



JFSC

CONSULTATION PAPER NO. 4 2007

AMENDMENTS TO REGULATORY LAWS

**Amendments to the Regulatory Laws as discussed in
Position Paper No. 4 2007**

CONSULTATION PAPER

The Jersey Financial Services Commission (the “**Commission**”) invites comments on this consultation paper. Responses may be sent directly to Caroline Morgan or David Hart at the Commission by 3 September 2007. If you require any assistance, clarification or wish to discuss any aspect of the proposal prior to formulating a response, it is of course appropriate to contact the Commission.

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It is the policy of the Commission to make the content of all responses available for public inspection unless specifically requested otherwise.

Glossary of terms

Banking Business (Jersey) Law 1991	BB(J)L
Collective Investment Funds (Jersey) Law 1988	CIF(J)L
Financial Services (Jersey) Law 1998	FS(J)L
Insurance Business (Jersey) Law 1996	IB(J)L

Individually this paper refers to these as a “primary law” and collectively they are referred to as the “Regulatory Laws”

Basel Committee on Banking Supervision	BCBS
International Association of Insurance Supervisors	IAIS
International Organisation of Securities Commissions	IOSCO
Financial Action Task Force	FATF

Collectively this paper refers to these as the “international regulatory bodies”

Position Paper No. 4 2007 Amendments to Regulatory Legislation, issued June 2007	the position paper
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Codes of Practice	Codes
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The Minister for Economic Development	the Minister
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Anti-Money Laundering / Countering the Financing of Terrorism	AML/CFT
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Unless stated otherwise “principal person” should be read as covering:

- the meaning given to “controller”, “manager” and “director” in Article 1 of the BB(J)L;
- the meaning given to “principal person” in Article 1 of the FS(J)L and CIF(J)L; and
- for category B permit holders the meaning given to “shareholder controller” and “chief executive” in Article 1 of the IB(J)L along with directors of such permit holders.

In this paper “licence” is being used as a generic term to cover:

- a registration granted under the BB(J)L;
- a permit granted pursuant to the CIF(J)L;
- a registration granted under the FS(J)L; and
- a permit granted pursuant to the IB(J)L.

In this paper “registered person” is being used as a generic term to cover:

- a person granted a registration under the BB(J)L;
- a person granted a permit pursuant to the CIF(J)L;
- a person granted a registration under the FS(J)L; and
- a person granted a permit pursuant to the IB(J)L.

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1 Executive summary

1.1 Overview

- 1.1.1 This consultation paper forms the third piece of work on the Commission's proposals to amend the Regulatory Laws.
- 1.1.2 The majority of proposals (see 1.1.5 for details of the exceptions) were first brought to industry's attention through the publication of the position paper in June 2007. The position paper was followed by six discussion sessions, held over a two day period at the St. Paul's Centre, which were designed to engage with industry in an informal manner. These discussion sessions allowed the Commission to obtain valuable feedback from approximately 100 individuals representing all aspects of the finance industry, including their professional advisors such as accountants and lawyers.
- 1.1.3 So, whilst this consultation paper provides industry with its first opportunity to review and comment on draft legislation, most of the areas covered by the consultation paper have been in the public domain for the past seven weeks.
- 1.1.4 This paper is designed to provide a link between the policy position as described in the position paper and the draft legislation as it currently stands, setting out any changes that have been made to the proposed policy since publication of the position paper, along with the rationale for those changes.
- 1.1.5 The exceptions to the statement in 1.1.2, relating to the paper's proposals having been brought previously to industry's attention, are the policy discussions set out in sections 11 - Gateways - and 12 - Powers of the Commission. Whilst Gateways were briefly discussed in 12.44 of the position paper, section 11 greatly expands on the discussion; and proposals to provide for greater consistency in Commission powers across the Regulatory Laws did not feature in the position paper.

1.2 What is proposed and why?

- 1.2.1 Jersey, along with the other Crown Dependencies of Guernsey and the Isle of Man, was last assessed, by the International Monetary Fund ("IMF"), in 2002/2003 and the resultant report published in October 2003. It is currently expected that each of the Crown Dependencies will all be re-assessed in the second quarter of 2008.
- 1.2.2 In the assessment, the Island's regulatory framework will be assessed against the relevant international regulatory standards. The assessment will consider legislation, Codes, policy statements and guidance notes, the practical implementation of the framework by the Commission (and other relevant agencies) - including resources that are available, and input provided by industry.

- 1.2.3 It is important that Jersey should obtain as favourable assessment as possible. External commentators will use the assessment as the basis for determining whether Jersey is a place to do business with, and the IMF report is also likely to be a factor in future discussions on the development of Jersey's international personality.
- 1.2.4 As a precursor to the Island's 2008 IMF assessment, the Commission has undertaken a comprehensive self assessment exercise - reviewing the Island's regulatory framework, including practical application of the framework, against the standards set by the international regulatory bodies. In addition to this, the Commission has also assessed itself against the Best Practice Statement for Trust and Company Service Providers issued by the OGBS (the "**OGBS Statement**").
- 1.2.5 The Commission's self assessment exercise has included a review of primary and secondary legislation, Codes, policy statements and guidance notes published by the Commission, along with the policies and procedures that define the day to day operations of the Commission, as it undertakes its functions under Article 5¹ of the Financial Services Commission (Jersey) Law 1998 (the "**Commission Law**").
- 1.2.6 At the same time, the Commission has continued with "business as usual", and, in addition to changes proposed as a result of the self assessment exercise, this paper proposes a number of changes anticipated in the 2007 business plan.
- 1.2.7 Many of the concepts that underpin the international regulatory standards are very similar therefore the construct of this paper is unlike that of many other Commission papers. It does not concentrate on one policy area or one regulatory law, rather it covers a number of policy initiatives across a number of Regulatory Laws. To assist industry in assessing the impact of the policies discussed we have included at Appendix B a matrix of policy change and the primary law article(s) impacted.
- 1.2.8 Sections 4 to 8 of this paper discuss policies that propose amendments to the Regulatory Laws as discussed in the position paper; sections 11 and 12 discuss the policy relating to amendments for which law drafting instructions have been submitted but draft legislation is not appended; section 9 addresses those amendments that update the Regulatory Laws in light of the Human Rights (Jersey) Law 2000, and section 10 is an amalgam of proposals to amend Regulatory Laws and a notification of items that will be addressed in a consultation on amendments to Orders later in the year.
- 1.2.9 This paper deals only with amendments to the Regulatory Laws; areas of the position paper proposing amendments to secondary legislation will form the basis of a separate consultation later this year.
- 1.2.10 In the main, the amendments proposed are in line with the policy set out in the position paper.

¹ The requirements of Article 5 have been provided at 3.2.

1.3 Who would be affected?

- 1.3.1 The Commission is of the opinion that many of the proposed changes do not impose new requirements on licensed entities, rather they provide greater clarity of existing practices, aim to protect the interests of investors and customers, and broaden the scope of regulatory sanctions so that the most appropriate is used.
- 1.3.2 To the extent that there is an impact on investors and customers, it is the opinion of the Commission that the proposed amendments provide them with greater information or protection when dealing with Jersey regulated entities.
- 1.3.3 As an aid in navigating the paper we have provided, as Appendix B, a matrix of policy changes and the primary law article(s) impacted. We believe this will assist the reader to identify areas of interest to them.

2 Consultation

2.1 Basis for consultation

2.1.1 The Commission has issued this consultation paper in accordance with Article 8(2) of the Financial Services Commission (Jersey) Law 1998 (the “**Commission Law**”), as amended, under which the Commission “*may, in connection with the carrying out of its functions -consult and seek the advice of such persons or bodies whether inside or outside Jersey as it considers appropriate*”.

2.2 Responding to the consultation

2.2.1 The Commission invites comments in writing from interested parties on the proposals included in this consultation paper. Where an industry body or association makes comments, that body or association should also provide a summary of the type of individuals and/or institutions that it represents.

2.2.2 To assist in analysing responses to the consultation paper, respondents are asked to:

2.2.2.1 prioritise comments and to indicate their relative importance; and

2.2.2.2 respond as specifically as possible and, where they refer to costs, to quantify those costs.

2.3 Next steps

2.3.1 The Commission will be collating responses to this consultation. Given the limited time available in which to consider responses, should you believe that a change may be required to the draft legislation, we would urge you to submit your comments as soon as possible.

2.3.2 Given that there are just 14 calendar days between the end of the consultation period and the date for submitting draft legislation to the Minister, the importance of early submission of responses cannot be overemphasised.

2.3.3 Amendments to the draft legislation may be affected as a result of the following:

2.3.3.1 the responses received to this consultation paper;

2.3.3.2 the review of the legislation for compliance with the Human Rights (Jersey) Law 2000 (“**Human Rights Law**”) (to be conducted by the Law Officers’ Department);

2.3.3.3 the outcome of the Attorney General’s consideration of the Commission’s proposals to align penalties associated with offences that are the same or similar; and

- 2.3.3.4 law drafting instructions covering proposals to revise the Commission's gateways (see section 11) and to align the powers of the Commission - where there are differences - under the Regulatory Laws, section 12.
- 2.3.4 In addition, during August, the Law Draftsman will combine the various amendments and supplements for each primary law in order to have a single amendment. In the case of the BB(J)L and CIF(J)L, these will be consolidated with existing amendments - Banking Business (Amendment No. 6) (Jersey) Law 200- and Collective Investment Funds (Amendment No. 4) (Jersey) Law 200-, respectively - so that a single amending law for each is lodged for debate by the States.
- 2.3.5 Consultation on Banking Business (Amendment No. 6) (Jersey) Law 200- and Collective Investment Funds (Amendment No. 4) (Jersey) Law 200- has already been undertaken, and each draft law has already been reviewed for compliance with the Human Rights Law.
- 2.3.6 To be clear, the amalgamation of draft legislation will be as follows:
 - 2.3.6.1 Banking Business - Appendix C, Appendix D and Banking Business (Amendment No. 6) (Jersey) Law 200-;
 - 2.3.6.2 Funds industry - Appendix E, Appendix F and Collective Investment Funds (Amendment No. 4) (Jersey) Law 200-;
 - 2.3.6.3 Financial Service Business - Appendix H and Appendix I; and
 - 2.3.6.4 Insurance Business - Appendix J and Appendix K
- 2.3.7 The Commission intends to lodge the amending legislation au Greffe by 21 September 2007, with a view to the States debating the draft legislation on 6 November 2007 - subject to any referral for scrutiny. Subject to this debate, the legislation will then be submitted to the Privy Council prior to the end of 2007. The intention is for the amending legislation to take effect prior to the IMF visit in 2008.
- 2.3.8 The Commission will provide feedback on the comments received to this consultation paper, however, as amendments to the legislation must be given priority, the feedback will be provided later in September or early in October.

3 The Commission

3.1 Overview

3.1.1 The Commission is a statutory body corporate established under the Commission Law. It is responsible for the supervision and development of financial services provided in or from within Jersey.

3.2 Commission's functions

3.2.1 The Commission Law prescribes that the Commission shall be responsible for:

- 3.2.1.1 the supervision and development of financial services provided in or from within Jersey;
- 3.2.1.2 providing the States, any Minister or any other public body with reports, advice, assistance and information in relation to any matter connected with financial services;
- 3.2.1.3 preparing and submitting to the Minister recommendations for the introduction, amendment or replacement of legislation appertaining to financial services, companies and other forms of business structure; and
- 3.2.1.4 such functions in relation to financial services or such incidental or ancillary matters –
 - as are required or authorised by or under any enactment, or
 - as the States may, by Regulations, transfer.

3.3 Guiding principles

3.3.1 The Commission's guiding principles require it to have particular regard to:

- 3.3.1.1 the reduction of risk to the public of financial loss due to dishonesty, incompetence or malpractice by, or the financial unsoundness of, persons carrying on the business of financial services in or from within Jersey;
- 3.3.1.2 the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters;
- 3.3.1.3 the best economic interests of Jersey; and, in pursuit of the above,
- 3.3.1.4 contributing to the fight against financial crime.

4 Powers to prevent individuals working in the prudentially supervised finance sector

4.1 Policy position

- 4.1.1 As noted in the position paper, the Commission operates a well established process for considering applications for the positions of principal and key persons and the Commission becomes privy to a substantial/significant volume of information whilst fulfilling its functions. This information is not restricted to principal and key persons as the Commission considers all aspects of an entity when undertaking a supervisory examination. In the main, this information does not cause the Commission to have concerns regarding the fitness and propriety of individuals employed in the local finance sectors.
- 4.1.2 However, there are occasions, albeit very much the exception to the rule, when the Commission, after considering extensively the information it possesses, considers that the circumstances are such that an individual should not be permitted to work in the local finance industry. This situation may occur either before or after an individual enters/has entered the local industry.
- 4.1.3 Currently the Regulatory Laws do not explicitly provide a power to prevent an individual from working in the finance sector.
- 4.1.4 Such an explicit power would not be used lightly. All decisions of the Commission must be proportionate and reasonable, given the information available at the time the decision is reached. The Commission is bound to follow its own decision-making process² which includes the right for an individual to be heard by the Board of Commissioners.
- 4.1.5 For the benefit of the finance industry, customers³ and investors the Commission believes that the power to prevent an individual undertaking functions should be explicit within the Regulatory Laws and, as such, the Commission has submitted drafting instructions to the Law Draftsman.
- 4.1.6 The instructions are such that the Commission would have an explicit power to prohibit an individual from acting in any capacity within any or all entities undertaking business that require licensing under one of the Island's Regulatory Laws. This power would extend to individuals undertaking unregulated activities, if the Commission considers that the individual might adversely impact on the regulated business of the entity.

² Website address for the Commission's Guidance Note on decision-making
http://www.jerseyfsc.org/pdf/guidance_on_decision-making_nov_2006.pdf.

³ In this context "customers" should be read as both customers and clients.

4.2 Subsequent policy discussions

Scope of individuals impacted

- 4.2.1 With respect to the scope of individuals on which the Commission would be able to exercise this power, discussions with the Law Draftsman concentrated on whether classes of persons or functions should be included in the Regulatory Laws.
- 4.2.2 It was concluded that no such classes should be specified as the Commission should be able to respond on a case by case basis. Consequently, the draft law has been prepared without any such specified classes.
- 4.2.3 The policy implementation has been achieved through extending the defined circumstances in which the power to issue a direction may be utilised. Currently, directions have immediate effect⁴ however, when utilised for the purpose of preventing an individual from being employed by, undertaking functions or holding a position in a regulated business the direction would not take effect for one month after the direction is issued. This, together with the right of appeal against the decision, protects the position of the individual in question.
- 4.2.4 The use of the direction also allows individuals to subsequently apply to the Commission for the direction to be varied or revoked. Again, where the Commission declines to vary or revoke a direction, there is a right of appeal against the refusal to the Royal Court.
- 4.2.5 It is also of note that, where an appeal is lodged, the direction would be suspended until the appeal is determined.

Duration of direction

- 4.2.6 Another area of discussion had with both the Law Draftsman and industry relates to the period for which the direction will be in force.
- 4.2.7 Again, the Commission considers that an absolute time period is inappropriate and that each set of circumstances should be considered independently by the Commission to ensure that any action is proportionate to the facts available. So, some directions may include a period in which the direction will have force, and others will be open-ended.
- 4.2.8 **Are you content for the duration of the direction to be variable and based on the individual circumstances of each case?**

⁴ With the exception of directions to “wind-up” an entity where a direction must be accompanied by a one month notice period.

Publication

- 4.2.9 Discussions with industry also featured the issue of whether or not the Commission would publish details of directions relating to the prevention of individuals from undertaking functions in the local finance industry.
- 4.2.10 Concerns were raised regarding how the industry in general would become aware of those in receipt of such a direction without a publicised list.
- 4.2.11 Currently the Commission has the power to publish directions but is not compelled to publish. It is the common practice of the Commission to issue public statements only when it is in the public interest to do so⁵.
- 4.2.12 It is conceivable that there would be circumstances when the Commission might not consider the publication of a direction to be in the public interest and it should be noted that, in a small jurisdiction, the impact of a public statement, which will also have the effect of “naming and shaming” might be a greater penalty than that imposed by the direction.
- 4.2.13 **Do you consider the use of the existing guidance note relating to public statements relevant for directions issued on individuals?**

Criteria

- 4.2.14 Concern has been raised as part of industry discussions about the criteria against which the Commission would consider individuals and the consequential impact on the registered person to which they are connected.
- 4.2.15 The Commission notes these concerns and continues to consider its response however, currently, it does not intend to issue a separate policy statement or guidance note regarding criteria.
- 4.2.16 To date, the Commission has issued a number of policy statements and guidance notes covering areas such as the personal questionnaire⁶, the Commission’s decision-making process and the Commission’s use of enforcement powers⁷. As part of the preparations for the forthcoming IMF assessment the Commission has already announced its intention to review existing policy statements and guidance notes, and industry’s concerns will be factored into this review process.
- 4.2.17 The Commission considers it essential to reiterate that issuing a direction that prevents an individual undertaking functions is the pinnacle of a triangle of possible enforcement actions. In reaching such a point, the preceding decision-making process would provide an individual with a number of opportunities to challenge the Commission and fully understand the basis for the direction.

⁵ The Commission has published a Guidance Note on the Commission’s use of public statements <http://www.jerseyfsc.org/pdf/public%20statements%20-%20july%202006.pdf>

⁶ Available on the Commission’s website at http://www.jerseyfsc.org/pdf/personal_questionnaire.pdf

⁷ Available on the Commission’s website at <http://www.jerseyfsc.org/pdf/enforcement%20powers%20-%20july%202006.pdf>

4.3 Draft legislation

- 4.3.1 Articles within each of the Regulatory Laws have been amended in line with the policy position and conclusions of the subsequent discussions as set out above.
- 4.3.2 Appendix B to this paper provides a guide to the location of the amendments within each primary law.

5 Extension of “principal person” regime to “key persons”

5.1 Policy position

- 5.1.1 The position paper noted that the requirements in the Regulatory Laws for individuals to interact with the Commission do not currently extend to those individuals acting for or intending to act in the capacity of “key persons”.
- 5.1.2 For the purposes of clarification, key persons are considered to be those holding the position of Compliance Officer (“CO”), Money Laundering Reporting Officer (“MLRO”) and, from 1 January 2008, Money Laundering Compliance Officer (“MLCO”).
- 5.1.3 The term “key persons” is applied across all finance sectors and, given the increasingly important position they hold within the governance structure of many entities, the Commission treats them in a manner similar to principal persons.
- 5.1.4 The Commission issued law drafting instructions such that each Regulatory Law would be amended in order to capture key persons in a similar manner to principal persons. The instruction intended that all consequential powers of the Commission, and rights accruing to principal persons, would extend to individuals occupying a key person position. In short, key persons, would be treated the same as principal persons (see also clarification of this position in 5.2.1).
- 5.1.5 This amendment should have little impact on entities and their key persons as the Commission, through the Codes⁸, currently requires that individuals applying for key person positions submit Personal Questionnaires (“PQs”) to the Commission in exactly the same manner as principal persons.
- 5.1.6 The amendments to the Regulatory Laws would provide the Commission with explicit powers to process PQs together with any additional information and issue letters of “no objection” or to object to key persons. This will also provide procedural certainty for both the Commission and the person concerned should the Commission be unable to form a view, or form a negative view, of an individual.

⁸ Within the **Funds sector**, Codes are still in the process of being introduced; however, information is currently collected as part of the permit application process as implemented under Article 6 of the CIF(J)L.

Within the **General Insurance Mediation Business sector**, draft Codes were issued for consultation in June 2007; however, information is currently collected as part of the registration application process as implemented under Article 8 of the FS(J)L.

Within the **Banking sector**, amendments to the Codes have recently been issued for consultation however until the BB(J)L amendment, consulted on recently, comes into force the Commission is aware that the Codes have no explicit legal status. However, compliance with the Codes would be considered in the event that the Commission needed to review the continued fitness and propriety of a registered person for registration purposes.

5.2 Subsequent policy discussions

- 5.2.1 With respect to section 5.1.4 the Commission wishes to clarify that key persons would only be treated the same as principal persons in certain circumstances. These circumstances are limited to:
- 5.2.1.1 the process associated with objecting to an individual taking up office or continuing in office; and
 - 5.2.1.2 the change notification requirements currently applicable to principal persons.
- 5.2.2 The Commission considered, but rejected, the option of expanding the definition of “principal person” to include key persons (as defined in 5.1.2). It considers that key persons, who are not also directors or controllers of registered persons, do not have the same profile and “regulatory responsibilities” as directors and controllers.
- 5.2.3 To clarify, as stated in the various draft Codes, recently published by the Commission⁹, the CO, MLRO and MLCO may be the same person, dependent upon the circumstances of each regulated entity.
- 5.2.4 During the drafting process it has proved necessary to provide definitions for the CO, MLRO and MLCO in each of the primary laws.
- 5.2.5 Additionally, the Commission believes it has been common practice for an individual not to commence the role of a key person until they have received a response relating to their personal questionnaire. Should the amended legislation take effect, an individual will not be permitted to take up their appointment until they have received a letter of “no objection” from the Commission.

5.3 Draft legislation

- 5.3.1 It should be noted that it is the intention that ‘Money Laundering Reporting Officer’ and ‘Money Laundering Compliance Officer’ will be defined terms within the forthcoming Money Laundering (Jersey) Order 200- (“**Money Laundering Order**”). However, at this stage it is not appropriate to refer to these definitions as the Order is only in draft form.
- 5.3.2 Consequently, as an interim measure, MLRO and MLCO have been defined in each Regulatory Law. Following enactment of the Money Laundering Order, MLRO and MLCO would be redefined in the Regulatory Laws by reference to the definitions contained in the Money Laundering Order.
- 5.3.3 It is proposed that provisions similar to the approval of principal persons under the FS(J)L are added to the CIF(J)L (see section 8 of this paper). Key persons provisions would also be added, however as there are currently no Codes

⁹ Consultation Paper No. 3 2007, On Amendments to Codes of Practice, published on 30 July 2007.

issued under the CIF(J)L, and the definition of compliance officer in Article 1 of CIF(J)L differs from that in the BB(J)L, IB(J)L and FS(J)L.

- 5.3.4 Articles within each of the primary laws have been amended in line with the policy position and subsequent policy discussions as set out above. Appendix B to this paper provides a guide to the location of the amendments within each primary law.
- 5.3.5 **Do you believe there is value to a registered person in terms of the Commission providing “no objection” prior to an individual taking up such an important role at a registered person?**

6 Disclosure of conditions

6.1 Policy position

- 6.1.1 As noted in the position paper, each of the Regulatory Laws provides the Commission with the ability to attach conditions to the licence of an entity. Conditions placed on an entity's licence can be (and perhaps should be) included with any public disclosure of a licence by the Commission; to date this has not been the "practice".
- 6.1.2 Some conditions, applicable to an entity's licence, may limit the scope of its permitted activities, even within a class of business. Consequently, there are times when the public may not be aware of the precise scope of an entity's licence.
- 6.1.3 The Commission believes it is right and proper that some conditions placed on an entity's licence are disclosed, in the public interest. However, the Commission also believes that there are circumstances when the subject of conditions should remain restricted.
- 6.1.4 The position paper proposed amendments to the Regulatory Laws such that the Commission would be able to require the disclosure of conditions where it believes it is in the public interest to do so.
- 6.1.5 The position paper also noted that the Commission intends to issue a Policy Statement explaining the criteria against which decisions on whether or not to make all, or any, licence conditions publicly available would be taken.
- 6.1.6 **Do you agree that only conditions limiting the scope of an entity's activities should be publicly disclosed? If not, what type of conditions do you consider should be made publicly available, and why?**
- 6.1.7 **Do you believe that a policy statement is the most appropriate mechanism for the Commission to explain the criteria against which a decision will be made when considering whether a condition should be publicly disclosed?**

6.2 Subsequent policy discussions

- 6.2.1 With respect to conditions that limit the scope of an entity's activities, discussions with industry have highlighted that conditions placed on a licence subsequent to it being granted may be construed as a type of enforcement action; whereas, those placed on a licence at the outset are construed as part of the original licence.
- 6.2.2 The Commission has noted this comment and intends to consider it further as it finalises the review of its own processes and procedures, which will be completed later in 2007. The Commission is of the opinion that this is a matter of practical application and does not impact on the drafting of primary legislation.

- 6.2.3 Additional comments received from industry centred around the practical processes associated with disclosing the conditions such as:
- 6.2.3.1 Will conditions be printed on the face of the certificate?
 - 6.2.3.2 Will an entity be able to obtain more than one copy of certificates and conditions that require disclosure?
 - 6.2.3.3 What will happen in respect of licences that have already been conditioned and the Commission requires disclosure of one or more of those conditions?
 - 6.2.3.4 Will the Commission disclose the relevant conditions for each entity on their website?
- 6.2.4 Regarding 6.2.3.3 the Commission proposes to undertake a review of conditions that are presently attached to licences, with a view to identifying those conditions that should be disclosed. It is anticipated that the vast majority of current conditions will not need disclosure.
- 6.2.5 With respect to 6.2.3.4 the Commission can confirm that it would disclose relevant conditions on its website. The Commission has noted the other comments and has taken these on board for inclusion in the continuing review of its processes and procedures.
- 6.2.6 The discussions with industry also helped to clarify the matter of when a notice to disclose a condition comes into force. The draft legislation has been written to bring the notice requirement for a condition attached subsequent to the licensing of a registered person into force on the earlier of:
- 6.2.6.1 one month; or
 - 6.2.6.2 a date formally agreed between the registered person and the Commission; or
 - 6.2.6.3 the date an appeal is determined or withdrawn.
- 6.2.7 There is no proposal for a similar delay for a notification requirement that relates to a condition attached at the time of licensing¹⁰.

The funds sector

- 6.2.8 The present registration regime for funds is different to other sectors in that the normal process for registration often occurs over a shortened period. The impact of the introduction of the policy above has been considered to be minimal, in that most conditions attached to permits are of a standard nature and non-standard conditions rarely limit the scope of the activities of the permit holder.

¹⁰ This policy has yet to be replicated in the FS(J)L. It is intended that Article 11A of Appendix I will be amended in line with the policy.

- 6.2.9 Once the service providers of unclassified funds fall to be regulated under the FS(J)L, the standard conditions that relate directly to these service providers will fall away as they will be incorporated into the Codes' requirements. It is thought that only a very small number of non-standard conditions would be considered for potential disclosure.
- 6.2.10 Under the CIF(J)L, the Commission's view is that unclassified fund certificate holders and Recognized Fund permit holders are unlikely to have conditions attached to the certificate or permit that would give rise to a possible disclosure.

Public display of licence

- 6.2.11 The position paper noted in the miscellaneous section that the Commission was seeking to require that licence certificates be publicly disclosed. This power already exists in the BB(J)L, so the requirement related to the other Regulatory Laws.
- 6.2.12 The Commission believes that the position paper could have been construed to indicate that the FS(J)L and IB(J)L would contain an obligation to publicly display, at the time of issue, a registered person's licence. This was not the intention.
- 6.2.13 However, the Commission would require each licence to be made available for inspection on request. In addition, the CIF(J)L was missed from the list of primary laws that would be amended for this policy.
- 6.2.14 In the draft legislation, the text relating to making certificate information available appears with the requirements to disclose certain conditions. Therefore this requirement to publicly display licences, in certain circumstances, has been raised in this section of the consultation paper.

6.3 Draft legislation

- 6.3.1 Legislation has been drafted in line with the policy set out in the position paper and the subsequent policy discussions presented above.
- 6.3.2 Appendix B to this paper provides a guide to the location of the amendments in the Regulatory Laws.

7 Disclosure of the identity of senior management/investment employees

7.1 Policy position

- 7.1.1 This section only relates to entities holding a licence to conduct investment business as defined by Article 2(2) of the FS(J)L.
- 7.1.2 As discussed in the position paper the Commission intends to disclose the identity of senior managers and investment employees in line with the following interpretations of the IOSCO requirements:
- 7.1.2.1 “senior management” is considered to mean those individuals captured by the definition of “principal person” contained in Article 1 of the FS(J)L; with the exception of those who are principal persons solely by virtue of their shareholding¹¹; and
- 7.1.2.2 “those authorised to act in the name of the intermediary” is considered to be individuals falling within part (a) of the definition of “investment employee”¹².
- 7.1.3 The extension of the statement in 7.1.2.2 is that the identity of investment employees who are not directly employed by an entity that has been registered to conduct investment business, would not be disclosed. Also, the Commission does not intend that vacant positions should be made public.
- 7.1.4 For each individual it is anticipated that the Commission would disclose their name and position within the registered person. Such disclosure will be undertaken via the Commission’s website.
- 7.1.5 The Commission does not intend to require investment employees to complete personal questionnaires nor would it in any way be “validating” the information provided or “approving” the investment employees of the registered person. This will be made clear to those accessing the Commission’s website.
- 7.1.6 **Do you have any objections to the proposal that the Commission disclose the names of senior management and investment employees? If so, please provide reasons for your objection.**
- 7.1.7 **Do you agree with the Commission’s interpretation of “senior management” and “those authorised to act in the name of the intermediary” for the purposes of disclosing the identity of these individuals? If not, please advise how you would interpret the terms, with reasons.**

¹¹ FS(J)L Article 1(b)(i) or (c)(ii) of the “principal person” definition.

¹² Part (a) of the definition of an investment employee states: a person employed on the relevant date under a contract of service or a contract for services by the registered person as – (i) a dealer, (ii) a discretionary investment manager, (iii) an advisor, or (iv) a supervisor

7.2 Subsequent policy discussions

- 7.2.1 With respect to disclosing the identity of senior management and investment employees, our discussions with industry have generally focussed on the practical aspects of achieving the policy intent rather than the policy itself.
- 7.2.2 Whilst the position paper did include the Commission's initial thoughts on the method and frequency of collecting data for disclosure purposes (position paper section 6.10) recent discussions have given us cause to reconsider our proposal.
- 7.2.3 The Commission seeks to collect the data in a manner and with such frequency that ensures that the information disclosed is relevant and timely but which does not impose an extensive administration burden on either the Commission or the registered person.
- 7.2.4 **What are your views with respect to the mechanism and frequency in which the Commission should collect and publish the relevant data?**

When considering your response to this question please remember that the Commission's definition of investment business encompasses small independent financial advisers operating solely in the local marketplace through to international banking operations with global reach.

7.3 Draft legislation

- 7.3.1 Legislation has been drafted in line with the policy set out in the position paper with respect to the individuals that the Commission intends to disclose the identity of. The policy has been achieved through an amendment to one of the Commission's existing gateways.
- 7.3.2 Appendix B to this paper provides a guide to the location of the amendments in the FS(J)L.
- 7.3.3 **Do you consider that the legislation as currently drafted reflects the Commission's policy?**

8 Fit and proper criteria for entities and individuals

8.1 Policy position

8.1.1 Each of the international regulatory standards require there to be clearly stated criteria against which assessment of applicants for a licence and principal persons shall be considered for fitness and propriety.

8.1.2 As noted in the position paper, when assessing the Island's Regulatory Laws for compliance against international regulatory standards, the Commission found that the current criteria were not always presented as clearly as they should be. Consequently, the Commission considers that compliance with some of the IOSCO Principles¹³ and Basel Core Principles¹⁴ cannot be demonstrated effectively.

8.1.3 Additionally, following the previous IMF assessment of the Island, it was accepted by the Commission that the Regulatory Laws are not specific with respect to consideration given to money laundering or terrorist financing convictions when considering the fitness and propriety of entities and individuals.

8.1.4 Consequently, the Commission proposed amending the relevant Regulatory Laws as follows:

8.1.4.1 With respect to the CIF(J)L, amendments were proposed to:

- introduce a basis for regulating who may be a principal and key person, along with the appropriate criteria, in a way that emulated the regime under the FS(J)L. In doing so, a provision for exempting shareholders of a fund company was required;
- introduce the requirement to notify the Commission in respect of the proposed appointment of, or changes relating to, principal and key persons, including provisions for failing to do so; and
- include criteria for refusing to grant a permit in a way that emulated granting registrations under the FS(J)L.

8.1.4.2 With respect to the BB(J)L amendments were proposed to provide greater clarity to the criteria used in considering an application for a licence and principal and key person status, in line with the FS(J)L.

8.1.4.3 Amendments were proposed to the relevant Articles of each

¹³ IOSCO Objectives and Principles of Securities Regulation ("IOSCO Principles")
<http://www.iosco.org/library/pubdocs/pdf/IOSCOPD154.pdf>

¹⁴ Core Principles for Effective Banking Supervision ("Basel Core Principles") set by the BCBS
<http://www.bis.org/publ/bcbs129.pdf>

Regulatory Law such that conviction for a money laundering or terrorist financing offence would be specifically listed as an item that the Commission would take into consideration when processing an entity's application to be licensed or an individual's application to be a principal or key person (and continued assessment of fitness and propriety thereafter).

8.2 Subsequent policy discussions

The funds sector

8.2.1 The Commission considers it important to clarify that the amendments to the CIF(J)L are designed to ensure that a fund company and a functionary of a Recognized Fund will be subject to a regulatory regime that is equivalent to that which will apply to fund functionaries under the FS(J)L.

Clarification of fit and proper with respect to AML/CFT

8.2.2 When submitting law drafting instructions the Commission has taken the approach of mirroring offences that cannot be "spent" under the Rehabilitation of Offenders (Exceptions) (Jersey) Regulations 2002, when considering the offences to be considered for fitness and propriety purposes.

8.2.3 Additionally, the Commission has taken the opportunity to add failure to comply with a direction as providing grounds for revocation of a licence.

8.3 Draft legislation

8.3.1 Legislation has been drafted in line with the policy position and subsequent policy discussions with respect to the fit and proper criteria for considering licence applications and principal/key person applications.

8.3.2 Appendix B to this paper provides a guide to the location of the amendments in the Regulatory Laws.

8.3.3 Please note:

8.3.3.1 Currently, the Collective Investment Funds (Amendment No. 4) (Jersey) Law 200- provides for the inclusion of an Article 8A.

8.3.3.2 However, Appendix E (Collective Investment Funds (Amendment No. 5) (Jersey) Law 200- also provides for the inclusion of an Article 8A.

8.3.3.3 This inconsistency in Article numbering will be addressed as part of the process set out in 2.3.4.

8.3.3.4 In the interim, the references to Article 8A in Appendix F (Collective Investment Funds (Amendment No. 5) (Jersey) Law 200- - Supplement) and Appendix G (Draft Collective Investment Funds (Appointment of Manager) (Jersey) Order 200-) should be read as follows:

- appendix F, Articles 2 and 10 relate to Article 8A as described in 8.3.3.1;
- appendix F, Articles 7 and 8 relate to Article 8A as described in 8.3.3.2; and
- appendix G, Article 2 relates to Article 8A as described in 8.3.3.1.

8.3.4 **Are you content that the amendments to the Regulatory Laws provide greater clarity relating to offences that the Commission will take into consideration when forming an opinion? If not, please detail your concerns.**

8.3.5 **Do you consider that the amendments to the CIF(J)L and BB(J)L implement the policy position?**

9 Human rights – appeals and penalties

9.1 Policy position

9.1.1 The position paper advised of the high level policy in respect of appeals in two areas:

9.1.1.1 the need to provide reasons for each decision taken by the Commission (except where a decision has been taken at the request of a registered person); and

9.1.1.2 the effect of an appeal of a decision.

9.2 Subsequent policy discussions

9.2.1 Subsequent discussions with the Law Draftsman have helped to develop policy in both of these areas.

9.2.2 Firstly, where the Commission makes a decision, and where it is required to notify the reasons for that decision to more than one person, the draft legislation clearly state that the Commission need not specify the same reasons, or reasons in the same manner. This is particularly relevant when the Commission objects to a principal person, e.g. where it transpires that an applicant has a criminal record, and where it is required to provide reasons for its objection to both the applicant and the registered person. In the case of the applicant, the Commission will wish to provide full reasons, but may wish to make a more general reference to "fitness and propriety" to the registered person that the application has been made in respect of.

9.2.3 Secondly, the draft legislation more clearly deals with the timing of the effect of a decision taken by the Commission. In the case of a decision to: refuse an application to be licensed; set a condition at the time that a licence is granted; require such a condition to be publicised; approve an application to be a principal person; or approve an application to be a key person, then that decision is to take immediate effect, and will not be suspended by any subsequent appeal to the Royal Court.

9.2.4 Otherwise, the effect of a decision taken by the Commission will be delayed for a period of one month, in order to allow a person that is aggrieved by a decision to appeal to the Royal Court¹⁵. The exceptions to this rule - where a decision can or will have immediate effect - are:

9.2.4.1 In the case of a public statement issued for the protection of the public.

9.2.4.2 In the case of any direction, other than one that relates to the winding up of an entity, or prevention of an individual from working in the

¹⁵ Current draft legislation –which does not provide for a delay in an objection to a principal person or key person under Article 13A of the CIF(J)L – does not reflect this policy.

prudentially supervised sector¹⁶.

- 9.2.4.3 In the case of a decision to refuse an application to vary or withdraw an existing direction.
- 9.2.4.4 Where the Commission is able to apply to the Royal Court to shorten the period of notice, and where the Commission does so and the Court makes such an Order.
- 9.2.5 Except as referred to above, the general presumption is also, in the event that there is an appeal against a decision taken by the Commission, that the decision will not take effect until the appeal has been determined by the **Royal Court** or withdrawn, except:
 - 9.2.5.1 In the case of a public statement issued for the protection of the public - which has already been issued (and which the Court has not ordered the Commission to stop making available).
 - 9.2.5.2 In the case of any direction, other than one that relates to the winding up of an entity, or the prevention of an individual from working in the prudentially supervised sector.
- 9.2.6 In the case of a decision to refuse an application to vary or withdraw an existing direction, then an appeal to the Court will not suspend the application of the existing direction.

9.3 Draft legislation

- 9.3.1 Articles within each of the primary laws have been amended in line with the policy position and subsequent policy discussion as set out above. Appendix B to this paper provides a guide to the location of the amendments within each primary law.
- 9.3.2 Additionally, Appendix M to this paper provides an extract from draft legislation relating to an amendment to the Companies (Jersey) Law 1991 ("**the Companies Law**"). The amendment is with respect to the Registrar's power to exercise discretion over the status of a company, as public or private and enacts the change proposed in 11.5 of the position paper.

¹⁶ Current draft legislation – which does not provide for any delay in a direction coming into force – does not reflect this policy.

10 Other miscellaneous amendments

10.1 Policy position

10.1.1 Section 12 of the position paper discussed the Commission's proposals to amend legislation in nine different areas. This section takes each of those areas and provides an update on the current position.

10.1.2 Where it is noted that the amendment forms part of this consultation the table included as Appendix B to this paper provides a guide to the relevant Article(s).

10.2 Relevant supervisory authority

10.2.1 No amendment to the policy set out in the position paper has been undertaken.

10.2.2 The amendment to the definition of relevant supervisory authority in the FS(J)L has been enacted, following the passing of the Financial Services (Amendment of Law) (Jersey) Regulations 2007.

10.2.3 As noted in the position paper the relevant amendment to the CIF(J)L was previously published as part of the Collective Investment Funds (Amendment No.4) (Jersey) Law 200-.

10.2.4 Amendments to the IB(J)L and BB(J)L form part of this consultation.

10.3 Power to issue directions

10.3.1 No amendment to the policy set out in the position paper has been undertaken.

10.3.2 As noted in the position paper, the relevant amendment to the BB(J)L has already been consulted upon.

10.3.3 The amendment to the IB(J)L forms part of this consultation.

10.4 Amendment of definitions and exemptions by Regulations

10.4.1 No amendment to the policy set out in the position paper has been undertaken.

10.4.2 As noted in the position paper, the relevant proposed amendment to the CIF(J)L was previously published as part of the Collective Investment Funds (Amendment No. 4) (Jersey) Law 200-.

10.4.3 The amendment to the BB(J)L forms part of this consultation however, it should be noted that the ability to amend certain definitions by way of an Order has been retained.

10.5 Regulatory scope over the operation of exchanges/trading systems

10.5.1 No amendment to the policy set out in the position paper has been undertaken.

10.5.2 As noted in the position paper, this policy will be implemented by way of Regulation rather than requiring an amendment to the primary Law therefore this consultation paper does not contain draft legislation in respect of this amendment.

10.5.3 The amending Regulation will form part of the amendments to be consulted upon later in 2007.

10.6 Powers over actuaries

10.6.1 No amendment to the policy set out in the position paper has been undertaken.

10.6.2 The amendment to the IB(J)L forms part of this consultation.

10.7 Disclosure by funds

10.7.1 As noted in the position paper, the amendments proposed, in respect of disclosures that funds are required to make to those investing or proposing to invest in funds, impact the Collective Investment Funds (Unclassified Funds) (Prospectus) (Jersey) Order 1995 (the "UFPO") and the Companies (General Provisions) (Jersey) Order 2002.

10.7.2 The Commission believes that the most appropriate amendment will be to redraft the UFPO so that it covers all types of unclassified collective investment funds.

10.7.3 Amendments to these Orders do not form part of this consultation; they will be addressed later in 2007.

10.8 Power to appoint a manager

10.8.1 No amendment to the policy set out in the position paper has been undertaken. The power to appoint a manager is a matter for the Court following an application by the Commission.

10.8.2 Amendments to the CIF(J)L and the IB(J)L form part of this consultation. We have also taken the opportunity to attach copies of the associated draft orders – Appendices G and L respectively.

11 Gateways

11.1 Policy position

- 11.1.1 The position paper noted that the Commission was considering the adequacy of information sharing powers (“gateways”) as they relate to sharing information with other domestic agencies.
- 11.1.2 In undertaking this limited scope review of gateways it became obvious that inconsistency exists generally within the Regulatory Laws with respect to whom and in what circumstances the Commission is able to share information.
- 11.1.3 As the local finance industry becomes ever more cross-border in its outlook the ability to share information becomes increasingly important, not only in the fight against financial crime but also in the ability of the Commission to play its part in the supervision of international financial conglomerates. Additionally, as an Offshore Financial Centre the IMF assessment will, inter alia, focus on the ability of the Island to share information with other bodies both domestic and international.
- 11.1.4 Consequently, the Commission has extended its gateways review beyond the domestic gateways to encompass both international and domestic gateways in each of the Regulatory Laws for relevance and consistency.
- 11.1.5 This review has highlighted that to realise consistency of power regarding the Commission’s ability to share information, amendments are required in the areas set out in 11.2 to 11.10.
- 11.1.6 Law drafting instructions have been submitted to the Law Draftsman to effect these changes. However due to a number of factors, including time, it has not been possible to draft amendments for inclusion in the appendices to this paper.
- 11.1.7 As a result the following sections set out the policy position behind each amendment and the Commission welcomes feedback on these positions.
- 11.1.8 **Do you have any concerns with the amendments designed to provide consistency of gateways as described in sections 11.2 to 11.10 inclusive? If so, please provide details of those concerns, including practical examples wherever possible.**
- 11.1.9 It should be noted that the Commission considers each request to share information on its individual merits and has published on its website information in respect of assisting overseas regulatory authorities¹⁷ and guidance for overseas regulatory authorities on how to obtain the Commission’s assistance¹⁸.

¹⁷ http://www.jerseyfsc.org/the_commission/international_co-operation/assisting-overseas.asp

¹⁸ http://www.jerseyfsc.org/the_commission/international_co-operation/cooperation-for-guidance-overseas-eng.asp

11.1.10 The Commission is currently considering the need to publish similar documents with respect to sharing information with bodies other than overseas regulatory authorities.

11.1.11 In addition, one additional gateway is proposed – in order to allow the Commission to provide information to certain professional bodies. This is discussed at 11.11.

11.2 Viscount and any person exercising a statutory function

11.2.1 With respect to the domestic agencies, currently there are inconsistencies in the Regulatory Laws with respect to:

11.2.1.1 the circumstances in which information may be shared;

11.2.1.2 who may share information; and

11.2.1.3 which domestic agencies information may be shared with.

11.2.2 Consequently, instructions have been submitted to the Law Draftsman to align the Regulatory Laws such that:

11.2.2.1 there is no restriction on the circumstances that may give rise to the need to disclose information;

11.2.2.2 the ability to share information is granted to the Commission or any person acting on its behalf; and

11.2.2.3 the scope to whom the disclosure can be made to is set to include any person exercising in Jersey a statutory registration or licensing function (see 11.2.3), and in addition:

- to the Comptroller of Income Tax (where the Commission holds information that is relevant to the functions of the Comptroller); and
- to the Comptroller and Auditor General (in order to facilitate future reviews akin to the recent Value for Money exercise).

11.2.3 The Commission considers that the gateway should incorporate, at a minimum:

11.2.3.1 the Gambling Commission (which is to have responsibility for monitoring compliance with AML/CFT for gambling purposes);

11.2.3.2 any body charged with collecting information on non-profit organisations (for the purposes of complying with FATF Special Recommendation VIII);

11.2.3.3 those designated as AML/CFT oversight bodies (see Consultation

Paper No. 2 published by the AML/CFT Strategy Group¹⁹);

11.2.3.4 the Jersey Competition Regulatory Authority (in order to allow the Commission to share information on persons that are regulated by both authorities);

11.2.3.5 any office that has the function of the regulation of undertakings; and

11.2.3.6 the Office of the Data Protection Commissioner.

11.3 Discharge of Commission functions

11.3.1 The Commission is charged with undertaking supervisory functions by virtue of laws other than the Regulatory Laws e.g. the Companies Law.

11.3.2 However, as the Regulatory Laws are currently drafted there is inconsistency with respect to the circumstances in which the Commission may share information in the discharge of its functions.

11.3.3 The CIF(J)L and FS(J)L allow disclosure for the purpose of discharging functions “...under this Law, or any other enactment under which they [the Commission] exercise a supervisory function” whereas the BB(J)L and the IB(J)L restrict the sharing of information to the discharge of functions under specific laws rather than all laws.

11.3.4 Consequently, law drafting instructions have been submitted to the Law Draftsman to align the gateways such that information can be shared for the purpose of discharging the Commission’s supervisory functions wherever they may be enacted.

11.4 Criminal proceedings

11.4.1 There is an inconsistency in the ability of the Commission to disclose information in relation to criminal proceedings in that the FS(J)L and CIF(J)L permit the disclosure of information “...with a view to the investigation of a suspected offence...” as well as for the purpose of instituting criminal proceedings.

11.4.2 However, the IB(J)L and BB(J)L limit the disclosure to the later situation thereby precluding the disclosure of information with a view to the investigation of a suspected offence.

11.4.3 Consequently law drafting instructions have been submitted such that the BB(J)L and IB(J)L are aligned with the CIF(J)L and FS(J)L.

¹⁹ The Island’s AML/CFT Strategy Group is chaired by the Chief Executive to the Council of Ministers and comprises officers from the following Government Departments and agencies: the Chief Minister’s Department, the Economic Development Department, the Law Officers’ Department, the Joint Financial Crimes Unit, the Jersey Financial Services Commission, and the Shadow Gambling Commission.

11.5 Disciplinary proceedings

- 11.5.1 This gateway relates to the ability of the Commission to share information for the purpose of undertaking disciplinary proceedings by certain bodies. The Commission has noted inconsistencies with respect to the scope of this gateway.
- 11.5.2 The Commission's policy is that it should be possible to disclose information, for the purposes of disciplinary proceedings, in respect of the following:
- 11.5.2.1 the auditor of an applicant;
 - 11.5.2.2 the current and former auditor of a registered person;
 - 11.5.2.3 the current and former auditor of a formerly registered person;
 - 11.5.2.4 persons that have performed investigations on behalf of the Commission; and
 - 11.5.2.5 persons that have produced reports at the behest of the Commission.
- 11.5.3 As the Regulatory Laws are currently drafted not all of the scenarios listed in 11.5.2 are covered by each primary law. Consequently, law drafting instructions have been submitted to address the inconsistencies and align the scope of the power of disclosure relating to disciplinary proceedings.

11.6 Attorney General or the Police

- 11.6.1 The review of this gateway has highlighted a number of inconsistencies with respect to:
- 11.6.1.1 who may disclose information;
 - 11.6.1.2 the source of the information that may be shared; and
 - 11.6.1.3 then who may subsequently disclose the shared information, and
 - 11.6.1.4 in what circumstances.
- 11.6.2 The Commission's policy with respect to each of the above is that:
- 11.6.2.1 it should be possible for information to be disclosed to the Attorney General or the police by the Commission or any person acting on the Commission's behalf;
 - 11.6.2.2 the source of information that may be disclosed should be consistent across the Regulatory Laws, and that the sources should include, at a minimum, information obtained:
 - through the use of the general power to require the provision of information and documents under the Regulatory Laws;

- as a result of an investigation conducted at the request of the Commission; and
- through the use of the power to enter and search premises; and

11.6.2.3 either the Attorney General or a police officer should be able to subsequently share information for the purposes of both a prosecution and the investigation of a suspected offence.

11.7 Compensation scheme

11.7.1 For the purposes of sharing information with those charged with the operation of a compensation scheme, the CIF(J)L currently requires that where the information relates to a participant in a collective investment fund, that participant must consent to the disclosure of the information.

11.7.2 This individual authority for disclosure is not a feature of the FS(J)L, BB(J)L or IB(J)L and the Commission has been unable to identify a need for the requirement in the CIF(J)L. It is the Commission's view that any information relating to the participants of a collective investment fund would be disclosed for the benefit of the participants.

11.7.3 Consequently, the Commission has submitted drafting instructions to remove the requirement to obtain consent from each participant under the CIF(J)L.

11.8 To the auditor of a registered person

11.8.1 This gateway is designed to provide the Commission with the ability to share information with auditors, if it appears to the Commission that sharing information would enable or assist the Commission to discharge its functions or the sharing of information is in the interest of the public.

11.8.2 The Regulatory Laws are not consistent with respect to which auditors the Commission may share information or with respect to the persons in whose interests the disclosure may be undertaken.

11.8.3 Consequently, the Commission has submitted drafting instructions to the Law Draftsman such that information may be shared:

11.8.3.1 with the auditor of a registered person;

11.8.3.2 with the auditor of a formerly registered person;

11.8.3.3 with the auditor of a person who appears to have conducted unauthorised business.

11.8.4 Information may be shared where it is:

11.8.4.1 in the interest of existing customers²⁰ of a registered person; or

11.8.4.2 in the interest of potential customers.

11.9 To enable the Commission to seek professional advice

11.9.1 This gateway allows the Commission to share information in circumstances where the Commission has felt the need to seek advice from any qualified person on any matter requiring the exercise of professional skill e.g. whether or not Regulatory Laws set out requirements that are in line with standards set by international regulatory bodies. The information would be shared for the purpose of ensuring that the qualified person is properly informed with respect to the matters on which that person's advice has been sought.

11.9.2 The Commission has submitted law drafting instructions with a view to clarifying that this gateway, in the Regulatory Laws, permits the sharing of information with those international bodies whose mandate includes the assessment of jurisdictions' compliance with international regulatory standards.

11.10 Information to the Commission by another authority

11.10.1 The review of the gateways has highlighted a limitation in the IB(J)L, BB(J)L and CIF(J)L on the Commission's ability to subsequently share information it has received from a relevant supervisory authority.

11.10.2 The intention is that no information shall be disclosed except where it is necessary in order for the Commission to discharge its functions or with a view to the institution of, or otherwise for the purpose of, criminal proceedings.

11.10.3 There is no such limitation in the FS(J)L; consequently law drafting instructions have been submitted to remove the limitation and align the IB(J)L, BB(J)L and CIF(J)L with the FS(J)L.

11.11 New gateway

11.11.1 Finally, having considered the existing gateways within the Regulatory Laws the Commission considers that "professional bodies" are not adequately covered.

11.11.2 On at least one occasion, the Commission has been unable to disclose the unfit and improper conduct of a principal person approved under the FS(J)L to that person's professional body, notwithstanding a request from that body to do so.

²⁰ Customers in this sense means, customers, clients and participants in collective investment funds.

- 11.11.3 Consequently the Commission has submitted law drafting instructions to facilitate the sharing of information with professional bodies that:
- 11.11.3.1 set required standards that are to be adhered to by professionals operating in a particular field; and
 - 11.11.3.2 have the power to discipline (including removal of status) such persons - should they subsequently fall below the required standards.
- 11.11.4 It is intended that such a gateway may cover, inter alia, accountants and auditors, members of the legal profession, and actuaries.
- 11.11.5 **Do you have any concerns with the new gateway as proposed by the Commission in respect of “professional bodies”? If so, please detail your concerns.**

12 Powers of the Commission

12.1 Policy position

- 12.1.1 The Commission has undertaken a high level comparison of the powers available to the Commission in the Regulatory Laws.
- 12.1.2 As a consequence of the review it has concluded that there are a number of areas where one or more primary laws require amendment to bring it or them in to line with the other primary laws. Differences in powers have been maintained where they are justifiable on the grounds of the manner in which the underlying financial sector operates.
- 12.1.3 Additionally, the review has highlighted that the BB(J)L includes a definition of the term “former registered person” which is not present in the CIF(J)L, FS(J)L or IB(J)L²¹. This defined term is used in nine BB(J)L Articles and in three Articles the use is either necessary or does not cause any problem.
- 12.1.4 With respect to the remaining six Articles, an issue arises because in defining the term the scope of formerly registered persons has been limited to those that “continue to have a liability in respect of any deposit for which it had a liability at a time when it was a registered person”. The effect of this is that a formerly registered person that no longer has any deposit liability is not considered to be a former registered person.

12.2 Drafting instructions

- 12.2.1 The Commission has submitted law drafting instructions to the Law Draftsman to effect the following amendments to align the Regulatory Laws with respect to the powers of the Commission:
- 12.2.1.1 Amend the BB(J)L, the IB(J)L and the CIF(J)L²² so that an applicant has to notify any changes in application information whilst their application is being determined. The FS(J)L already contains such a provision in Article 8(6).
- 12.2.1.2 Amend the BB(J)L and the IB(J)L so that the Commission may apply to the court for an injunction and a remedial order. The FS(J)L and the CIF(J)L already contain such a provision (Article 24 and Article 34(8) respectively).
- 12.2.1.3 Amend the IB(J)L and the CIF(J)L so that the Commission may apply to the court for an order to impose supervision, restraint or conditions on a registered person. The FS(J)L already contains such a provision in Article 6(1).

²¹ The CIF(J)L, FS(J)L and IB(J)L refer to a formerly registered person or formerly registered permit holder but do not define these terms.

²² An applicant for a permit or [the proposed new] fund certificate.

- 12.2.1.4 Amend an existing provision in Article 19 of the BB(J)L so that the present limited circumstances in which the Court may impose supervision, restraint or conditions are removed.
- 12.2.1.5 Amend the IB(J)L so that the court may make a restoration order where a person had conducted unauthorised business or issued a misleading statement. The FS(J)L and the CIF(J)L already contain such a provision (Article 26(2) and Article 34(9) respectively). The BB(J)L already provides for the court to make an order for the repayment of unauthorised deposits (Article 35) and profits from unauthorised deposits. However, the BB(J)L is to be amended to provide that a court may make a restoration order if a person is found guilty of an offence under Article 23 [Fraudulent Inducement].
- 12.2.1.6 Amend the IB(J)L so that an officer or agent of the Commission may enter premises and obtain information and documents generally. The FS(J)L, the BB(J)L and the CIF(J)L already contain such a provision (Article 32(3), Article 27, and Article 9(6) respectively).
- 12.2.1.7 Amend the BB(J)L, the IB(J)L and the CIF(J)L so that - in order to assist a 'relevant supervisory authority' - the Commission may apply to the court for an order to impose supervision, restraint or conditions on a registered person. The FS(J)L already contains such a provision in Article 36(1)(c) [which enables the use of Article 26(1) to assist a relevant supervisory authority].
- 12.2.1.8 Amend Article 32(1) of the FS(J)L so that the general power to obtain information and documents can be exercised on any person who appears to the Commission, or any duly authorised officer or agent of the Commission, to be in possession of the information or documents sought. The BB(J)L, the IB(J)L and the CIF(J)L already contain such a provision (Article 26(4), Article 10(4) and Article 9(4) respectively).
- 12.2.2 Law drafting instructions have been submitted to the Law Draftsman to effect these changes. However, due to a number of factors, including time, it has not been possible to draft amendments for inclusion in the appendices to this paper - with the exception of the provision set out in 12.2.1.8 - which is covered in Appendix I.
- 12.2.3 **Do you have any concerns with respect to the alignment of powers as set out in 12.2.1? If so, please provide details of your concerns.**
- 12.2.4 The Law Draftsman has also been instructed to amend the following Articles of the BB(J)L so that they will apply to a former registered person whether or not any liability in respect of a deposit still exists:
- 12.2.4.1 Article 22(3) [False statements];
- 12.2.4.2 Article 26(10) [Power to obtain information and require production of documents];

12.2.4.3 Article 28(6) [Investigations on behalf of the Commission]; and

12.2.4.4 Article 34(7) [Communication by auditor, etc. with the Commission].

12.2.5 Do you have any concerns with respect to the BB(J)L amendments relating to former registered persons? If so, please provide details of those concerns.

13 Cost benefit analysis

13.1 Costs to industry

13.1.1 The Commission understands that amendments to the regulatory framework are never without cost. However, the Commission considers that the cost to industry of the introduction of these amendments is likely to be minimal.

13.1.2 The proposals in general deal with powers available to the Commission, or make certain processes already adopted by the Commission more explicit in the Regulatory Laws. It is therefore not surprising that the proposals set out in the paper do not have a significant impact on industry.

13.1.3 Notwithstanding the above, the Commission recognises that industry may incur additional administrative costs as a result of the Commission's intention to:

13.1.3.1 disclose the identity of senior management and investment employees in the investment business sector. As conclusions have not been drawn on the mechanism for information delivery or frequency of update, related costs cannot be quantified; and

13.1.3.2 require that each licence, and specified conditions, be made available to the public, on request.

13.2 Costs to the Commission

13.2.1 The amendments do not extend the scope of the regulated community therefore the amendments are not expected to add materially to the Commission's operating costs.

13.2.2 The Commission considers that it will incur minimal additional administrative costs.

13.3 Benefits

13.3.1 The main benefits achievable from the amendments proposed to the Regulatory Laws are:

13.3.1.1 increased transparency, and consequently greater protection for customers, in the areas of:

- disclosure of the identity of senior management and investment employees in the investment business sector; and
- the disclosure of conditions placed on a licence that limit the scope of an entity's permitted activities;

13.3.1.2 the protection of existing and future customers resulting from the

explicit ability of the Commission to prevent individuals working in the prudentially supervised finance sector;

13.3.1.3 new and more robust arrangements for appealing against administrative decision taken by the Commission;

13.3.1.4 the harmonisation of similar provisions in the Island's regulatory laws; and

13.3.1.5 the maintenance of confidence in the Island's finance industry by other regulatory bodies and the wider international community, including the IMF.

14 Summary of questions

4 Powers to prevent individuals working in the prudentially supervised finance sector

4.2.8 Are you content for the duration of the direction to be variable and based on the individual circumstances of each case?

4.2.13 Do you consider the use of the existing guidance note relating to public statements relevant for directions issued on individuals?

5 Extension of “principal person” regime to “key persons”

5.3.5 Do you believe there is value to a registered person in terms of the Commission providing “no objection” prior to an individual taking up such an important role at a registered person?

6 Disclosure of conditions

6.1.6 Do you agree that only conditions limiting the scope of an entity’s activities should be publicly disclosed? If not, what type of conditions do you consider should be made publicly available, and why?

6.1.7 Do you believe that a policy statement is the most appropriate mechanism for the Commission to explain the criteria against which a decision will be made when considering whether a condition should be publicly disclosed?

7 Disclosure of the identity of senior management/investment employees

7.1.6 Do you have any objections to the proposal that the Commission disclose the names of senior management and investment employees? If so, please provide reasons for your objection.

7.1.7 Do you agree with the Commission’s interpretation of “senior management” and “those authorised to act in the name of the intermediary” for the purposes of disclosing the identity of these individuals? If not, please advise how you would interpret the terms, with reasons.

7.2.4 What are your views with respect to the mechanism and frequency in which the Commission should collect and publish the relevant data?

When considering your response to this question please remember that the Commission's definition of investment business encompasses small independent financial advisers operating solely in the local marketplace through to international banking operations with global reach.

7.3.3 Do you consider that the legislation as currently drafted reflects the Commission's policy?

8 Fit and proper criteria for entities and individuals

8.3.4 Are you content that the amendments to the Regulatory Laws provide greater clarity relating to offences that the Commission will take into consideration when forming an opinion? If not, please detail your concerns.

8.3.5 Do you consider that the amendments to the CIF(J)L and BB(J)L implement the policy position?

11 Gateways

11.1.8 Do you have any concerns with the amendments designed to provide consistency of gateways as described in sections 11.2 to 11.10 inclusive? If so, please provide details of those concerns, including practical examples wherever possible.

11.11.5 Do you have any concerns with the new gateway as proposed by the Commission in respect of "professional bodies"? If so, please detail your concerns.

12 Powers of the Commission

12.2.3 Do you have any concerns with respect to the alignment of powers as set out in 12.2.1? If so, please provide details of your concerns.

12.2.5 Do you have any concerns with respect to the BB(J)L amendments relating to former registered persons? If so, please provide details of those concerns.

APPENDIX A

List of representative bodies who have been sent this consultation paper.

- Jersey Finance Limited
- Jersey Bankers' Association
- Jersey Funds Association
- Jersey Association of Trust Companies
- Jersey Compliance Officers' Association

APPENDIX B

Matrix of policy change and primary law article(s) impacted

Chapter & Policy	BB(J)L	CIF(J)L	FS(J)L	IB(J)L
4 - Powers to prevent individuals working in the prudentially supervised finance sector	Appendix C, Article 21	Appendix E, Article 13	Appendix H, Article 23	Appendix J, Article 36
5 - Extension of “principal person” regime to “key persons”	Appendix C, Articles 1, 24	Appendix E, Articles 1 Appendix F, Articles A13, B13, C13	Appendix H, Articles 13, 14, 32	Appendix J, Articles 5, 7, 10, 23
6 - Disclosure of conditions & public display of licence	Appendix D, Articles 13, 45	Appendix F, Articles 8F, 29	Appendix I, Article 11A	Appendix K, Article 7A, 32
7 - Disclosure of the identity of senior management /investment employee			Appendix H, Article 38	
8 - Fit and proper criteria for entities and individuals	Appendix C, Articles 10, 14, 15	Appendix F, Articles 1, 6, 7, 8B, 8C, A13, B13, C13, D13		

Chapter & Policy	BB(J)L	CIF(J)L	FS(J)L	IB(J)L
9 - Human rights - appeals and penalties	Appendix C , Articles 14, 17 18, 18A, 48, 48A, 48B, 48C	Appendix E , Articles 1, 7, 8, 8A, 8AA, 13, 17, 17A, 17B, 17C, 21	Appendix H , Articles 11, 13, 16, 23, 25A, 25B, 25C	Appendix J , Articles 8, 8A, 9, 24, 25, 36, 43A, 43B, 43C, 44
10 - Relevant Supervisory authority	Appendix D , Articles 1, 44 & Appendix C Article 47			Appendix K , Articles 1, 31
10 - Power to issue directions				Appendix J , Article 36
10 - Amendment to definitions and exemptions by Regulations	Appendix D , Article 5			
10 - Powers over actuaries				Appendix J , Article 23
10 - Power to appoint a manager		Appendix F , Article 1, 34A & Appendix G		Appendix K , Article 9A & Appendix L
10 - Shell banks	Appendix D , Article 10			
12 - General power to obtain information and documents			Appendix I , Article 31(1A)	



Jersey

BANKING BUSINESS (AMENDMENT No. 7)

JERSEY LAW 200-

CONSULTATION DRAFT ONLY



Jersey

BANKING BUSINESS (AMENDMENT No. 7) JERSEY LAW 200-

Arrangement

Article

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Jersey

BANKING BUSINESS (AMENDMENT No. 7) JERSEY LAW 200-

A LAW to amend further the Banking Business (Jersey) Law 1991.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Interpretation

In this Law “principal Law” means the Banking Business (Jersey) Law 1991.

2 Article 1 amended

In Article 1 of the principal Law the following definitions shall be inserted in appropriate alphabetical order –

“ ‘code of practice’ means a code of practice under Article 19A;

‘compliance officer’ means a person so designated, under a code of practice, by a registered person and having the function of monitoring whether the law of Jersey, and the codes of practice, are being complied with in the conduct of the business in respect of which the registered person is registered;

‘key person’ means a person employed or otherwise engaged by a registered person as an officer of any one or more of the following classes in relation to the conduct of the business in respect of which the registered person is registered –

- (a) compliance officer;
- (b) money laundering compliance officer;

(c) money laundering reporting officer;

‘money laundering compliance officer’ means a person employed or otherwise engaged by a registered person to be in charge of monitoring whether the law of Jersey relating to money laundering is being complied with in the conduct of the business in respect of which the registered person is registered;

‘money laundering reporting officer’ means a person employed or otherwise engaged by a registered person to receive reports from employees of the registered person in relation to activities that may constitute money laundering and come to the attention of the employees in the conduct of the business in respect of which the registered person is registered;

‘public statement’ means a public statement issued under Article 48;

‘vary’ includes amend, replace and revoke;”.

3 Article 10 amended

In Article 10 of the principal Law –

- (a) paragraph (1) shall be renumbered paragraph (3);
- (b) for paragraph (3) (as so renumbered) there shall be substituted the following paragraph –

“(3) If a person (‘person A’) applies for registration, or is already registered, the Commission may refuse to register the person, or revoke the registration, on one or more of the following grounds –

- (a) having regard to the information before the Commission as to –

- (i) the integrity, competence, financial standing, structure and organization of person A,
- (ii) the persons employed by or associated with person A for the purposes of person A’s business or who are directors, controllers, or managers, in relation to person A,
- (iii) the description of business that person A proposes to carry on or carries on,

the Commission is not satisfied that person A is a fit and proper person to be registered;

- (b) person A has, at any time and whether or not in relation to his or her application, in any case where information was required under this Law to be given in any connection –

- (i) failed to provide any such information, or
- (ii) provided information that was untrue or misleading in any material particular;

- (c) person A has at any time failed to comply in any material respect with any condition prescribed or attached under



- Article 11 to a current or previous registration held by person A;
- (d) person A or any person employed by or associated with person A for the purposes of person A's business has been convicted of –
- (i) an offence involving fraud or other dishonesty,
 - (ii) an offence under –
 - (A) this Law,
 - (B) the Collective Investment Funds (Jersey) Law 1988,
 - (C) the Financial Services (Jersey) Law 1998,
 - (D) the Insurance Business (Jersey) Law 1996,
 - (E) any Regulation or Order made under any of those Laws,
 - (iii) any similar offence to those listed in clause (ii) under the laws of any country or territory other than Jersey,
 - (iv) where clause (ii) or (iii) does not apply, an offence under any enactment (whether or not of Jersey) relating to building societies, companies, consumer credit, consumer protection, credit unions, friendly societies, industrial and provident societies, insurance, insolvency, insider dealing, money laundering or terrorist financing,
 - (v) an offence of perjury or conspiracy to pervert the course of justice,
 - (vi) an offence committed (whether under the law of Jersey or elsewhere) in connection with, or in relation to, taxation for which a person aged 21 years or more may be sentenced to imprisonment for a term of 2 years or more;
- (e) it appears to the Commission, as a result of information provided under Article 9, or information otherwise obtained, that –
- (i) it is not in the best interests of persons who may deposit, or have deposited, money with person A that person A should be registered or should continue to be registered,
 - (ii) in order to protect the reputation and integrity of Jersey in financial or commercial matters, person A should not be registered or should not continue to be registered, or
 - (iii) it is not in the best economic interests of Jersey that person A should be registered or should continue to be registered;

- (f) the Commission has reason to believe that at any time there has been a failure on the part of person A to follow a code of practice;
- (g) person A has failed to comply with a direction given to the person at any time under Article 17 or 21.”.

4 Article 11 amended

In Article 11 of the principal Law –

- (a) in paragraph (2)(b) for the word “amend” there shall be substituted the word “vary”;
- (b) paragraph (6) shall be repealed.

5 Article 14 amended

In Article 14 of the principal Law –

- (a) after paragraph (3) the following paragraph shall be inserted –
 - “(3A) The Commission shall serve notice, on the person from whom notice was received under this Article, stating whether the Commission objects or does not object to his or her becoming a controller, as referred to in paragraph (1).”;
- (b) in paragraph (4)(c) after the words “the criteria” there shall be inserted the words “(including those set out in Article 10)”;
- (c) in paragraph (5)(b) for the words “Article 18” there shall be inserted the words “Article 18A”.

6 Article 15 amended

For Article 15(2) and (3) of the principal Law there shall be substituted the following paragraph –

- “(2) The Commission may, in deciding whether to serve notice under paragraph (1), take into account such of the matters set out in Article 10 as may be relevant, as well as such other matters as it thinks fit.”.

7 Article 17A inserted

After Article 17 of the principal Law the following Article shall be inserted –

“17A Notice of acts and reasons

- (1) The Commission shall give notice as follows –
 - (a) if under Article 10 it refuses an application for registration, it shall give notice to the applicant;
 - (b) if under Article 10 it revokes a person’s registration, it shall give notice to the person;



- (c) if under Article 11, at the time of a person's registration it attaches a condition to the registration, or at any time after a person's registration, it attaches an additional condition to the person's registration, or varies the conditions attached to the person's registration, it shall give notice to the person;
 - (d) if under Article 39 it refuses permission or grants permission subject to one or more conditions or restrictions, it shall give notice to the applicant for the permission;
 - (e) if under any Order under this Law it refuses consent, refuses approval, or imposes a requirement, it shall give notice to the relevant registered person (if any) and any other person in respect of whom the refusal or imposition is made.
- (2) A notice required under this Article, or a notice under Article 13, 15, 17(2), 21(1) or 21(6), shall –
- (a) set out the terms of the refusal, revocation, attachment or imposition of conditions, imposition or variation of requirements, objection, conditions or restrictions, or direction, of which it is notice;
 - (b) except in the case of an objection under Article 15 or refusal under Article 21(5), set out the terms of the relevant conditions, requirements, restrictions (including conditions, requirements or restrictions as varied) or direction;
 - (c) give the reasons for the refusal, revocation, attachment, imposition, variation, objection, or giving of directions, (except if the revocation, attachment, or variation, is made on the application of the relevant registered person); and
 - (d) give particulars of the rights of appeal conferred by Article 18A.
- (3) If under this Article the Commission is required to give reasons in a notice, that requirement shall not require the Commission –
- (a) to specify any reason that would in the Commission's opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party; or
 - (b) to specify the same reasons, or reasons in the same manner, in the case of notices to different persons about the same matter.”.

8 Article 18 substituted

For Article 18 of the principal Law there shall be substituted the following Articles –

18 Delay in taking effect

- (1) Any of the following acts of the Commission shall not take effect until one month after notice of them is given under this Law, such date as is specified in the notice, or, if an appeal is lodged under

this Law against the act or the decision relating to the act, before the appeal is determined or withdrawn, whichever is the latest time –

- (a) a revocation under Article 10;
- (b) an attachment under Article 11 of an additional condition to a person's registration, or variation under that Article of the conditions attached to a person's registration, at any time after the registration of the person;
- (c) the imposition of a requirement under Article 13(2) or (3);
- (d) an objection under Article 15.

(2) Paragraph (1) shall not however have effect if –

- (a) the persons entitled to notice of the act agree that the act take effect at a time earlier than the time that would apply under paragraph (1); or
- (b) the Court orders otherwise under paragraph (3).

(3) If, on the application of the Commission, the Court is satisfied that it is in the best interests of persons with whom a registered person has transacted or may transact deposit-taking business that paragraph (1) should not have effect, or should cease to have effect in a particular case, or that the period specified in paragraph (1) should be reduced, the Court may so order.

(4) An order under paragraph (3) may be made without prior notice to and without hearing the registered person concerned.

(5) The order shall have immediate effect, but any person aggrieved by the order may apply to the Court to vary or set aside the order.

(6) In respect of an application under paragraph (3), the Court may make such order as it thinks fit, and in respect of an application under paragraph (5), the Court may make such order in respect of the relevant order under paragraph (3) as it thinks fit.

18A Appeals

(1) A person aggrieved by an act of the Commission, being –

- (a) a refusal under Article 10;
- (b) a revocation under Article 10;
- (c) the revocation under Article 10 of a person's registration;
- (d) an attachment under Article 11 of a condition at the time of a person's registration to the registration, or of an additional condition to a person's registration after that time, or variation under that Article of the conditions attached to a person's registration;
- (e) the imposition of a requirement under Article 13;
- (f) an objection under Article 14, 15 or 24;
- (g) the giving of a direction under Article 17 or 21;



- (h) the refusal of an application under Article 21(5) or granting of such an application only in part;
- (i) a refusal of permission, or grant of permission subject to one or more conditions or restrictions, under Article 39;
- (j) a refusal of consent, refusal of approval, or imposition of a requirement, under any Order under this Law,

may appeal to the Court, in accordance with this Article, against that act.

- (2) An appeal under paragraph (1) may be made only on the ground that the act appealed against was unreasonable having regard to all the circumstances of the case.
- (3) A person's appeal under this Article shall be lodged with the Court no later than the day that is one month after the day on which notice was served on the person of the relevant act.
- (4) On an appeal under this Article, the Court may make such interim or final order as it thinks fit.
- (5) Otherwise than with respect to a direction that makes a requirement referred to in Article 21(2)(c) or (d), an appeal against the giving of a direction under Article 17 or 21 shall not suspend the operation of any direction in connection with which the appeal is made.”.

9 Article 21 replaced

For Article 21 of the principal Law there shall be substituted the following Article –

“21 Power to issue directions

- (1) If it appears to the Commission that –
 - (a) any requirements in relation to the registration of a person are no longer satisfied;
 - (b) it is in the best interests of persons with whom a registered person has transacted or may transact deposit-taking business, or in the best interests of the creditors of a registered person;
 - (c) it is in the best interests of one or more registered persons;
 - (d) it is desirable in order to protect the reputation and integrity of Jersey in financial and commercial matters;
 - (e) it is in the best economic interests of Jersey; or
 - (f) any advertisement relating to deposits and issued or proposed to be issued by or on behalf of any person is misleading or undesirable,

the Commission may, whenever it considers it necessary, give, by notice in writing, such directions as it may consider appropriate in the circumstances.

- (2) Without prejudice to the generality of paragraph (1), a direction under this Article may –
 - (a) require anything to be done or not to be done, or impose any prohibition, restriction or limitation, or any other requirement, and confer powers, with respect to any transaction or other act, or to any assets, or to any other thing whatsoever;
 - (b) require that a director, chief executive, shareholder controller, key person, or person having functions, in relation to a registered person, be removed or removed and replaced by another person acceptable to the Commission;
 - (c) require that any individual not perform a specified function (or any function at all), not engage in specified employment (or any employment at all) or not hold a specified position (or any position at all) in relation to a specified registered person (or any registered person at all);
 - (d) require a registered person or former registered person to cease operations and to wind up its affairs, in accordance with such procedures and directions as may be specified in the direction, which may provide for the appointment of a person to take possession and control of all documents, records, assets and property belonging to or in the possession or control of the registered person or former registered person;
 - (e) prohibit the issue, re-issue or continuance of a particular advertisement relating to deposit-taking business;
 - (f) require that any particular advertisement relating to deposit-taking business be modified in a specified manner;
 - (g) prohibit the issue, re-issue or continuance of advertisements (relating to deposit-taking business) of any description; or
 - (h) require that advertisements (relating to deposit-taking business) of any description be modified in a specified manner.
- (3) A direction under this Article or Article 17 may be of unlimited duration or of a duration specified in the notice of the direction.
- (4) The power to give directions under this Article or Article 17 shall include the power by direction to vary a direction given under that Article.
- (5) Any person to whom a direction is given under this Article may apply to the Commission to have it withdrawn or varied and the Commission shall withdraw or vary the direction in whole or in part if it considers that there are no longer any grounds under paragraph (1)(a) to (f) that justify the direction or part of the direction concerned.



- (6) If the Commission refuses an application under paragraph (5), or grants such an application only in part, it shall give notice in writing of that fact to the applicant.
- (7) A person who fails to comply with a direction in respect of which notice is given under paragraph (1) to the person shall be guilty of an offence and liable to a term of imprisonment for a term not exceeding 2 years or a fine, or both.”.

10 Article 24 substituted

For Article 24 of the principal Law there shall be substituted the following Article –

“24 Notification of change of director etc.

- (1) A person shall not become a director, controller, key person of any class or manager of a registered person unless –
 - (a) he or she has notified the Commission in writing of his or her intention to become such a director, such a controller, key person of such a class or such a manager; and
 - (b) the Commission has notified the person in writing that there is no objection to his or her becoming such a director, such a controller, key person of such a class or such a manager.
- (2) If the intended director, controller, key person or manager is to be a full time employee of the registered person, the notification to the Commission may be made by the registered person instead.
- (3) The Commission shall serve notice on the person in relation to whom notice was received under paragraph (1) or (2), stating whether the Commission objects or does not object to his or her becoming a director, controller, key person of the relevant class or manager, of a registered person, as referred to in paragraph (1).
- (4) A registered person shall give written notice to the Commission of the fact that any person has become or ceased to be a director, controller, key person or manager of the registered person.
- (5) A notice required to be given under paragraph (4) shall be given before the end of the period of 14 days beginning with the day on which the registered person becomes aware of the relevant facts.
- (6) The Commission may by notice in writing wholly or partly dispense from the obligation imposed by paragraph (4) any registered person whose principal place of business is outside Jersey.
- (7) A notice of objection under this Article shall –
 - (a) subject to paragraph (8), specify the reasons for the Commission’s objection; and

- (b) give particulars of the rights of appeal conferred by Article 18A.
- (8) Paragraph (7) shall not require the Commission –
 - (a) to specify any reason that would in the Commission’s opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party; or
 - (b) to specify the same reasons, or reasons in the same manner, in the case of notices to different persons about the same matter.
- (9) A person who –
 - (a) fails to give a notice required by paragraph (1)(a) or (4); or
 - (b) becomes a director, controller, key person of any class, or manager, of a registered person without having been served with a notice by the Commission under paragraph (1)(b) to the effect that the Commission does not object to the person’s so becoming a director, controller, key person of any class, or manager,shall be guilty of an offence.
- (10) A person shall not be guilty of an offence under paragraph (9) if he or she shows that he or she did not know of the acts or circumstances by which, as the case may be, he or she, or another person, became a director, controller, key person of the relevant class, or manager, of the registered person.
- (11) Despite paragraph (10), if the person subsequently becomes aware of the relevant acts or circumstances, he or she shall be guilty of an offence unless he or she gives the Commission written notice of the fact that he or she, or another person, became, as the case may be, a director, controller, key person of the relevant class, or manager, of the registered person, within 14 days of becoming aware of that fact.
- (12) A person guilty of an offence under paragraph (9) or (11) shall be liable to imprisonment for a term of 2 years or a fine, or both.”.

11 Article 47 amended

In Article 47(1)(b) of the principal Law for the word “impose” there shall be substituted the word “attach”.

12 Article 48 replaced

For Article 48 of the principal Law there shall be substituted the following Articles –



“48 Public statement

- (1) The Commission may issue a public statement concerning a person if that person appears to the Commission to have contravened any of the following –
 - (a) Article 8;
 - (b) Article 11;
 - (c) Article 20;
 - (d) Article 21;
 - (e) Article 22;
 - (f) Article 23;
 - (g) a Regulation, or an Order, made under this Law.
- (2) The Commission may issue –
 - (a) a public statement with respect to, or setting out, any direction that the Commission has given under Article 17 or 21;
 - (b) a public statement concerning a person if that person appears to the Commission to have failed to comply with a code of practice; or
 - (c) a public statement concerning a person if the Commission believes that the person is carrying on deposit-taking business, whether in Jersey or elsewhere, and it appears to the Commission to be desirable to issue the statement in the interests of the public.

48A Notice of public statement

- (1) If a public statement identifies any person who is registered, the Commission shall serve notice on the person.
- (2) If a public statement identifies any person who is not registered, and at any time before it issues the public statement the Commission is, or becomes, aware of an address at which it may serve notice on the person, the Commission shall serve notice on the person.
- (3) The notice shall –
 - (a) give the reasons for issuing the statement;
 - (b) give the proposed or actual date of issue of the statement;
 - (c) contain a copy of the statement;
 - (d) give particulars of the right of appeal under Article 48C in respect of the statement; and
 - (e) if the statement is issued, in accordance with a decision under Article 48B(4), before the day specified in Article 48B(1) in relation to the statement, give the reasons for issuing it before that day.

- (4) Paragraph (3) shall not require the Commission –
 - (a) to specify any reason that would in the Commission's opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party; or
 - (b) to specify the same reasons, or reasons in the same manner, in the case of notices to different persons about the same matter.
- (5) In this Article and Articles 48B and 48C, a reference to the identification of a person in a public statement does not include the identification, in the statement, of the Commission or of any other person in their capacity of exercising functions under this Law.

48B Notice period

- (1) If service is required under Article 48A(1) or (2) in relation to a public statement, the Commission shall not issue the public statement before the expiration of one month following the date of the last such service in relation to the public statement.
- (2) Paragraph (1) shall not apply if –
 - (a) each of the persons identified (within the meaning of Article 48A) in the relevant public statement agrees that the statement may be issued on a date earlier than the date that would apply under that paragraph; and
 - (b) the statement is in fact issued on or after the earlier date.
- (3) Paragraph (1) shall not apply if –
 - (a) the Commission decides on reasonable grounds that the interest of the public in the issue of the relevant public statement on a date earlier than the date that would apply under that paragraph outweighs the detriment to the persons identified in the statement, being the detriment attributable to that earliness; and
 - (b) the statement is in fact issued on or after the earlier date.
- (4) In making a decision under paragraph (3), the Commission is not prevented from choosing as the date of issue of a public statement the date of service (if any) of notice of the statement.
- (5) Despite this Article, if an appeal is made to the Court under Article 48C(1), and the Court orders that the statement not be issued before any specified date or event, the Commission shall not issue the statement before the date or event so specified.
- (6) In a case to which paragraph (1) applies, if an appeal is made under Article 48C(2) to the Court against a decision to issue a public statement, the Commission shall not issue the statement before the day on which that appeal is determined by the Court or withdrawn.



48C Appeals and orders about public statements

- (1) A person aggrieved by a decision of the Commission under Article 48B(3) may appeal to the Court, in accordance with this Article, against the decision.
- (2) A person aggrieved by a decision of the Commission to issue a public statement that identifies the person may appeal to the Court, in accordance with this Article, against the decision.
- (3) An appeal under paragraph (2) may be made only on the ground that the decision of the Commission was unreasonable having regard to all the circumstances of the case.
- (4) A person's appeal under this Article shall be lodged with the Court no later than –
 - (a) if notice is served on the person under Article 48A in relation to the public statement, the day that is one month after the date of the last such service on the person in relation to the public statement; or
 - (b) if no such notice is served on the person, the day that is one month after the issue of the public statement.
- (5) Nothing in paragraph (4) prevents the lodging of an appeal before a notice is served or a public statement is issued.
- (6) On an appeal under this Article, the Court may make such interim or final order as it thinks fit, including an order that the Commission not issue the relevant public statement or, if the public statement has been issued, that the Commission issue a further public statement to the effect set out in the order or stop making the statement available to the public.”.

13 Citation and commencement

- (1) This Law may be cited as the Banking Business (Amendment No. 7) (Jersey) Law 200-.
- (2) This Law shall come into operation on such day or days as the States may by Act appoint, and different days may be appointed for different provisions.





Jersey

BANKING BUSINESS (AMENDMENT No. 7) (JERSEY) LAW 200- – SUPPLEMENT

A LAW to amend further the Banking Business (Jersey) Law 1991.

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

PART 3

1 Article 1 amended

In Article 1 of the principal Law, for the definition of “relevant supervisory authority” there shall be substituted the following definition –

“ ‘relevant supervisory authority’, in relation to a country or territory outside Jersey, means an authority discharging in that country or territory any function that is similar to a function of the Commission;”.

2 Article 5 amended

For Article 5 there shall be substituted the following Article –

“5 Power to amend definitions

- (1) The Minister may by Order amend the meaning of deposit, deposit-taking business, holding company, subsidiary company or wholly-owned subsidiary.

- (2) Without prejudice to the generality of paragraph (1), an Order under that paragraph amending the meaning of deposit-taking business may provide for taking into account as activities of an institution the activities of any person who is connected with it in such a manner as is specified in the Order.
- (3) The States may by Regulations amend the definitions in Article 1 and in the Schedule including those mentioned in paragraph (1) of this Article.
- (4) An Order or Regulations made under this Article may –
 - (a) make such transitional, incidental or supplementary provisions as the Minister or the States, as the case may be, thinks necessary or expedient;
 - (b) include provisions that exclude or modify the effect of the Order or Regulations, as the case may be, on any other enactment which is expressed to have effect in relation to a deposit or deposit-taking business within the meaning of this Law.”.

3 Article 10 amended

In Article 10 of the principal Law –

- (a) paragraph (1) shall be renumbered paragraph (3);
- (b) for paragraph (1) there shall be substituted the following paragraphs –
 - “(1) The Commission shall refuse to grant an application for registration, or where registration has been granted shall revoke the registration, if the applicant or registered person –
 - (a) has no physical presence in Jersey involving meaningful decision-making and management; and
 - (b) is not subject to supervision by a relevant supervisory authority by reason of that person’s connection with any other institution or person.
 - (2) For the purposes of paragraph (1)(b), ‘connection’ has the same meaning as in Article 3A of the Income Tax (Jersey) Law 1961.”.

[Procedure: see Articles 17, 18 and 18A.]

4 Article 13 amended

For Article 13 of the principal Law there shall be substituted the following Article:

“13 Display of registration certificate and conditions

- (1) When the Commission registers a person under Article 9(1), it may give that person notice in writing of the manner in which that person shall display or otherwise make available to members of the public –

-
- (a) that person's registration certificate, or the information contained in the certificate, or both; and
 - (b) a record of such conditions under Article 11(1) as the Commission may specify that apply to that person (whether prescribed generally or to a class of persons) or which are attached to the registration of that person.
- (2) Where the Commission under Article 11(1) varies a condition or attaches any new condition to the registration of a person it may notify that person in writing of the manner in which that person shall display or otherwise make available to members of the public a record of the conditions as varied or the new condition, as the case may be.
 - (3) The Commission may at any time vary any requirement in any notice it has given under paragraph (1) or (2) by further notice to the registered person.
 - (4) Without prejudice to the generality of paragraphs (1), (2) and (3), a notice under any of those paragraphs may require the certificate, information or record of conditions, as the case may be, to be displayed at any address at which the registered person carries on deposit-taking business or to be published on the internet, or both.
 - (5) A registered person who carries on a deposit-taking business in breach of any requirements in a notice given under this Article which have effect in relation to that business shall be guilty of an offence and liable to a fine of level 2 on the standard scale.”.

[Further requirements to give reasons in notice; time limits for compliance and appeal rights set out in Articles 17A, 18 and 18A]

5 Article 44 amended

For Article 44(2) of the principal Law there shall be substituted the following paragraph –

- “(2) Article 42 does not preclude the disclosure of information for the purpose of enabling or assisting a relevant supervisory authority to exercise any of its supervisory functions.”.

6 Article 45 amended

In Article 45 of the principal Law –

- (a) for the full-stop at the end of paragraph (1)(d) there shall be substituted “;”;
- (b) after paragraph (1)(d) there shall be added the following sub-paragraph –
 - “(e) to a person by the Commission showing whether or not any person is registered under this Law, including any conditions which apply to that person or which are attached to the registration of that person under Article 11(1).”.

7 Article 47 amended

In Article 47(1)(a) for “Article 10(1)” there shall be substituted “Article 10(3)”.



Jersey

**COLLECTIVE INVESTMENT FUNDS
(AMENDMENT No. 5) (JERSEY) LAW 200-**

CONSULTATION DRAFT ONLY





Jersey

COLLECTIVE INVESTMENT FUNDS (AMENDMENT No. 5) (JERSEY) LAW 200-

Arrangement

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Jersey

COLLECTIVE INVESTMENT FUNDS (AMENDMENT No. 5) (JERSEY) LAW 200-

A **LAW** to amend further the Collective Investment Funds (Jersey) Law 1988.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Interpretation

In this Law, “principal Law” means the Collective Investment Funds (Jersey) Law 1988.

2 Article 1 amended

In Article 1 of the principal Law, there shall be inserted the following definitions in appropriate alphabetical order –

“ ‘certificate holder’ means a company, trustee, or general partner, in relation to a fund in respect of which a certificate has been issued;

‘compliance officer’ means a person so designated for the purposes of this Law, by a permit holder or certificate holder, in relation to a collective investment fund, and having the function of monitoring whether the law of Jersey, and the codes of practice, are being complied with in the conduct of the fund;

‘key person’ means a person employed or otherwise engaged in relation to a collective investment fund as an officer of any one or more of the following classes in relation to the conduct of the fund –

- (a) compliance officer;
- (b) money laundering compliance officer;
- (c) money laundering reporting officer;

‘money laundering compliance officer’ means a person employed or otherwise engaged in relation to a collective investment fund to be in charge of monitoring whether the law of Jersey relating to money laundering is being complied with in the conduct of the fund;

‘money laundering reporting officer’ means a person employed or otherwise engaged in relation to a collective investment fund to receive reports, from persons that have functions in relation to the fund, in relation to activities that may constitute money laundering and come to the attention of the persons in the conduct of the fund;

‘public statement’ means a statement issued under Article 17;

‘vary’ includes amend, replace and revoke;”.

3 Article 7 amended

Article 7(9) shall be repealed.

4 Article 8 substituted

For Article 8 of the principal Law there shall be substituted the following Articles –

“8 Notice of decisions and reasons

- (1) The Commission shall give notice as follows –
 - (a) if under Article 7 it refuses to grant a permit, it shall give notice to the applicant for the permit;
 - (b) if under Article 7 it cancels a permit, it shall give notice to the person named in the permit as holder of the permit;
 - (c) if under Article 7 it attaches a condition to the grant of a permit, attaches a condition to a permit already granted or varies a condition attached to a permit, it shall give notice to the holder of the permit;
 - (d) if under Article 8C it refuses to grant a certificate, it shall give notice to the applicant for the permit or certificate;
 - (e) if under Article 8C it cancels a certificate, it shall give notice to the person named in the certificate as holder of the certificate;
 - (f) if under Article 8C it attaches a condition to the grant of a certificate, attaches a condition to a certificate already granted or varies a condition attached to a certificate, it shall give notice to the holder of the certificate;

- (g) if under any Order under this Law it refuses consent, refuses approval, or imposes a requirement, it shall give notice to the relevant permit holder or certificate holder (if any) and any other person in respect of whom the refusal or imposition is made.
- (2) A notice required under paragraph (1) shall –
 - (a) set out the terms of the refusal, cancellation, attachment of conditions, variation of conditions, or imposition, of which it is notice;
 - (b) in the case of the attachment of conditions, set out also the terms of the conditions;
 - (c) in the case of the variation of conditions, set out also the terms of the conditions as so varied;
 - (d) give the reasons for the refusal, cancellation, attachment, variation or imposition (except to the extent that the refusal, cancellation, attachment, variation or imposition is made on the application of the relevant permit holder, certificate holder or applicant); and
 - (e) give particulars of the rights of appeal conferred by Article 8AA.
 - (3) A notice imposing a requirement under Article 8F shall –
 - (a) give the reasons for the imposition of the requirement; and
 - (b) give particulars of the rights of appeal conferred by Article 8AA.
 - (4) A notice by which an objection and direction are made under Article A13 shall –
 - (a) give the reasons for making the objection and direction; and
 - (b) give particulars of the rights of appeal conferred by Article 8AA.
 - (5) A notice by which a direction is given under Article 13 or D13 shall –
 - (a) give the reasons for giving the direction; and
 - (b) give particulars of the rights of appeal conferred by Article 8AA.
 - (6) If under this Article the Commission is required to give reasons in a notice, that requirement shall not require the Commission –
 - (a) to specify any reason that would in the Commission's opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party; or
 - (b) to specify the same reasons, or reasons in the same manner, in the case of notices to different persons about the same matter.

8A Delay in taking effect

- (1) Any of the following acts of the Commission shall not take effect until one month after notice of them is given under this Law, such date as is specified in the notice, or, if an appeal is lodged under this Law against the act or the decision relating to the act, before the appeal is determined or withdrawn, whichever is the latest time –
 - (a) the cancellation of a permit under Article 7;
 - (b) the attachment under Article 7 of an additional condition to a person's permit, or variation under that Article of the conditions attached to a person's permit, at any time after the grant of the permit;
 - (c) the cancellation of a certificate under Article 8C;
 - (d) the attachment under Article 8C of an additional condition to a certificate, or variation under that Article of the conditions attached to a certificate, at any time after the grant of the certificate;
 - (e) the imposition of requirement under Article 8F(2) or (3).
- (2) Paragraph (1) shall not however have effect if –
 - (a) the persons entitled to notice of the act agree that the act take effect at a time earlier than the time that would apply under paragraph (1); or
 - (b) the Court orders otherwise under paragraph (3).
- (3) If, on the application of the Commission, the Court is satisfied that it is desirable in the best interests of existing or potential participants in a collective investment fund to which a permit or certificate relates, that paragraph (1) should not have effect, or should cease to have effect in a particular case, or that the period specified in paragraph (1) should be reduced, the Court may so order.
- (4) An order under paragraph (3) may be made without prior notice to, and without hearing, the relevant permit holder or certificate holder.
- (5) The order shall have immediate effect, but any person aggrieved by the order may apply to the Court to vary or set aside the order.
- (6) In respect of an application under paragraph (3), the Court may make such order as it thinks fit, and in respect of an application under paragraph (5), the Court may make such order in respect of the relevant order under paragraph (3) as it thinks fit.

8AA Appeals

- (1) A person aggrieved by an act of the Commission, being –
 - (a) the refusal, or cancellation, under Article 7 of a permit;
 - (b) the attachment under Article 7 of a condition to the grant of a person's permit, the attachment under that Article of an

additional condition to a person's permit, or the variation under that Article of the conditions attached to a person's permit;

- (c) the refusal, or cancellation, under Article 8C of a certificate;
- (d) the attachment under Article 8C of a condition to the grant of a person's certificate, the attachment under that Article of an additional condition to a person's certificate, or the variation under that Article of the conditions attached to a person's certificate;
- (e) the imposition of a requirement under Article 8F;
- (f) an objection and a direction under Article A13;
- (g) a direction under Article D13;
- (h) the giving of a direction under Article 13;
- (i) the refusal of an application under Article 13(5) or granting of such an application only in part; or
- (j) a refusal of consent, refusal of approval, or imposition of a requirement, under any Order under this Law,

may appeal to the Court, in accordance with this Article, against that act.

- (2) An appeal under paragraph (1) may be made only on the ground that the act appealed against was unreasonable having regard to all the circumstances of the case.
- (3) A person's appeal under this Article shall be lodged with the Court no later than the day that is one month after the day on which notice was served on the person of the relevant act.
- (4) On an appeal under this Article, the Court may make such interim or final order as it thinks fit.
- (5) Otherwise than with respect to a direction that makes a requirement referred to in Article 13(2)(c) or (e), an appeal against the giving of a direction under Article 13 shall not suspend the operation of any direction in connection with which the appeal is made."

5 Article 13 substituted

For Article 13 of the principal Law there shall be substituted the following Article –

"13 Directions

- (1) If it appears to the Commission, in relation to a collective investment fund or funds of any class, that –
 - (a) any requirements in relation to the collective investment fund or funds of the class are no longer satisfied;

- (b) it is in the best interests of existing or potential participants in the collective investment fund or funds of the class or in the best interests of the creditors of the collective investment fund or funds of the class;
- (c) it is in the best interests of one or more collective investment funds, functionaries, permit holders, or certificate holders;
- (d) it is desirable in order to protect the reputation and integrity of Jersey in financial and commercial matters;
- (e) it is in the best economic interests of Jersey; or
- (f) any prospectus or other form of promotion of a collective investment fund published or made available, or proposed to be published or made available is misleading or undesirable,

the Commission may, whenever it considers it necessary, give, by notice in writing, such directions as it may consider appropriate in the circumstances.

(2) Without prejudice to the generality of paragraph (1), a direction under this Article may –

- (a) require anything to be done or be omitted to be done, or impose any prohibition, restriction or limitation, or any other requirement, and confer powers, with respect to any transaction or other act, or to any assets, or to any other thing whatsoever;
- (b) require that any principal person, or key person, in relation to any functionary of a collective investment fund or fund of any class (or in relation to a certificate holder), or any person having functions, in relation to a collective investment fund or fund of any class (or in relation to a certificate holder), be removed or removed and replaced by another person acceptable to the Commission;
- (c) require that any individual not perform a specified function (or any function at all), not engage in specified employment (or any employment at all) or not hold a specified position (or any position at all) in relation to any functionary of a collective investment fund or fund of any class (or in relation to a certificate holder);
- (d) require a functionary of a collective investment fund or fund of any class, or require a certificate holder, to cease the issue or redemption, or both the issue and redemption of units, on a date specified in the direction, either until such further date as is specified in that or another direction or indefinitely;
- (e) require a functionary of a collective investment fund or of a fund of any class, or the relevant company, trustee or general partner in relation to any fund in respect of which a certificate has been issued, to wind up the affairs of the fund or of the company, trust or partnership, in accordance with such procedures and directions as may be specified in the direction, which may provide for the appointment of a person to take possession and control of documents, records,

- assets and property belonging to or in the possession or control of the functionary or company, trustee or general partner;
- (f) prohibit the publication or making available of a particular prospectus or any other form of promotion of a collective investment fund or of a fund of any class; or
 - (g) require that any particular prospectus or other form of promotion of a collective investment fund or of a fund of any class be modified in a specified manner.
- (3) A direction under this Article may be of unlimited duration or of a duration specified in the notice of the direction.
 - (4) The power to give directions under this Article shall include the power to vary any direction, as well as the power to issue further directions.
 - (5) Any person to whom a direction is given under paragraph (1) may apply to the Commission to have it withdrawn or varied and the Commission shall withdraw or vary the direction in whole or in part if it considers that there are no longer any grounds under paragraph (1)(a) to (f) that justify the direction or part of the direction concerned.
 - (6) If the Commission refuses an application under paragraph (5), or grants such an application only in part, it shall give notice in writing of that fact to the applicant.
 - (7) A person who fails to comply with a direction in respect of which notice is given under paragraph (1) to the person shall be guilty of an offence and liable to imprisonment for a term of 2 years or a fine, or both.”.

6 Article 17 substituted

For Article 17 of the principal Law there shall be substituted the following Articles –

“17 Public statement

- (1) The Commission may issue a public statement concerning a person if that person appears to the Commission to have contravened any of the following –
 - (a) Article 5;
 - (b) Article 7;
 - (c) Article 8A;
 - (d) Article 8C;
 - (e) Article 10;
 - (f) Article 13;
 - (g) Article C13;

- (h) Article D13;
- (i) Article 16;
- (j) a Regulation, or an Order, made under this Law.

(2) The Commission may issue –

- (a) a public statement with respect to, or setting out, any direction that the Commission has given under Article 13;
- (b) a public statement concerning a person if that person appears to the Commission to have failed to comply with a code of practice;
- (c) a public statement concerning –
 - (i) a permit holder or certificate holder, or
 - (ii) a person whom the Commission believes to be holding himself or herself out, whether in Jersey or elsewhere, as being a functionary of a collective investment fund, or as being a permit holder or certificate holder,

if it appears to the Commission to be desirable to do so in the interests of the public.

17A Notice of public statement

- (1) If a public statement identifies any person who holds a permit or who is a certificate holder, the Commission shall serve notice on the person.
- (2) If a public statement identifies any other person, and at any time before it issues the public statement the Commission is, or becomes, aware of an address at which it may serve notice on the person, the Commission shall serve notice on the person.
- (3) The notice shall –
 - (a) give the reasons for issuing the statement;
 - (b) give the proposed or actual date of issue of the statement;
 - (c) contain a copy of the statement;
 - (d) give particulars of the right of appeal under Article 17C in respect of the statement; and
 - (e) if the statement is issued, in accordance with a decision under Article 17B(3), before the date specified in Article 17B(1) in relation to the statement, give the reasons for issuing it before that day.
- (4) Paragraph (3) shall not require the Commission –
 - (a) to specify any reason that would in the Commission's opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party; or

(b) to specify the same reasons, or reasons in the same manner, in the case of notices to different persons about the same matter.

(5) In this Article and Articles 17B and 17C, a reference to the identification of a person in a public statement does not include the identification, in the statement, of the Commission or of any other person in their capacity of exercising functions under this Law.

17B Notice period

(1) If service is required under Article 17A(1) or (2) in relation to a public statement, the Commission shall not issue the public statement earlier than the expiration of one month following the date of the last such service in relation to the public statement.

(2) Paragraph (1) shall not apply if –

(a) each of the persons identified in the relevant public statement agrees that the statement may be issued on a date earlier than the date that would apply under that paragraph; and

(b) the statement is in fact issued on or after the earlier date.

(3) Paragraph (1) shall not apply if –

(a) the Commission decides on reasonable grounds that the interest of the public in the issue of the relevant public statement on a date earlier than the date that would apply under that paragraph outweighs the detriment to the persons identified in the statement, being the detriment attributable to that earliness; and

(b) the statement is in fact issued on or after the earlier date.

(4) In making a decision under paragraph (3), the Commission is not prevented from choosing as the date of issue of a public statement the date of service (if any) of notice of the statement.

(5) Despite this Article, if an appeal is made to the Court under Article 17C(1), and the Court orders that the statement not be issued before any specified date or event, the Commission shall not issue the statement before the date or event so specified.

(6) In a case to which paragraph (1) applies, if an appeal is made under Article 17C(2) to the Court against a decision to issue a public statement, the Commission shall not issue the statement before the day on which that appeal is determined by the Court or withdrawn.

17C Appeals and orders about public statements

(1) A person aggrieved by a decision of the Commission under Article 17B(3) may appeal to the Court, in accordance with this Article, against the decision.

- (2) A person aggrieved by a decision of the Commission to issue a public statement that identifies the person may appeal to the Court, in accordance with this Article, against the decision.
- (3) An appeal under paragraph (2) may be made only on the ground that the decision of the Commission was unreasonable having regard to all the circumstances of the case.
- (4) A person's appeal under this Article shall be lodged with the Court no later than –
 - (a) if notice is served on the person under Article 17A in relation to the public statement, the day that is one month after the date of the last such service on the person in relation to the public statement; or
 - (b) if no such notice is served on the person, the day that is one month after the issue of the public statement.
- (5) Nothing in paragraph (4) prevents the lodging of an appeal before a notice is served or a public statement is issued.
- (6) On an appeal under this Article, the Court may make such interim or final order as it thinks fit, including an order that the Commission not issue the relevant public statement or, if the public statement has been issued, that the Commission issue a further public statement to the effect set out in the order or stop making the statement available to the public.”.

7 Article 21 substituted

For Article 21 of the principal Law, there shall be substituted the following Article –

“21 Service of notices

- (1) No notice required by this Law to be given to the Commission shall be regarded as so given until it is received.
- (2) Subject to paragraph (1), any notice or other document required or authorized by or under this Law to be given to the Commission may be given by facsimile, electronic transmission or by any similar means that produces a document containing the text of the communication in legible form or is capable of doing so.
- (3) Any notice, direction or other document required or authorized by or under this Law to be given to or served on any person other than the Commission may be given or served on the person in question –
 - (a) by delivering it to the person;
 - (b) by leaving it at the person's proper address;
 - (c) by sending it by post to the person at that address; or
 - (d) by sending it to the person at that address by facsimile, electronic transmission or other similar means that produces



a document containing the text of the communication in legible form or is capable of doing so.

- (4) Any such notice, direction or other document may –
- (a) in the case of a company incorporated in Jersey, be served by being delivered to its registered office;
 - (b) in the case of a partnership, company incorporated outside Jersey or unincorporated association, be given to or served on a person who is a principal person in relation to it, or on the secretary or other similar officer of the partnership, company or association or any person who purports to act in any such capacity, by whatever name called, or on the person having the control or management of the partnership business, as the case may be, or by being served on the person or delivered to the person's registered or administrative office.
- (5) For the purposes of this Article and of Article 7 of the Interpretation (Jersey) Law 1954 in its application to this Article, the proper address of any person to or on whom a document is to be given or served by post shall be the person's last known address, except that –
- (a) in the case of a company incorporated in Jersey, or its secretary, clerk or other similar officer or person, it shall be the address of the registered or principal office of the company in Jersey; and
 - (b) in the case of a partnership, or a person who is a principal person in relation to a partnership, it shall be that of its principal office in Jersey.
- (6) If the person to or on whom any document referred to in paragraph (3) is to be given or served has notified the Commission of an address within Jersey other than the person's proper address within the meaning of paragraph (5), as the one at which the person or someone on the person's behalf will accept documents of the same description as that document, that address shall also be treated for the purposes of this Article and Article 7 of the Interpretation (Jersey) Law 1954 as the person's proper address."

8 Citation and commencement

- (1) This Law may be cited as the Collective Investment Funds (Amendment No. 5) (Jersey) Law 200-.
- (2) This Law shall come into operation on such day or days as the States may by Act appoint, and different days may be appointed for different provisions.





Jersey

COLLECTIVE INVESTMENT FUNDS (AMENDMENT No. 5) (JERSEY) LAW 200- – SUPPLEMENT

A LAW to amend further the Collective Investment Funds (Jersey) Law 1988.

Adopted by the States [date to be inserted]
Sanctioned by Order of Her Majesty in Council [date to be inserted]
Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

PART 3

[IMF AMENDMENTS]

1 Interpretation

In this Law, “principal Law” means the Collective Investment Funds (Jersey) Law 1988.

2 Article 1 amended

In Article 1 of the principal Law –

(a) for the definition of “principal person” there shall be substituted the following definition –

“ ‘principal person’ –

(a) in relation to a sole trader, subject to paragraph (f), means the proprietor;

(b) in relation to a company, subject to paragraph (f), means –

(i) a person who, either along with any associate or associates –

- (A) directly or indirectly holds 10% or more of the share capital issued by the company,
 - (B) is entitled to exercise or control the exercise of not less than 10% of the voting power in general meeting of the company or of any other company of which it is a subsidiary, or
 - (C) has a holding in the company directly or indirectly which makes it possible to exercise significant influence over the management of the company;
- (ii) a director or equivalent, by whatever name called,
 - (iii) a person in accordance with whose directions, whether given directly or indirectly, any director of the company, or director of any company of which the company is a subsidiary, is accustomed to act (but disregarding advice given in a professional capacity);
- (c) in relation to a partnership, subject to paragraph (f)(iii), means –
 - (i) a partner,
 - (ii) where a partner is a company, any person who, in relation to that company, falls within paragraph (b);
 - (d) in relation to a person whose registered office and principal place of business are outside Jersey, subject to paragraph (f), includes a person who, either alone or jointly with one or more other persons, is responsible for the conduct of the person's business in Jersey;
 - (e) in relation to a person who has become bankrupt, subject to paragraph (f), includes a person who has been appointed as liquidator or administrator of the person's affairs;
 - (f) does not include any person (person A) who –
 - (i) would be a principal person in relation to a company where –
 - (A) that company is a person to whom Article 8A(1)(a) applies, and
 - (B) person A would be principal person in relation to that company under paragraph (b) as a result of any shareholding that person A holds in that company;
 - (ii) would be a principal person in relation to a company where –
 - (A) that company is a functionary to whom Group 1, Part 2 of the Schedule applies, and
 - (B) person A would be principal person in relation to that company under paragraph (b) as a result of any shareholding that person A holds in that company; or

(iii) would be a principal person under any of paragraphs (a) to (e) in relation to a person (person B) where person B is a person to whom Article 8A(1)(b) or (c) applies;”;

(b) after “Schedule” there shall be inserted the following definition –

“ ‘shareholder controller’ has the meaning given by paragraph (b) in the definition of ‘principal person’ but does not include any person who, by virtue of paragraph (f), is not a principal person;”.

3 Article 6 amended

In Article 6 of the principal Law –

- (a) in paragraph (2) for the words “paragraph (3)” there shall be substituted the words “considering whether to grant or refuse a permit under Article 7(1)”;
- (b) paragraph (3) shall be repealed.

4 Article 7 amended

In Article 7 of the principal Law –

(a) for paragraph (6) there shall be substituted the following paragraphs –

“(6) The Commission may refuse to grant a permit on one or more of the following grounds, namely that –

- (a) having regard to the information before the Commission as to –
 - (i) the integrity, competence, financial standing, structure and organization of the applicant,
 - (ii) the persons employed by or associated with the applicant for the purposes of the applicant’s business or who are principal persons in relation to the applicant,
 - (iii) the nature of the collective investment fund to which the applicant’s function relates,
 - (iv) the function to be performed by the applicant,
 - (v) the reputation of the applicant, and
 - (vi) any other functionaries there are or may be of the collective investment fund to which the application relates,

the Commission is not satisfied that the applicant is a fit and proper person to be granted a permit;

- (b) the applicant has at any time and whether or not in relation to the application, in any case where information was required under this Law in any connection –
 - (i) failed to provide any such information, or
 - (ii) provided to the Commission information which was untrue or misleading in any material particular;

- (c) the applicant has at any time failed to comply with any condition attached to the grant of a permit, or with any condition varied or with any condition prescribed as applicable to that permit (whether generally or not) under paragraph (1), (3) or (4), as the case may be;
- (d) the applicant or any person employed by or associated with the applicant for the purposes of the applicant's business has been convicted –
 - (i) of an offence involving fraud or other dishonesty,
 - (ii) an offence under –
 - (A) this Law,
 - (B) the Banking Business (Jersey) Law 1991,
 - (C) the Financial Services (Jersey) Law 1998,
 - (D) the Insurance Business (Jersey) Law 1996,
 - (E) any Regulation or Order made under any of those Laws;
 - (iii) any similar offence to those listed in clause (ii) under the laws of any country or territory other than Jersey,
 - (iv) where clause (ii) or (iii) does not apply, an offence under any enactment (whether or not of Jersey) relating to building societies, companies (including insider dealing), consumer credit, consumer protection, credit unions, friendly societies, industrial and provident societies, insurance, insolvency, money laundering or terrorist financing,
 - (v) an offence of perjury or conspiracy to pervert the course of justice,
 - (vi) an offence committed (whether under the law of Jersey or elsewhere) in connection with, or in relation to, taxation for which a person aged 21 years or more may be sentenced to imprisonment for a term of 2 years or more;
- (e) it appears to the Commission, as a result of information provided in pursuance of requirements of or under Article 6, or information otherwise obtained, that –
 - (i) for the protection of the public or of the participants or potential participants in the collective investment fund, the applicant should not be granted a permit,
 - (ii) in order to protect the reputation and integrity of Jersey in financial and commercial matters, the applicant should not be granted a permit, or
 - (iii) in the best economic interests of Jersey, the applicant should not be granted a permit;
- (f) the Commission has reason to believe that at any time there has been failure on the part of the applicant to follow a code of practice; or

- (g) the applicant has failed at any time to comply with a direction by the Commission under Article 13.
- (6A) In exercising its or his or her powers in respect of conditions under paragraphs (1), (3) or (4), the Commission or Minister, as the case may be, shall have regard to such of the matters referred to in paragraph (6) as it, he or she thinks appropriate.
- (6B) For the purposes of paragraph (6A), when the Commission is exercising its powers under paragraph (3), paragraph (6) shall apply with the substitution for references to the applicant of references to the holder of the permit.”;
- (b) in paragraph (7) –
 - (a) the “or” at the end of sub-paragraph (e) shall be deleted;
 - (b) for the full-stop at the end of sub-paragraph (f) there shall be substituted “;”;
 - (c) after sub-paragraph (f) there is added the following sub-paragraphs –
 - “(g) on one or more of the grounds set out in paragraph (6), which shall apply in such a case with the substitution for references to the applicant of references to the holder of the permit;
 - (h) if there is a failure to comply with a notice of objection served under Article A13; or
 - (i) if the holder of the permit fails to pay any fee prescribed under paragraph 12.”.

5 Article 8B amended

In Article 8B of the principal Law –

- (a) in paragraph (3) for the words “paragraph (4)” there shall be substituted the words “considering whether to grant or refuse a certificate under Article 8C(1)”;
- (b) paragraphs (4) and (5) shall be repealed.

6 Article 8C amended

In Article 8C of the principal Law –

- (a) for paragraph (7) there shall be substituted the following paragraphs –
 - “(7) The Commission may refuse to grant a certificate on one or more of the following grounds, namely that –
 - (a) having regard to the information before the Commission as to the –
 - (i) integrity, competence, financial standing, structure and organization of the applicant,
 - (ii) persons employed by or associated with the applicant for the purposes of the applicant’s business or who are principal persons in relation to the applicant,

-
- (iii) the nature of the collective investment fund to which the applicant's role relates,
 - (iv) the role to be performed by the applicant in relation to the collective investment fund,
 - (v) the reputation of the applicant, and
 - (vi) any other fund service provider in relation to an unclassified fund there are or may be in respect of the collective investment fund to which the application relates,
- the Commission is not satisfied that the applicant is a fit and proper person to be granted a certificate;
- (b) the applicant has at any time and whether or not in relation to the application, in any case where information was required under this Law in any connection –
 - (i) failed to provide any such information, or
 - (ii) provided to the Commission information which was untrue or misleading in any material particular;
 - (c) the applicant has at any time failed to comply with any condition attached to the grant of a certificate, or with any condition varied or with any condition prescribed as applicable to that certificate (whether generally or not) under paragraph (2), (4) or (5), as the case may be;
 - (d) the applicant or any person employed by or associated with the applicant for the purposes of the applicant's business has been convicted –
 - (i) of an offence involving fraud or other dishonesty,
 - (ii) an offence under –
 - (A) this Law,
 - (B) the Banking Business (Jersey) Law 1991,
 - (C) the Financial Services (Jersey) Law 1998,
 - (D) the Insurance Business (Jersey) Law 1996,
 - (E) any Regulation or Order made under any of those Laws;
- (iii) any similar offence to those listed in clause (ii) under the laws of any country or territory other than Jersey,
 - (iv) where clause (ii) or (iii) does not apply, an offence under any enactment (whether or not of Jersey) relating to building societies, companies (including insider dealing), consumer credit, consumer protection, credit unions, friendly societies, industrial and provident societies, insurance, insolvency, money laundering or terrorist financing,
 - (v) an offence of perjury or conspiracy to pervert the course of justice,
 - (vi) an offence committed (whether under the law of Jersey or elsewhere) in connection with, or in relation

- to, taxation for which a person aged 21 years or more may be sentenced to imprisonment for a term of 2 years or more;
- (e) it appears to the Commission, as a result of information provided in pursuance of requirements of or under Article 8B, or information otherwise obtained, that –
 - (i) for the protection of the public or of the participants or potential participants in the collective investment fund, the applicant should not be granted a certificate,
 - (ii) in order to protect the reputation and integrity of Jersey in financial and commercial matters, the applicant should not be granted a certificate, or
 - (iii) in the best economic interests of Jersey, the applicant should not be granted a certificate;
 - (f) the Commission has reason to believe that at any time there has been failure on the part of the applicant to follow a code of practice; or
 - (g) the applicant has failed at any time to comply with a direction by the Commission under Article 13.
- (7A) In exercising its or his or her powers under paragraphs (2), (4) or (5), the Commission or Minister, as the case may be, shall have regard to such of the matters referred to in paragraph (7) as it, he or she thinks appropriate.
- (7B) For the purposes of paragraph (7A), when the Commission is exercising its powers paragraph (4), paragraph (7) shall apply with the substitution of references to the applicant of references to the holder of the certificate.”;
- (b) In paragraph (8) –
 - (a) the “or” at the end of sub-paragraph (d) is deleted;
 - (b) for the full-stop at the end of sub-paragraph (e) there is substituted “,”;
 - (c) after sub-paragraph (e) there is added the following sub-paragraphs –
 - “(f) on one or more of the grounds set out in paragraph (7), which shall apply in such a case with the substitution for references to the applicant of references to the holder of the certificate; or
 - (g) if the holder of the certificate fails to pay any fee prescribed under paragraph 14.”.

7 New Article 8F

In the principal Law, after Article 8F there shall be inserted the following Article –

“8F Display of permit or certificate and conditions

- (1) When the Commission grants a permit to a person under Article 7(1) or a certificate under Article 8C(1), it may give that person notice in writing of the manner in which that person shall display or otherwise make available to members of the public –
 - (a) that permit or certificate, as the case may be, or the information it contains, or both;
 - (b) a record of such conditions as the Commission may specify –
 - (i) to which that permit or certificate is subject under Article 7(1) or Article 8C(2), as the case may be,
 - (ii) which have been prescribed in relation to that permit or certificate (whether generally or not) under Article 7(4) or Article 8C(5), as the case may be.
- (2) Where the Commission varies a condition of, or attaches any new condition to, the permit under Article 7(3) or varies a condition of, or attaches any new condition to, the certificate under Article 8C(4), it may notify that person in writing of the manner in which that person shall display or otherwise make available to members of the public a record of that new condition, or the condition as varied, as the case may be.
- (3) The Commission may at any time vary any requirement in any notice it has given to a person under paragraph (1) or (2) by further notice to that person.
- (4) Without prejudice to the generality of paragraphs (1), (2) and (3), a notice under any of those paragraphs may require the permit, certificate, information or record of conditions, as the case may be, to be displayed at any address at which the permit holder or certificate holder, as the case may be, carries on business relating to a collective investment fund or to be published on the internet, or both.
- (5) A permit holder or certificate holder who carries on business relating to a collective investment fund in breach of any requirements in a notice given under this Article which have effect in relation to that business shall be guilty of an offence and liable to fine of level 2 on the standard scale.”.

[Further requirements to give reasons in notice; time limits for compliance and appeal rights to be set out in Articles 8, 8A and 8AA.]

8 New Articles A13 to D13 inserted

In the principal Law, after Article 12 there shall be inserted the following Articles –

“A13 Objection to principal person and to changes in holdings

- (1) Where it appears to the Commission at any time, that on the information before it, and having regard to the matters set out in

Articles 7(6) and 8C(7), a person who is a principal person, or key person of any class, in relation to a holder of a permit or certificate or in respect of whom notice has been given that the person will become (respectively) a principal person, or key person of any class, is not a fit and proper person to be (respectively) a principal person, or key person of the relevant class or any class, in relation to a holder of the permit or certificate, as the case may be, the Commission shall serve on that person and on the holder of the permit or certificate a written notice of objection, directing that the person shall not continue to be, or shall not become, (respectively) a principal person or key person of the relevant class or any class.

- (2) Following receipt of a notice under Article B13(2) that a person has increased his or her holding, or is about to do so, or that the person is about to reduce or dispose of his or her holding, the Commission may serve on that person and on the holder of the permit concerned a written notice of objection, directing that that person shall not continue to have such increased holding, or shall not increase, reduce or dispose of the person's holding, as the case may be.

[For requirements relating to notices, time limits for compliance and appeals etc see Articles 8A etc in main amendments.]

B13 Notification of change of principal person and change in shareholding

- (1) No person shall become a principal person, or key person of any class, in relation to a holder of a permit or certificate unless that person has notified the Commission in writing of that person's intention to become such a principal person, or key person of that class, and the Commission has notified that person in writing that there is no objection to that person becoming such a principal person, or key person of that class.
- (2) No person who is a shareholder controller shall increase, reduce or dispose of that person's holding in the company concerned so that the proportion of the share capital or voting rights held by the person in the company reaches, exceeds or falls below 20%, 33% or 50%, or so that the company becomes the subsidiary of such person or ceases to be such subsidiary, as the case may be, unless the person has notified the Commission in writing of that person's intention to increase, reduce or dispose of such holding, as the case may be, and the Commission has notified the person in writing that there is no objection to the person's so doing.
- (3) Subject to paragraph (5), a holder of a permit or certificate shall, before the end of one month beginning with the day on which that holder becomes aware that any person has become, is about to become or has ceased to be a principal person, or key person, in relation to that holder, or has increased, reduced or disposed of that person's holding, as the case may be, or is about to do so for the purposes of paragraph (2), give written notice to the Commission of that fact.

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- (4) For the purposes of paragraphs (1) and (3) a person shall be treated as –
- (a) becoming a principal person, or key person, in relation to a holder of a permit or certificate if, being a principal person, or key person, respectively in one or more capacities, or a key person of any class, he or she becomes respectively a principal person, or key person, in any other capacity or a key person of any other class; and
 - (b) ceasing to be a principal person, or key person, in relation to a holder of a permit or certificate if, being a principal person, or key person, in one or more capacities, or a key person of any class, he or she ceases to be respectively a principal person, or key person, in one or more such capacities or a key person in any class.
- (5) The obligations imposed by paragraph (3) shall not apply in any case where a holder of a permit or certificate, as the case may be, has complied with an equivalent obligation under another enactment under which the Commission exercises a supervisory function or where the Commission by notice in writing waives the obligations, wholly or in part.
- (6) A notice under paragraph (1), (2) or (3) that a person has become or is about to become a principal person or key person, or has increased, reduced or disposed of that person's holding or is about to do so, as the case may be, shall include such information regarding the person in question as may be required by the Commission.
- (7) A notice under paragraph (2) or (3) that a person has ceased to be a principal person or key person or has reduced or disposed of that person's holding or is about to do so, as the case may be, shall include a statement of the reasons for the change.
- (8) Following receipt of a notice under paragraph (1), (2) or (3), the Commission may, by giving written notice, require the person concerned or the holder of the permit or certificate, as the case may be, to provide such additional information or documents as the Commission may require in order to decide whether to serve a notice of objection under Article A13.
- (9) A notice given by the Commission under paragraph (1) or (2) that there is no objection shall lapse if –
- (a) the person concerned does not become a principal person, or key person of the relevant class, as the case requires; or
 - (b) the increase, reduction or disposal, does not take place, within one year following the giving of the notice by the Commission.

C13 Failure to notify change of principal person or changes in holdings

- (1) A holder of a permit or certificate who fails to give notice required by Article B13(3) shall be guilty of an offence and liable to imprisonment for a term of 6 months and a fine.
- (2) Any person who –
 - (a) fails to give a notice required by Article B13(1) or (2) or becomes a principal person, or key person of any class, or increases, reduces or disposes of that person's holding before having been served with a notice by the Commission under Article B13(1) or (2), as the case requires; or
 - (b) becomes or continues to be a principal person, or key person of any class, or continues to have an increased holding, or increases, reduces or disposes of, his or her holding, as the case may be, following service on that person of a notice of objection under Article A13 in that connection,shall be guilty of an offence.
- (3) Subject to paragraph (4), a person shall not be guilty of an offence under paragraph (2) if that person shows that he or she did not know of the acts or circumstances by which that person became a principal person, by which that person became a key person of any class, or whereby that person's holding was increased, reduced or disposed of, as the case may be.
- (4) Where a person subsequently becomes aware of the relevant acts or circumstances by which that person became a principal person, by which that person became a key person of any class, or whereby that person's holding was increased, reduced or disposed of, as the case may be, that person shall be guilty of an offence unless that person gives the Commission written notice of the fact that that person has become such a principal person, has become a key person of the relevant class, or has increased, reduced or disposed of the person's holding, as the case may be, within 14 days of becoming aware of that fact.
- (5) A person guilty of an offence under paragraph (2) or (4) shall be liable to imprisonment for a term not exceeding 2 years and a fine.

D13 Powers of Commission and Court in respect of shares

- (1) The powers conferred by this Article shall be exercisable where a person has contravened Article C13(2) and –
 - (a) the holder of the permit concerned is a company; and
 - (b) the person concerned is a shareholder controller of that company.
- (2) The Commission may, by notice in writing served on the person concerned, direct that any specified shares to which this Article applies shall, until further notice, be subject to one or more of the following restrictions –

-
- (a) any transfer of, or agreement to transfer, those shares or, in the case of unissued shares, any transfer or agreement to transfer the right to be issued with them, shall be void;
 - (b) no voting rights shall be exercisable in respect of the shares;
 - (c) no further shares shall be issued in right of them or in pursuance of any offer made to their holder;
 - (d) except in liquidation, no payment shall be made of any sum due from the holder of the permit on the shares, whether in respect of capital or otherwise.
 - (3) Subject to paragraph (4), the Court may, on the application of the Commission, order the sale of any specified shares to which this Article applies and, if they are for the time being subject to any restrictions under paragraph (2), that they shall cease to be subject to those restrictions.
 - (4) No order shall be made under paragraph (3) in a case where a notice of objection was served under Article A13 –
 - (a) until the end of the period within which an appeal can be brought against the notice of objection; and
 - (b) if such an appeal is brought, until it has been determined or withdrawn.
 - (5) Where an order has been made under paragraph (3) the Court may, on the application of the Commission, make such further order relating to the sale or transfer of the shares as it thinks fit.
 - (6) Where shares are sold in pursuance of an order under this Article the proceeds of sale, less the costs of the sale, shall be paid to the Viscount for the benefit of the persons beneficially interested in them; and any such person may apply to the Court for an order that the whole or part of the proceeds be paid to the person by the Viscount.
 - (7) This Article applies –
 - (a) to all shares in the holder of the permit referred to in paragraph (1) held by the person concerned, or by any associate of the person, which were not so held immediately before the person became a principal person, or increased his or her holding, or which were so held immediately before that person reduced or disposed of his or her holding, as the case may be; and
 - (b) where the person concerned became a principal person, or increased his or her holding, or reduced, or disposed of his or her holding, as a result of the acquisition or disposal by the person or any associate of the person of shares in another company, to all the shares in that company which are held by the person or any associate of the person and were not so held before that person became a principal person or increased his or her holding, or which were so held immediately before that person reduced or disposed of his or her holding.

- (8) A copy of the notice served on the person concerned under paragraph (2) shall be served on the holder of the permit referred to in paragraph (1) and on any company referred to in paragraph (7)(b) and, if it relates to shares held by an associate of the principal person concerned, on that associate.
- (9) Any person who fails to comply with a notice served on the person under paragraph (2) or an order made under paragraph (3) shall be guilty of an offence and shall be liable on conviction to imprisonment for a term of 2 years and a fine.”.

9 Article 29 amended

- (1) In Article 29(1)(c) of the principal Law for the full stop at the end there shall be substituted “;”.
- (2) After Article 29(1)(c) of the principal Law there shall be added the following sub-paragraph –
 - “(d) to a person by the Commission showing whether or not any person holds a permit or certificate under this Law, including any conditions to which that permit or certificate is subject under Article 7 or Article 8C as the case may be.”.

10 New Article 34A

After Article 34 of the principal Law there shall be inserted the following Article –

“34A Commission may apply to Court for appointment of a manager in prescribed circumstances

- (1) The Minister may, by Order, prescribe circumstances in which the Commission may apply to the Court for the appointment by the Court of a person to manage the affairs, or any part of the affairs, of any person mentioned in paragraph (2) in so far as those affairs relate to a collective investment fund.
- (2) Those persons are –
 - (a) any person granted a permit or a certificate;
 - (b) any person whom the Commission reasonably believes to be in breach of Article 5 or Article 8A.
- (3) An Order made under paragraph (1) may contain such incidental or supplementary provisions as the Minister thinks necessary or expedient.
- (4) The Court may, on an application made to it by the Commission, in circumstances prescribed in an Order made under paragraph (1), appoint, on such terms as it considers to be appropriate, a person to manage the affairs, or any part of the affairs, of any person mentioned in paragraph (2) in so far as those affairs relate to a collective investment fund.

- (5) Subject to the terms of his or her appointment, a person appointed under paragraph (4) shall have all the powers necessary to manage the affairs, or the part of the affairs, of the person in respect of whom the appointment was made in so far as they relate to a collective investment fund.”



Jersey

**DRAFT COLLECTIVE INVESTMENT FUNDS
(APPOINTMENT OF MANAGER) (JERSEY)
ORDER 200-**

CONSULTATION DRAFT ONLY





Jersey

**DRAFT COLLECTIVE INVESTMENT FUNDS
(APPOINTMENT OF MANAGER) (JERSEY)
ORDER 200--**

APPENDIX G

APPENDIX G

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Jersey

DRAFT COLLECTIVE INVESTMENT FUNDS (APPOINTMENT OF MANAGER) (JERSEY) ORDER 200--

Made [date to be inserted]
Coming into force [date to be inserted]

THE MINISTER FOR ECONOMIC DEVELOPMENT, in pursuance of Article 34A of the Collective Investment Funds (Jersey) Law 1988, orders as follows –

1 Interpretation

- (1) In this Order –
 - “fund person” means the person in respect of whose affairs an appointment is made under Article 2;
 - “Law” means the Collective Investment Funds (Jersey) Law 1988.
- (2) In this Order a note contained in a paragraph of the Schedule to this Order forms part of that paragraph.

2 Circumstances in which the Commission may appoint a manager

- (1) Where the Commission is satisfied that there is sufficient evidence to show the existence of any of the cases set out in the Schedule in respect of the affairs of any person mentioned in paragraph (2) relating to a collective investment fund, the Commission may apply to the Court for the appointment by the Court of a person to manage the affairs of the person, or any part of the affairs of that person, in so far as those affairs relate to that fund.
- (2) Those persons are –
 - (a) any person granted a permit or certificate;
 - (b) any person whom the Commission reasonably believes to be in breach of Article 5 or Article 8A.

3 Citation and commencement

- (1) This Order may be cited as the Collective Investment Funds (Appointment of Manager) (Jersey) Order 200-.
- (2) It shall come into force on the same date as the Collective Investment Funds (Amendment No. 5) (Jersey) Law 200-.



SCHEDULE

(Article 2(1))

PRESCRIBED CIRCUMSTANCES

Case 1

There has been inadequate management of the affairs of the fund person in so far as they relate to a collective investment fund.

Note Inadequate management of such person's affairs may be evidenced, in particular, by –

- (a) the dishonesty of a principal person in relation to the fund person;
- (b) insufficient resources being held by the fund person in relation to the affairs of the collective investment fund;
- (c) a serious failure by the fund person to maintain proper records;
- (d) the existence of a conflict of interests that may prevent the interests of a participant in the fund being properly protected;
- (e) the person committing serious and persistent breaches of the Law or any of the codes of practice or Orders made under the Law;
- (f) the death or incapacity or prolonged absence of a principal person in relation to the fund person to the detriment of the collective investment fund.

Case 2

The fund person appears to have ceased to carry on that person's business relating to a collective investment fund, but that person has failed to wind up, liquidate, close or transfer the business in an orderly manner or at all.

Case 3

The fund person has persistently failed to examine claims or complaints of participants in the collective investment fund.

Case 4

The fund person does not hold a permit or there is no certificate in relation to the collective investment fund.

Case 5

There is a need to appoint a manager to collect, protect or preserve the assets or records of the collective investment fund or the property of participants in the fund, or both.

Case 6

There is a need to appoint a manager to avoid circumstances arising that could provide grounds for a forced winding up of the collective investment fund.

Case 7

There is a need to appoint a manager to promote or implement a compensation scheme established specifically for participants in the collective investment fund.

Case 8

The fund person has failed to comply with a notice of objection under Article A13 and B13 of the Law so there is a need to appoint a manager to ensure independent management of affairs relating to the collective investment fund.





Jersey

**FINANCIAL SERVICES (AMENDMENT No. 4)
(JERSEY) LAW 200-**

CONSULTATION DRAFT ONLY





Jersey

FINANCIAL SERVICES (AMENDMENT No. 4) (JERSEY) LAW 200-

Arrangement

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Jersey

FINANCIAL SERVICES (AMENDMENT No. 4) (JERSEY) LAW 200-

A LAW to amend further the Financial Services (Jersey) Law 1998.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Interpretation

In this Law “principal Law” means the Financial Services (Jersey) Law 1998.

2 Article 1 amended

In Article 1(1) of the principal Law the following definitions shall be inserted in appropriate alphabetical order –

“ ‘Code of Practice’ means Code of Practice under Article 19;

‘compliance officer’ means a person so designated, under a Code of Practice, by a registered person and having the function of monitoring whether the law of Jersey, and the Codes of Practice, are being complied with in the conduct of the business in respect of which the registered person is registered;

‘key person’ means a person employed or otherwise engaged by a registered person as an officer of any one or more of the following classes in relation to the conduct of the business of the registered person –

- (a) compliance officer;
- (b) money laundering compliance officer;
- (c) money laundering reporting officer;

‘money laundering compliance officer’ means a person employed or otherwise engaged by a registered person to be in charge of monitoring whether the law of Jersey relating to money laundering is being complied with in the conduct of the business of the registered person;

‘money laundering reporting officer’ means a person employed or otherwise engaged by a registered person to receive reports from employees of the registered person in relation to activities that may constitute money laundering and come to the attention of the employees in the conduct of the business of the registered person;

‘public statement’ means a statement issued under Article 25;”.

3 Article 9 amended

In Article 9 of the principal Law –

- (a) for paragraph (3)(d) there shall be substituted the following sub-paragraph –

“(d) the applicant or any person employed by or associated with the applicant for the purposes of the applicant’s business has been convicted of –

- (i) an offence involving fraud or other dishonesty,
- (ii) an offence under –
 - (A) this Law,
 - (B) the Banking Business (Jersey) Law 1991,
 - (C) the Collective Investment Funds (Jersey) Law 1988,
 - (D) the Insurance Business (Jersey) Law 1996,
 - (E) any Regulation or Order made under any of those Laws,
- (iii) any similar offence to those listed in clause (ii) under the laws of any country or territory other than Jersey,
- (iv) where clause (ii) or (iii) does not apply, an offence under any enactment (whether or not of Jersey) relating to building societies, companies, consumer credit, consumer protection, credit unions, friendly societies, industrial and provident societies, insurance, insolvency, insider dealing, money laundering or terrorist financing,
- (v) an offence of perjury or conspiracy to pervert the course of justice,
- (vi) an offence committed (whether under the law of Jersey or elsewhere) in connection with, or in relation to, taxation for which a person aged 21 or more may be sentenced to imprisonment for a term of 2 years or more.”;



- (b) in paragraph (3)(e)(iv) the word “or” shall be deleted;
- (c) after paragraph (3)(f) there shall be inserted the following sub-paragraph –
 - “;
 - (g) the person who is the applicant has failed to comply with a direction given to the person at any time under Article 16 or 23.”.

4 Article 11 amended

In Article 11 of the principal Law –

- (a) in paragraph (4) for the word “increased” there shall be substituted the word “reduced”;
- (b) for paragraphs (6) and (7) there shall be substituted the following paragraphs –
 - “(6) An order under paragraph (4) shall have immediate effect, but any person aggrieved by the order may apply to the Court to vary or set aside the order.
 - (7) In respect of an application under paragraph (4), the Court may make such order as it thinks fit, and in respect of an application under paragraph (6), the Court may make such order in respect of the relevant order under paragraph (4) as it thinks fit.”.

5 Article 13 amended

For Article 13 of the principal Law, and the headings associated with Part 3 that are located immediately before that Article, there shall be substituted the following headings and Article –

“PART 3

SUPERVISION OF FINANCIAL SERVICE BUSINESS

PRINCIPAL PERSONS, KEY PERSONS AND SHAREHOLDERS

13 Objection to principal persons, key persons or share holdings

- (1) Where it appears to the Commission at any time that, on the information before it, and having regard to the matters set out in Article 9(3), a person who is a principal person, or key person of any class, in relation to a registered person or in respect of whom notice has been given that the person will become such a principal person, or key person of any class, is not a fit and proper person to be a principal person, or key person of that class or of any class, respectively in relation to a registered person, the Commission

shall serve on that person and on the registered person concerned a written notice of objection, directing that the person shall not continue to be, or shall not become, a principal person or key person of the relevant class or of any class (as the case requires), respectively.

(2) Following receipt of a notice under Article 14(2) or (3) that a person has increased his or her holding, or is about to do so, or that the person is about to reduce or dispose of his or her holding, the Commission may serve on that person and on the registered person concerned a written notice of objection, directing that he or she shall not continue to have such increased holding, or shall not increase, reduce, or dispose of the person's holding, as the case may be.

(3) A notice of objection served on a person under this Article directing that the person shall not continue to be a principal person, or key person of a particular class or of any class, or shall not continue to have an increased holding shall, subject to paragraph (4), not take effect before –

- (a) the expiration of one month after the notice is given to the person; or
- (b) the date on which an appeal under paragraph (10) against the notice is determined or withdrawn,

whichever is the later, unless the person to whom the notice relates requests that it should take effect at an earlier date.

(4) If, on the application of the Commission, the Court is satisfied that it is desirable –

- (a) in the best interests of persons who have transacted or may transact financial services business with the registered person; or
- (b) if the registered person is carrying on trust company business, in the best interests of persons who –
 - (i) have entered into or may enter into agreements for the provision of services to be provided by the registered person in the latter's carrying on of trust company business, or
 - (ii) have received or may receive the benefit of services provided or arranged by the registered person in the latter's carrying on of trust company business,

that paragraph (3) should not have effect, or should cease to have effect in a particular case, or that the period specified in paragraph (3)(a) should be reduced, the Court may so order.

(5) An order under paragraph (4) may be made without prior notice to, and without hearing, the registered person concerned.

(6) An order under paragraph (4) shall have immediate effect, but any person aggrieved by the order may apply to the Court to vary or set aside the order.



-
- (7) In respect of an application under paragraph (4), the Court may make such order as it thinks fit, and in respect of an application under paragraph (6), the Court may make such order in respect of the relevant order under paragraph (4) as it thinks fit.
- (8) A notice of objection shall –
- (a) if served under paragraph (1), specify the reasons for which it appears to the Commission that the person in question is not fit and proper;
 - (b) if served under paragraph (2), specify the reasons for the objection;
 - (c) draw the attention of the person in relation to whom, or to whose holding, objection is taken, and of the registered person, to the provisions of Article 9(3) and (4), if appropriate;
 - (d) give particulars of the rights of appeal conferred by paragraph (10).
- (9) Paragraph (8)(a) and (b) shall not require the Commission –
- (a) to specify any reason that would in the Commission’s opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party; or
 - (b) to specify the same reasons, or reasons in the same manner, in the case of notices to different persons about the same matter.
- (10) A person aggrieved by a notice of objection under this Article may appeal to the Court within one month from the date on which the notice was so served, on the ground that the decision of the Commission is unreasonable having regard to all the circumstances of the case.”.

6 Article 14 amended

In Article 14 of the principal Law –

- (a) for paragraph (1) there shall be substituted the following paragraph –
 - “(1) No person shall become a principal person, or key person of any class, in relation to a registered person unless he or she has notified the Commission in writing of his or her intention to become a principal person, or key person of that class, in relation to the registered person, and the Commission has notified him or her in writing that there is no objection to his or her so becoming such a person in relation to the registered person.”;
- (b) in paragraph (3) after the words “principal person” there shall be inserted the words “or key person”;
- (c) for paragraph (4) there shall be substituted the following paragraph –

- “(4) For the purposes of paragraphs (1) and (3) a person shall be treated as –
- (a) becoming a principal person, or key person, in relation to a registered person if, being a principal person, or key person, respectively in one or more capacities, or a key person of any class, he or she becomes respectively a principal person, or key person, in any other capacity, or a key person of any other class; and
 - (b) ceasing to be a principal person or key person in relation to a registered person if, being a principal person, or key person, in one or more capacities, or a key person of any class, he or she ceases to be respectively a principal person, or key person, in one or more such capacities or a key person in any class.”;
- (d) in paragraph (6) after the words “principal person” there shall be inserted the words “or key person”;
- (e) in paragraph (7) after the words “principal person” there shall be inserted the words “or key person”;
- (f) for paragraph (9) there shall be substituted the following paragraph –
- “(9) A notice given by the Commission under paragraph (1) or (2) that there is no objection shall lapse if –
- (a) the person concerned does not become a principal person, or key person of the relevant class, as the case requires; or
 - (b) the increase, reduction or disposal, does not take place, within one year following the giving of the notice by the Commission.”.

7 Article 15 substituted

For Article 15 of the principal Law there shall be substituted the following Article –

“15 Failure to notify change

- (1) A registered person who fails to give a notice required by Article 14(3) shall be guilty of an offence and liable to imprisonment for a term of 6 months or a fine, or both.
- (2) Any person who –
- (a) fails to give a notice required by Article 14(1) or (2) or becomes a principal person, or key person of any class, or increases, reduces or disposes of his or her holding before having been served with a notice by the Commission under Article 14(1) or (2), as the case requires; or
 - (b) becomes or continues to be a principal person, or key person of any class, or continues to have an increased holding, or increases, reduces or disposes of, his or her holding, as the

case may be, following service on the person of a notice of objection under Article 13 in that connection, shall be guilty of an offence.

- (3) A person shall not be guilty of an offence under paragraph (2) if he or she shows that he or she did not know of the acts or circumstances by which, as the case may be, he or she became a principal person, he or she became a key person of any class, or his or her holding was increased, reduced or disposed of.
- (4) Despite paragraph (3), if the person subsequently becomes aware of the relevant acts or circumstances, he or she shall be guilty of an offence unless he or she gives the Commission written notice of the fact that he or she, as the case may be, has become such a principal person, has become such a key person of any class or has increased, reduced or disposed of his or her holding, within 14 days of becoming aware of that fact.
- (5) A person guilty of an offence under paragraph (2) or (4) shall be liable to imprisonment for a term of 2 years or a fine, or both.”.

8 Article 16 amended

After Article 16(2) of the principal Law there shall be inserted the following paragraphs –

- “(2A) A notice of a direction under paragraph (2) shall –
- (a) specify the reasons for giving the direction; and
 - (b) give particulars of the rights of appeal conferred by paragraph (2B).
- (2B) A person aggrieved by a direction under paragraph (2) may appeal to the Court within one month from the date on which notice of the direction was given under paragraph (2), on the ground that the decision of the Commission to give the direction is unreasonable having regard to all the circumstances of the case.”.

9 Article 23 amended

For Article 23 of the principal Law there shall be substituted the following Article –

“23 Power to issue directions

- (1) If it appears to the Commission in relation to financial service business that –
 - (a) any requirements in relation to the registration of a registered person are no longer satisfied;
 - (b) it is in the best interests of –
 - (i) creditors of a registered person,

- (ii) persons with whom a registered person has transacted or may transact financial service business (other than trust company business),
 - (iii) persons who have entered or may enter into agreements for the provision of services to be provided by a registered person when carrying on trust company business,
 - (iv) persons who have received or may receive the benefit of services to be provided or arranged by the registered person when carrying on trust company business, or
 - (v) one or more registered persons;
- (c) it is desirable in order to protect the reputation and integrity of Jersey in financial and commercial matters;
 - (d) it is in the best economic interests of Jersey; or
 - (e) any financial service advertisement issued or proposed to be issued by or on behalf of any person is misleading or undesirable,

the Commission may, whenever it considers it necessary, give, by notice in writing, such directions as it may consider appropriate in the circumstances.

- (2) Without prejudice to the generality of paragraph (1), a direction under this Article may –
 - (a) require anything to be done or be omitted to be done, or impose any prohibition, restriction or limitation, or any other requirement, and confer powers, with respect to any transaction or other act, or to any assets, or to any other thing whatsoever;
 - (b) require that any principal person, key person, or person having functions, in relation to a registered person be removed or removed and replaced by another person acceptable to the Commission;
 - (c) require that any individual not perform a specified function (or any function at all), not engage in specified employment (or any employment at all) or not hold a specified position (or any position at all) in relation to a specified registered person (or any registered person at all);
 - (d) require a registered person or formerly registered person to cease operations and to wind up its affairs, in accordance with such procedures and directions as may be specified in the direction, which may provide for the appointment of a person to take possession and control of all documents, records, assets and property belonging to or in the possession or control of the registered person or formerly registered person;
 - (e) prohibit the issue, re-issue or continuance of a particular financial service advertisement;

- (f) require that any particular financial service advertisement be modified in a specified manner;
 - (g) prohibit the issue, re-issue or continuance of financial service advertisements of any description; or
 - (h) require that financial service advertisements of any description be modified in a specified manner.
- (3) A direction under Article 16 or this Article may be of unlimited duration or of a duration specified in the notice of the direction.
 - (4) The power to give directions under this Article shall include the power by direction to vary or withdraw any direction, as well as the power to issue further directions.
 - (5) A notice of a direction under this Article shall –
 - (a) specify the reasons for the giving of the direction; and
 - (b) give particulars of the rights of appeal conferred by paragraph (8).
 - (6) Any person to whom a direction is given under paragraph (1) may apply to the Commission to have it withdrawn or varied and the Commission shall withdraw or vary the direction in whole or in part if it considers that there are no longer any grounds under paragraph (1)(a) to (e) which justify the direction or part of the direction concerned.
 - (7) If the Commission refuses an application under paragraph (6), or grants such an application only in part, it shall give notice in writing of that fact to the applicant.
 - (8) Any person aggrieved by a direction given to the person under paragraph (1), or a refusal to grant an application under paragraph (6), or the granting of such an application only in part, may appeal to the Court.
 - (9) Such an appeal may be made only on the ground that the decision to give the direction, to make the refusal or to grant the application only in part (as the case requires) was unreasonable having regard to all the circumstances of the case.
 - (10) A person's appeal under paragraph (8) shall be lodged with the Court no later than the day that is one month after the day on which notice was served on the person of the direction, refusal or grant (as the case requires).
 - (11) On the appeal, the Court may make such interim or final order as it thinks fit.
 - (12) Otherwise than with respect to a direction that makes a requirement referred to in paragraph (2)(c) or (d), an appeal made under paragraph (8) shall not suspend the operation of any direction in connection with which the appeal is made.

- (13) A person who fails to comply with any of the provisions of a direction given under this Article shall be guilty of an offence and liable to imprisonment for a term of 2 years or a fine, or both.
- (14) The record of the conviction of any person for an offence under paragraph (12) shall be admissible in any civil proceedings as evidence of the facts constituting the offence.”.

10 Article 25 substituted

For Article 25 of the principal Law there shall be substituted the following Articles –

“25 Public statements

The Commission may issue –

- (a) a public statement with respect to, or setting out, any direction that the Commission has given under Article 16 or 23;
- (b) a public statement concerning a person if that person appears to the Commission to have failed to comply with a Code of Practice;
- (c) a public statement concerning a person if that person appears to the Commission to have committed a contravention of any of the provisions referred to in Article 24(1)(a) to (e); or
- (d) a public statement concerning a person if the Commission believes that the person is carrying on financial service business, whether in Jersey or elsewhere, and it appears to the Commission to be desirable to issue the statement in the interests of the public.

25A Notice of public statement

- (1) If a public statement identifies any person who is registered, the Commission shall serve notice on the person.
- (2) If a public statement identifies any person who is not registered, and at any time before it issues the public statement the Commission is, or becomes, aware of an address at which it may serve notice on the person, the Commission shall serve notice on the person.
- (3) The notice shall –
 - (a) give the reasons for issuing the statement;
 - (b) give the proposed or actual date of issue of the statement;
 - (c) contain a copy of the statement;
 - (d) give particulars of the right of appeal under Article 25C in respect of the statement; and
 - (e) if the statement is issued, in accordance with a decision under Article 25B(3), before the day specified in Article 25B(1) in relation to the statement, give the reasons for issuing it before that day.

- (4) Paragraph (3) shall not require the Commission –
 - (a) to specify any reason that would in the Commission's opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party; or
 - (b) to specify the same reasons, or reasons in the same manner, in the case of notices to different persons about the same matter.
- (5) In this Article and Articles 25B and 25C, a reference to the identification of a person in a public statement does not include the identification, in the statement, of the Commission or of any other person in their capacity of exercising functions under this Law.

25B Notice period

- (1) If service is required under Article 25A(1) or (2) in relation to a public statement, the Commission shall not issue the public statement earlier than the expiration of one month from the date of the last such service in relation to the public statement.
- (2) Paragraph (1) shall not apply if –
 - (a) each of the persons identified (within the meaning of Article 25A) in the relevant public statement agrees that the statement may be issued on a date earlier than the date that would apply under that paragraph; and
 - (b) the statement is in fact issued on or after the earlier date.
- (3) Paragraph (1) shall not apply if –
 - (a) the Commission decides on reasonable grounds that the interest of the public in the issue of the relevant public statement on a date earlier than the date that would apply under that paragraph outweighs the detriment to the persons identified in the statement, being the detriment attributable to that earliness; and
 - (b) the statement is in fact issued on or after the earlier date.
- (4) In making a decision under paragraph (3), the Commission is not prevented from choosing as the date of issue of a public statement the date of service (if any) of notice of the statement.
- (5) Despite this Article, if an appeal is made to the Court under Article 25C(1), and the Court orders that the statement not be issued before any specified date or event, the Commission shall not issue the statement before the date or event so specified.
- (6) In a case to which paragraph (1) applies, if an appeal is made under Article 25C(2) to the Court against a decision to issue a public statement, the Commission shall not issue the statement before the day on which that appeal is determined by the Court or withdrawn.

25C Appeals about public statements

- (1) A person aggrieved by a decision of the Commission under Article 25B(3) may appeal to the Court, in accordance with this Article, against the decision.
- (2) A person aggrieved by a decision of the Commission to issue a public statement that identifies the person may appeal to the Court, in accordance with this Article, against the decision.
- (3) An appeal under paragraph (2) may be made only on the ground that the decision of the Commission was unreasonable having regard to all the circumstances of the case.
- (4) A person's appeal under this Article shall be lodged with the Court no later than –
 - (a) if notice is served on the person under Article 25A in relation to the public statement, the day that is one month after the date of the last such service on the person in relation to the public statement; or
 - (b) if no such notice is served on the person, the day that is one month after the issue of the public statement.
- (5) Nothing in paragraph (4) prevents the lodging of an appeal before a notice is served or a public statement is issued.
- (6) On an appeal under this Article, the Court may make such interim or final order as it thinks fit, including an order that the Commission not issue the relevant public statement or, if the public statement has been issued, that the Commission issue a further public statement to the effect set out in the order or stop making the statement available to the public.”.

11 Article 32 amended

In Article 32(1) of the principal Law –

- (a) for the words “a person who is or was a principal person in relation to the person, or any associate of such a principal person” there shall be substituted the words “a person who is or was a principal person, or key person, in relation to the registered person or formerly registered person, or any associate of such a principal person”;
- (b) in sub-paragraph (ii), for the words “any person who is or was a principal person in relation to the person, and of any associate of such a principal person” there shall be substituted the words “any person who is or was a principal person, or key person, in relation to the registered person or formerly registered person, and of any associate of such a principal person”.

12 Article 38 amended

After Article 38(1)(d) of the principal Law there shall be inserted the following sub-paragraph –

“(d1) by the Commission, or any person on its behalf, to the public of the name of –

- (i) a director of a company that carries on investment business and is registered under the Law,
- (ii) a director of a company that is a partner in a partnership that carries on investment business and is registered under the Law,
- (iii) a person employed under a contract of service or a contract for services by a person that carries on investment business and is registered under the Law, such an employee being so employed as –
 - (A) a dealer,
 - (B) a discretionary investment manager,
 - (C) an adviser, or
 - (D) a supervisor;”.

13 Citation and commencement

- (1) This Law may be cited as the Financial Services (Amendment No. 4) (Jersey) Law 200-.
- (2) This Law shall come into operation on such day or days as the States may by Act appoint, and different days may be appointed for different provisions.





Jersey

FINANCIAL SERVICES (AMENDMENT No. 4) (JERSEY) LAW 200- – SUPPLEMENT

A LAW to amend further the Financial Services (Jersey) Law 1998.

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 New Article 11A

After Article 11 of the principal Law there shall be inserted the following Article –

“11A Display of registration certificate and conditions

- (1) When the Commission registers a person under Article 9(1), it may give that person notice in writing with reasons of the manner in which that person shall display or otherwise make available to members of the public –
 - (a) that person’s registration certificate, or the information contained in the certificate, or both;
 - (b) a record of such conditions as the Commission may specify –
 - (i) that are prescribed under Article 10(1) and apply to that person,
 - (ii) that are prescribed under Article 10(1) and apply to the carrying on of financial service business by that person,
 - (iii) that are attached to the registration of that person under Article 10(2).

- (2) Where the Commission under Article 10(2) amends, varies or substitutes a condition or attaches any new condition to the registration of that person it may notify that person in writing with reasons of the manner in which that person shall display or otherwise make available to members of the public a record of the condition as amended, varied or substituted or the new condition, as the case may be.
- (3) The Commission may at any time amend, vary, substitute or revoke any requirement in any notice it has given to a person under paragraph (1) or (2) by further notice in writing with reasons to the registered person.
- (4) Without prejudice to the generality of paragraphs (1), (2) and (3), a notice under any of those paragraphs may require the certificate, information or record of conditions, as the case may be, to be displayed at any address at which the registered person carries on financial service business or to be published on the internet, or both.
- (5) A notice given under paragraph (1), (2) or (3) shall state the rights of appeal conferred by paragraph (8).
- (6) Subject to paragraph (7), a notice given under this Article will not take effect before whichever is the latest of the following –
 - (a) one month after notice is given;
 - (b) such date as is specified in the notice for it to take effect;
 - (c) if an appeal is lodged under paragraph (7), the date the appeal is determined or withdrawn.
- (7) Paragraph (6) shall not have effect if the Commission and person entitled to the relevant notice agree that it will take effect at a time earlier than that which would apply under paragraph (6).
- (8) Within one month of a person being given notice under paragraph (1), (2) or (3) that person may appeal to the Court on the ground that any requirement contained in the notice is unreasonable having regard to all the circumstances of the case.
- (9) On an appeal under paragraph (8), the Court may make such interim or final order as it thinks fit.
- (10) A registered person who carries on financial service business in breach of requirements in a notice given under this Article which have effect in relation to that business shall be guilty of an offence and liable to a fine of level 2 on the standard scale.”.

2 Article 32 amended

In Article 32 of the principal Law –

- (a) in paragraph (1), before the words “may by notice” there shall be inserted the words “ or any duly authorized officer or agent of the Commission”;
- (b) after Article 32(1) there shall be inserted the following paragraphs –

“(1A) Where by virtue of paragraph (1) the Commission or any duly authorized officer or agent has power to require the provision of any information or documents from any person mentioned in that paragraph, the Commission, that duly authorized officer or agent shall have the like power to require the provision of such information or documents from any person who appears to be in possession of them.

(1B) Where any person from whom provision is required under paragraph (1)(B) claims a lien on documents produced by that person, the provision shall be without prejudice to the lien.”.

3 Article 38 amended

For Article 38(1)(d) of the principal Law there shall be substituted the following sub-paragraph –

“(d) to a person by the Commission showing whether or not any person is registered under this Law, including any conditions which are attached to the registration of that person under Article 10(2).”.



Jersey

**INSURANCE BUSINESS (AMENDMENT No. 6)
(JERSEY) LAW 200-**

CONSULTATION DRAFT ONLY



Jersey

INSURANCE BUSINESS (AMENDMENT No. 6) (JERSEY) LAW 200-

Arrangement

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Jersey

INSURANCE BUSINESS (AMENDMENT No. 6) (JERSEY) LAW 200-

A **LAW** to amend further the Insurance Business (Jersey) Law 1996.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Interpretation

In this Law “principal Law” means the Insurance Business (Jersey) Law 1996.

2 Article 1 amended

In Article 1 of the principal Law the following definitions shall be inserted in appropriate alphabetical order –

“ ‘code of practice’ means a code of practice under Article 42;

‘compliance officer’ means a person so designated, under a code of practice, by a permit holder and having the function of monitoring whether the law of Jersey, and the codes of practice, are being complied with in the conduct of the business in respect of which the permit holder holds a permit;

‘key person’ means a person employed or otherwise engaged by a permit holder as an officer of any one or more of the following classes in relation to the conduct of the business in respect of which the permit holder holds a permit –

- (a) compliance officer;
- (b) money laundering compliance officer;

(c) money laundering reporting officer;

‘money laundering compliance officer’ means a person employed or otherwise engaged by a permit holder to be in charge of monitoring whether the law of Jersey relating to money laundering is being complied with in the conduct of the business in respect of which the permit holder holds a permit;

‘money laundering reporting officer’ means a person employed or otherwise engaged by a permit holder to receive reports from employees of the permit holder in relation to activities that may constitute money laundering and come to the attention of the employees in the conduct of the business in respect of which the permit holder holds a permit;

‘public statement’ means a public statement issued under Article 43;

‘vary’ includes amend, replace and revoke;”.

3 Article 7 amended

In Article 7 of the principal Law –

(a) for paragraph (4)(d) there shall be substituted the following sub-paragraph –

“(d) the applicant or any person employed by or associated with the applicant for the purposes of the applicant’s business has been convicted of –

- (i) an offence involving fraud or other dishonesty,
- (ii) an offence under –
 - (A) this Law,
 - (B) the Banking Business (Jersey) Law 1991,
 - (C) the Collective Investment Funds (Jersey) Law 1988,
 - (D) the Financial Services (Jersey) Law 1998,
 - (E) any Regulation or Order made under any of those Laws,
- (iii) any similar offence to those listed in clause (ii) under the laws of any country or territory other than Jersey,
- (iv) where clause (ii) or (iii) does not apply, an offence under any enactment (whether or not of Jersey) relating to building societies, companies, consumer credit, consumer protection, credit unions, friendly societies, industrial and provident societies, insurance, insolvency, insider dealing, money laundering or terrorist financing,
- (v) an offence of perjury or conspiracy to pervert the course of justice,

- (vi) an offence committed (whether under the law of Jersey or elsewhere) in connection with, or in relation to, taxation for which a person aged 21 years or more may be sentenced to imprisonment for a term of 2 years or more;”;
- (b) for paragraph (4)(g) and (h) there shall be substituted the following subparagraphs –
- “(g) in the case of a Category A permit, the Commission is not satisfied as to the adequacy of the supervision by the supervisory authority in the jurisdiction outside Jersey in which the applicant is authorized to carry on business in terms of paragraph (2)(a);
 - (h) the person who is the applicant has failed to comply with a direction given to the person at any time under Article 28 or 36;
 - (i) the Commission has reason to believe that there has been a failure on the part of the applicant to follow guidance contained in a code of practice.”;
- (c) paragraph (10) shall be repealed.

4 Articles 8 and 9 replaced

For Articles 8 and 9 of the principal Law there shall be substituted the following Articles –

“8 Notice of acts and reasons

- (1) The Commission shall give notice as follows –
- (a) if under Article 7 it refuses to grant a permit, it shall give notice to the applicant for the permit;
 - (b) if under Article 7 it cancels a permit, it shall give notice to the person named as holder of the permit;
 - (c) if under Article 7, it attaches a condition to the grant of a person’s permit or, at any time after the grant of a person’s permit, it attaches an additional condition to the permit, or varies a condition attached to the permit, it shall give notice to the person;
 - (d) if under any Order under this Law it refuses consent, refuses approval, or imposes a requirement, it shall give notice to the relevant permit holder.
- (2) A notice required under this paragraph (1) shall –
- (a) set out the terms of the refusal, cancellation, attachment of conditions, or variation of conditions, of which it is notice;
 - (b) in the case of the attachment of conditions, set out also the terms of the conditions;

- (c) in the case of the variation of conditions, set out also the terms of the conditions as so varied;
 - (d) give the reasons for the refusal, cancellation, attachment or variation (except to the extent that the refusal, cancellation, attachment or variation is made on the application of the relevant permit holder); and
 - (e) give particulars of the rights of appeal conferred by Article 9.
- (3) A notice imposing a requirement under Article 7A or 25, a notice of an objection and direction under Article 23, a notice of a direction under Article 28 or 36 or a notice under Article 36(6) of refusal of an application in whole or in part, shall –
- (a) give the reasons for the imposition of the requirement, the objection and direction, the giving of the direction or the refusal; and
 - (b) give particulars of the rights of appeal conferred by Article 9.
- (4) If under this Article the Commission is required to give reasons in a notice, that requirement shall not require the Commission –
- (a) to specify any reason that would in the Commission's opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party; or
 - (b) to specify the same reasons, or reasons in the same manner, in the case of notices to different persons about the same matter.

8A Delay in taking effect

- (1) Any of the following acts of the Commission shall not take effect until one month after notice of them is given under this Law, such date as is specified in the notice, or, if an appeal under this Law is lodged against the act or the decision relating to the act, before the appeal is determined or withdrawn, whichever is the latest time –
- (a) the imposition of a requirement under Article 7A(2) or (3) or Article 25(4);
 - (b) the cancellation of a permit under Article 7;
 - (c) the attachment under Article 7 of an additional condition to a person's permit, or variation under that Article of the conditions attached to a person's permit, at any time after the grant of the permit;
 - (d) an objection and direction under Article 23.
- (2) Paragraph (1) shall not however have effect if –
- (a) the persons entitled to notice of the act agree that the act take effect at a time earlier than the time that would apply under paragraph (1); or

- (b) the Court orders otherwise under paragraph (3).
- (3) If, on the application of the Commission, the Court is satisfied that it is in the best interests of persons with whom a permit holder has transacted or may transact insurance business that paragraph (1) should not have effect, or should cease to have effect in a particular case, or that the period specified in paragraph (1) should be reduced, the Court may so order.
- (4) An order under paragraph (3) may be made without prior notice to and without hearing the permit holder, or any other person, concerned.
- (5) An order under paragraph (3) shall have immediate effect, but any person aggrieved by the order may apply to the Court to vary or set aside the order.
- (6) In respect of an application under paragraph (3), the Court may make such order as it thinks fit, and in respect of an application under paragraph (5), the Court may make such order in respect of the relevant order under paragraph (3) as it thinks fit.

9 Appeals

- (1) A person aggrieved by an act of the Commission, being –
 - (a) the imposition of a requirement under Article 7A or 25;
 - (b) a refusal, or cancellation, under Article 7 of a permit;
 - (c) the attachment under Article 7 of a condition to the grant of a person's permit or of an additional condition to a person's permit, or variation under that Article of the conditions attached to a person's permit;
 - (d) an objection and direction under Article 23;
 - (e) the giving of a direction under Article 28 or 36;
 - (f) the refusal of an application under Article 36(5) or granting of such an application only in part; or
 - (g) a refusal of consent, refusal of approval, or imposition of a requirement, under any Order under this Law,may appeal to the Court, in accordance with this Article, against that act.
- (2) An appeal under paragraph (1) may be made only on the ground that the act appealed against was unreasonable having regard to all the circumstances of the case.
- (3) A person's appeal under this Article shall be lodged with the Court no later than the day that is one month after the day on which notice was served on the person of the relevant act.
- (4) On an appeal under this Article, the Court may make such interim or final order as it thinks fit.

- (5) Otherwise than with respect to a direction that makes a requirement referred to in Article 36(2)(c) or (d), an appeal against the giving of a direction under Article 28 or 36 shall not suspend the operation of any direction in connection with which the appeal is made.”.

5 Article 10 amended

For Article 10(5)(a)(ii) of the principal Law there shall be substituted the following clause –

- “(ii) to require that person, or any other person who is or was at any time a director, chief executive, key person or auditor of, a shareholder controller in relation to, or an employee employed by, the permit holder, to provide an explanation of any of them; or”.

6 Article 23 substituted

For Article 23 of the principal Law there shall be substituted the following Article –

“23 Approval of directors, etc. in relation to Category B permit holders

- (1) Subject to paragraph (2), a permit holder to which this Article applies shall, before the end of the period of 14 days beginning with the day on which he or she becomes aware that any person has become or is about to become, or has ceased to be, a director, chief executive, key person or shareholder controller in relation to the permit holder, give written notice to the Commission of that fact.
- (2) This Article applies to a Category B permit holder.
- (3) Article 6(1)(a) to (d) shall apply to a notice under paragraph (1) as it applies to an application for a permit.
- (4) A notice under paragraph (1) that a person has ceased to be a director, chief executive, key person, or shareholder controller, in relation to a permit holder shall include a statement of the reasons for the change.
- (5) The Commission may, by notice in writing, require a permit holder to provide, by a specified date, specified information or documents (or information or documents within specified classes) about a person in respect of whom –
 - (a) notice has been given under paragraph (1) that he or she has become or is about to become a director, chief executive, key person, or shareholder controller, in relation to the permit holder; or
 - (b) notice has been given under Article 25(3) or (5) that he or she has been appointed as the permit holder’s actuary,



or about any other matter, in order for the Commission to decide whether to serve a notice of objection under paragraph (6).

(6) If it appears to the Commission at any time, on the information before it (and having regard particularly to the criteria for refusal of an application set out in Article 7(4)), that a person who –

- (a) has become or is about to become a director, chief executive, key person of any particular class, or shareholder controller, in relation to the permit holder; or
- (b) has been appointed as the permit holder's actuary,

is not a fit and proper person to be (as the case requires) a director, chief executive, key person of that class, or shareholder controller, in relation to the permit holder, or the permit holder's actuary, the Commission shall serve on the person and on the permit holder a written notice of objection, directing that the person shall not, as the case requires –

- (i) continue to be, or become, a director, chief executive, key person of the particular class, or shareholder controller, in relation to the permit holder; or
- (ii) continue to be the permit holder's actuary.

(7) If a permit holder fails to give notice under paragraph (1) or Article 25(3) or (5) about a person or fails to comply with a notice under paragraph (5) about a person, the Commission may serve on the person, and on the permit holder, a written notice of objection, directing that the person in question shall not, as the case requires –

- (a) continue to be, or become, such a director, chief executive, key person of the particular class, or shareholder controller in relation to the permit holder; or
- (b) continue to be the permit holder's actuary.

(8) A permit holder who –

- (a) fails to give notice in accordance with paragraph (1); or
- (b) fails to comply with the requirements of a notice under paragraph (5),

shall be guilty of an offence.

(9) A person who –

- (a) becomes (as the case requires) a director, chief executive, key person of a particular class, or shareholder controller, in relation to a permit holder; or
- (b) continues to be (as the case requires) a director, chief executive, key person of a particular class, or shareholder controller, in relation to a permit holder or continues to be a permit holder's actuary,

following service on him or her of a notice of objection under paragraph (6) or (7) in that connection, shall be guilty of an offence.

- (10) A person guilty of an offence under paragraph (8) or (9) shall be liable to imprisonment for a term not exceeding 2 years or a fine, or both.”.

7 Article 24 amended

In Article 24(4) of the principal Law after the words “give notice” there shall be inserted the words “in writing”.

8 Article 25 amended

In Article 25 of the principal Law –

- (a) in paragraph (4) after the words “paragraph, the Commission may” there shall be inserted the words “by notice in writing”;
- (b) in paragraph (6) after the words “The Commission may” there shall be inserted the words “by notice in writing”.

9 Article 36 replaced

For Article 36 of the principal Law there shall be substituted the following Article –

“36 Power to issue directions

- (1) If it appears to the Commission that –
- (a) any requirements in relation to a person’s holding of a permit are no longer satisfied;
 - (b) it is in the best interests of persons with whom a permit holder has transacted or may transact insurance business, or in the best interests of creditors of a permit holder;
 - (c) it is in the best interests of one or more permit holders;
 - (d) it is desirable in order to protect the reputation and integrity of Jersey in financial and commercial matters;
 - (e) it is in the best economic interests of Jersey; or
 - (f) any advertisement relating to insurance and issued or proposed to be issued by or on behalf of any person is misleading or undesirable,
- the Commission may, whenever it considers it necessary, give, by notice in writing, such directions as it may consider appropriate in the circumstances.
- (2) Without prejudice to the generality of paragraph (1), a direction under this Article may –
- (a) require anything to be done or not to be done, or impose any prohibition, restriction or limitation, or any other requirement, and confer powers, with respect to any

- transaction or other act, or to any assets, or to any other thing whatsoever;
- (b) require that a director, chief executive, shareholder controller, key person, or person having functions, in relation to a permit holder, be removed or removed and replaced by another person acceptable to the Commission;
 - (c) require that any individual not perform a specified function (or any function at all), not engage in specified employment (or any employment at all) or not hold a specified position (or any position at all) in relation to a specified permit holder (or any permit holder at all);
 - (d) require a permit holder or former permit holder to cease operations and to wind up its affairs, in accordance with such procedures and directions as may be specified in the direction, which may provide for the appointment of a person to take possession and control of all documents, records, assets and property belonging to or in the possession or control of the permit holder or former permit holder;
 - (e) prohibit the issue, re-issue or continuance of a particular advertisement for insurance;
 - (f) require that any particular advertisement for insurance be modified in a specified manner;
 - (g) prohibit the issue, re-issue or continuance of advertisements (for insurance) of any description; or
 - (h) require that advertisements (for insurance) of any description be modified in a specified manner.
- (3) A direction under this Article or Article 28 may be of unlimited duration or of a duration specified in the notice of the direction.
 - (4) The power to give directions under this Article or Article 28 shall include the power by direction to vary a direction given under that Article.
 - (5) Any person to whom a direction is given under this Article or Article 28 may apply to the Commission to have it withdrawn or varied and the Commission shall withdraw or vary the direction in whole or in part if it considers that there are no longer any grounds under paragraph (1)(a) to (f) that justify the direction or part of the direction concerned.
 - (6) If the Commission refuses an application under paragraph (5), or grants such an application only in part, it shall give notice in writing of that fact to the applicant.
 - (7) A person who fails to comply with a direction in respect of which notice is given under paragraph (1) to the person shall be guilty of an offence and liable to a term of imprisonment for a term not exceeding 2 years or a fine, or both.”

10 Article 42 amended

For Article 42(1)(b) of the principal Law there shall be substituted the following sub-paragraph –

“(b) amend any such code.”.

11 Article 43 replaced

For Article 43 of the principal Law there shall be substituted the following Articles –

“43 Public statement

(1) The Commission may issue a public statement concerning a person if that person appears to the Commission to have contravened any of the following –

- (a) Article 5(2);
- (b) Article 7;
- (c) Article 15;
- (d) Article 35;
- (e) Article 36;
- (f) Article 38;
- (g) a Regulation, or an Order, made under this Law.

(2) The Commission may issue –

- (a) a public statement with respect to, or setting out, any direction that the Commission has given under Article 36;
- (b) a public statement concerning a person if that person appears to the Commission to have failed to comply with a code of practice; or
- (c) a public statement concerning a person if the Commission believes that the person is carrying on insurance business, whether in Jersey or elsewhere, and it appears to the Commission to be desirable to issue the statement in the interests of the public.

43A Notice of public statement

(1) If a public statement identifies any person who holds a permit, the Commission shall serve notice on the person.

(2) If a public statement identifies any person who does not hold a permit, and at any time before it issues the public statement the Commission is, or becomes, aware of an address at which it may serve notice on the person, the Commission shall serve notice on the person.

(3) The notice shall –

- (a) give the reasons for issuing the statement;



- (b) give the proposed or actual date of issue of the statement;
- (c) contain a copy of the statement;
- (d) give particulars of the right of appeal under Article 43C in respect of the statement; and
- (e) if the statement is issued, in accordance with a decision under Article 43B(4), before the day specified in Article 43B(1) in relation to the statement, give the reasons for issuing it before that day.

(4) Paragraph (3) shall not require the Commission –

- (a) to specify any reason that would in the Commission's opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party; or
- (b) to specify the same reasons, or reasons in the same manner, in the case of notices to different persons about the same matter.

(5) In this Article and Articles 43B and 43C, a reference to the identification of a person in a public statement does not include the identification, in the statement, of the Commission or of any other person in their capacity of exercising functions under this Law.

43B Notice period

(1) If service is required under Article 43A(1) or (2) in relation to a public statement, the Commission shall not issue the public statement earlier than the expiration of one month following the date of the last such service in relation to the public statement.

(2) Paragraph (1) shall not apply if –

- (a) each of the persons identified (within the meaning of Article 43A) in the relevant public statement agrees that the statement may be issued on a date earlier than the date that would apply under that paragraph; and
- (b) the statement is in fact issued on or after the earlier date.

(3) Paragraph (1) shall not apply if –

- (a) the Commission decides on reasonable grounds that the interest of the public in the issue of the relevant public statement on a date earlier than the date that would apply under that paragraph outweighs the detriment to the persons identified in the statement, being the detriment attributable to that earliness; and
- (b) the statement is in fact issued on or after the earlier date.

(4) In making a decision under paragraph (3), the Commission is not prevented from choosing as the date of issue of a public statement the date of service (if any) of notice of the statement.

- (5) Despite this Article, if an appeal is made to the Court under Article 43C(1), and the Court orders that the statement not be issued before any specified date or event, the Commission shall not issue the statement before the date or event so specified.
- (6) In a case to which paragraph (1) applies, if an appeal is made under Article 43C(2) to the Court against a decision to issue a public statement, the Commission shall not issue the statement before the day on which that appeal is determined by the Court or withdrawn.

43C Appeals and orders about public statements

- (1) A person aggrieved by a decision of the Commission under Article 43B(3) may appeal to the Court, in accordance with this Article, against the decision.
- (2) A person aggrieved by a decision of the Commission to issue a public statement that identifies the person may appeal to the Court, in accordance with this Article, against the decision.
- (3) An appeal under paragraph (2) may be made only on the ground that the decision of the Commission was unreasonable having regard to all the circumstances of the case.
- (4) A person's appeal under this Article shall be lodged with the Court, no later than –
 - (a) if notice is served on the person under Article 43A in relation to the public statement, the day that is one month after the date of the last such service on the person in relation to the public statement; or
 - (b) if no such notice is served on the person, the day that is one month after the issue of the public statement.
- (5) Nothing in paragraph (4) prevents the lodging of an appeal, before a notice is served or a public statement is issued.
- (6) On an appeal under this Article, the Court may make such interim or final order as it thinks fit, including an order that the Commission not issue the relevant public statement or, if the public statement has been issued, that the Commission issue a further public statement to the effect set out in the order or stop making the statement available to the public.”.

12 Article 44 replaced

For Article 44 of the principal Law, there shall be substituted the following Article –

“44 Service of notices

- (1) No notice required by this Law to be given to the Commission shall be regarded as so given until it is received.



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- (2) Subject to paragraph (1), any notice or other document required or authorized by or under this Law to be given to the Commission may be given by facsimile, electronic transmission or by any similar means that produces a document containing the text of the communication in legible form or is capable of doing so.
 - (3) Any notice, direction or other document required or authorized by or under this Law to be given to or served on any person other than the Commission may be given or served on the person in question –
 - (a) by delivering it to the person;
 - (b) by leaving it at the person's proper address;
 - (c) by sending it by post to the person at that address; or
 - (d) by sending it to the person at that address by facsimile, electronic transmission or other similar means that produces a document containing the text of the communication in legible form or is capable of doing so.
 - (4) Any such notice, direction or other document may –
 - (a) in the case of a company incorporated in Jersey, be served by being delivered to its registered office;
 - (b) in the case of a partnership, company incorporated outside Jersey or unincorporated association, be given to or served on a person who is a principal person in relation to it, or on the secretary or other similar officer of the partnership, company or association or any person who purports to act in any such capacity, by whatever name called, or on the person having the control or management of the partnership business, as the case may be, or by being served on the person or delivered to the person's registered or administrative office.
 - (5) For the purposes of this Article and of Article 7 of the Interpretation (Jersey) Law 1954 in its application to this Article, the proper address of any person to or on whom a document is to be given or served by post shall be the person's last known address, except that –
 - (a) in the case of a company or its secretary, clerk or other similar officer or person referred to in paragraph (4)(a), it shall be the address of the registered or principal office of the company in Jersey; and
 - (b) in the case of a partnership, or a person who is a principal person in relation to a partnership, it shall be that of its principal office in Jersey.
 - (6) If the person to or on whom any document referred to in paragraph (3) is to be given or served has notified the Commission of an address within Jersey other than the person's proper address within the meaning of paragraph (5), as the one at which the person or someone on the person's behalf will accept documents of the

same description as that document, that address shall also be treated for the purposes of this Article and Article 7 of the Interpretation (Jersey) Law 1954 as the person's proper address.”.

13 Citation and commencement

- (1) This Law may be cited as the Insurance Business (Amendment No. 6) (Jersey) Law 200-
- (2) This Law shall come into operation on such day or days as the States may by Act appoint, and different days may be appointed for different provisions.



Jersey

INSURANCE BUSINESS (AMENDMENT No. 6) (JERSEY) LAW 200- – SUPPLEMENT

A LAW to amend further the Insurance Business (Jersey) Law 1996.

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Article 1 amended

In Article 1 of the principal Law, for the definition of “relevant supervisory authority” there shall be substituted the following definition –

“ ‘relevant supervisory authority’, in relation to a country or territory outside Jersey, means an authority discharging in that country or territory any function that is similar to a function of the Commission;”.

2 New Article 7A

After Article 7 of the principal Law there shall be inserted the following Article –

“7A Display of permit and conditions

- (1) When the Commission grants a permit to an applicant under Article 7(1) it may give that person notice in writing of the manner in which that person shall display or otherwise make available to members of the public –
 - (a) that permit, or the information contained in the permit, or both; and

- (b) a record of such conditions as the Commission may specify to which that permit is subject under Article 7(1) or which have been prescribed under Article 7(8) (whether generally or in relation to a particular class or category) and which apply to that permit.
- (2) Where the Commission varies or attaches any new condition to the grant of a permit under Article 7(5) it may notify the holder of the permit in writing of the manner in which that person shall display or otherwise make available to members of the public a record of that condition as varied or the new condition, as the case may be.
- (3) The Commission may at any time vary any requirement in any notice it has given under paragraph (1) or (2) by further notice to the holder of the permit.
- (4) Without prejudice to the generality of paragraphs (1), (2) and (3), a notice under any of those paragraphs may require the permit, information or record of conditions, as the case may be, to be displayed at any address at which the holder of the permit carries on insurance business or to be published on the internet, or both.
- (5) A holder of a permit who carries on insurance business in breach of any requirements in a notice given under this Article which have effect in relation to that business shall be guilty of an offence and liable to a fine of level 2 on the standard scale.”.

[Further requirements to give reasons in notice; time limits for compliance and appeal rights set out in Articles 8, 8A and 9.]

3 New Article 9A

After Article 9 of the principal Law there shall be inserted the following Article –

“9A Commission may apply to Court for appointment of manager in prescribed circumstances

- (1) The Minister may, by Order, prescribe circumstances in which the Commission may apply to the Court for the appointment by the Court of a person to manage the affairs, or any part of the affairs, of persons in so far as they relate to the carrying on of insurance business to which Article 5 applies.
- (2) An Order made under paragraph (1) may contain such incidental or supplementary provisions as the Minister thinks necessary or expedient.
- (3) The Court may, on an application made to it by the Commission in circumstances prescribed in an Order made under paragraph (1), appoint, on such terms as it considers to be appropriate, a person to manage the affairs, or any part of the affairs, of a person in so far as they relating to the carrying on of insurance business to which Article 5 applies.

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- (4) Subject to the terms of his or her appointment, a person appointed under paragraph (3) shall have all the powers necessary to manage the affairs, or the part of the affairs, of the person in respect of whom the appointment was made in so far as they relate to the carrying on of insurance business to which Article 5 applies.”.

4 Article 31 amended

For Article 31(2) there shall be substituted the following paragraph –

- “(2) Article 29 does not preclude the disclosure of information for the purpose of enabling or assisting a relevant supervisory authority to exercise any of its supervisory functions.”.

5 Article 32 amended

In Article 32 of the principal Law –

- (a) for the full-stop at the end of paragraph (1)(c) there shall be substituted “;”;
- (b) after paragraph (1)(c) there shall be added the following sub-paragraph –
 - “(d) to a person by the Commission showing whether or not any person holds a permit under this Law, including any conditions to which that permit is subject under Article 7(1) or 7(5).”.



Jersey

**DRAFT INSURANCE BUSINESS (APPOINTMENT
OF MANAGER) (JERSEY) ORDER 200-**

CONSULTATION DRAFT ONLY





Jersey

DRAFT INSURANCE BUSINESS (APPOINTMENT OF MANAGER) (JERSEY) ORDER 200-

APPENDIX L

APPENDIX L

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Jersey

DRAFT INSURANCE BUSINESS (APPOINTMENT OF MANAGER) (JERSEY) ORDER 200-

Made [date to be inserted]
Coming into force [date to be inserted]

THE MINISTER FOR ECONOMIC DEVELOPMENT, in pursuance of Article 9A of the Insurance Business (Jersey) Law 1996, orders as follows –

1 Interpretation

- (1) In this Order –
 - “insurance business” means insurance business to which Article 5 of the Law applies;
 - “Law” means the Insurance Business (Jersey) Law 1996;
 - “policy holder” means a person who is the holder of, or may receive a benefit under, a policy securing a contract of insurance.
- (2) In this Order a note contained in a paragraph of the Schedule to this Order forms part of that paragraph.

2 Circumstances in which the Commission may appoint a manager

Where the Commission is satisfied that there is sufficient evidence to show the existence of any of the cases set out in the Schedule in respect of insurance business carried on by a person the Commission may apply to the Court for the appointment by the Court of a person to manage the affairs of the person, or any part of the affairs of that person, carrying on that business in so far as those affairs relate to that business.

3 Citation and commencement

- (1) This Order may be cited as the Insurance Business (Appointment of Manager) (Jersey) Order 200-.
- (2) It shall come into force on the same date as the Insurance Business (Amendment No. 6) (Jersey) Law 200-.





SCHEDULE

(Article 2)

PRESCRIBED CIRCUMSTANCES

Case 1

There has been inadequate management of the affairs of the insurance business.

Note Inadequate management of the affairs of a person's insurance business may be evidenced, in particular, by –

- (a) the dishonesty of a shareholder controller or any director or employee of the person;
- (b) the person having insufficient resources to continue to carry on an effective insurance business;
- (c) a serious failure by the person to maintain proper records;
- (d) the existence of a conflict of interests that may prevent the interests of the person's business or the interests of a policy holder or prospective policy holder being properly protected;
- (e) the person committing serious and persistent breaches of the Law or any of the codes of practice or Orders made under the Law;
- (f) the death or incapacity or prolonged absence of a shareholder controller or directors of the person to the detriment of the insurance business of the person.

Case 2

The person carrying on the insurance business appears to have ceased to do so but has failed to wind up, liquidate, close or transfer the business in an orderly manner or at all.

Case 3

The person carrying on the insurance business has persistently failed to examine claims or complaints by policy holders or prospective policy holders.

Case 4

There is a need to appoint a manager to collect, protect or preserve the assets or records of the insurance business or the property of policy holders including prospective policy holders, or both.

Case 5

There is a need to appoint a manager to avoid circumstances arising that could provide grounds for a forced closure of the insurance business.

Case 6

There is a need to appoint a manager to promote or implement a compensation scheme established specifically for policy holders.

Case 7

The person carrying on the insurance business has failed to comply with a notice of objection under Article 23(6) or (7) of the Law or a direction under Article 28 or Article 36 of the Law or has failed to comply with a condition imposed under Article 7 of the Law.





Appendix M

Amendment to Companies (Jersey) Law 1991

The following is an extract of an amendment that it is intended to include in Companies (Amendment No. 10) (Jersey) Law 200-

3 Article 16 amended

In Article 16 of the principal Law, at the end, there shall be added the following paragraphs –

“(7) Within 28 days after a company receives a notice of a direction made by the Commission under paragraph (2) in relation to the company –

- (a) a member of the company may appeal to the court on the ground that the direction was unreasonable having regard to all the circumstances of the case; and
- (b) the company, or a member of the company, may appeal to the court on the ground that a condition imposed by the direction was unreasonable having regard to all the circumstances of the case.

(8) Within 28 days after a company receives a notice of a direction made by the Commission under paragraph (4) in relation to the company, the company, or a member of the company, may appeal to the court on the ground that the direction was unreasonable having regard to all the circumstances of the case.

(9) On hearing an appeal under this Article against –

- (a) a direction imposed by the Commission, the court may confirm or reverse the direction made by the Commission; or
- (b) a condition specified in a direction made by the Commission, the court may confirm, vary or revoke the condition and, in any case, add a new condition to the conditions specified in the direction.

(10) On hearing an appeal under this Article the Court may make such order as to the costs of the appeal as it thinks fit.”.

4 Article 17 amended

In Article 17 of the principal Law –

- (a) paragraph (4) shall be deleted;
- (b) at the end, there shall be added the following paragraphs –

- “(9) Within 28 days after a company receives a notice of a direction, or an amendment of the terms of a direction, made by the Commission under paragraph (7) in relation to the company –
 - (a) a member of the company may appeal to the court on the ground that the direction was unreasonable having regard to all the circumstances of the case; and
 - (b) the company, or a member of the company, may appeal to the court on the ground that a term imposed by the direction, or an amendment to a term of the direction, was unreasonable having regard to all the circumstances of the case.
- (10) On hearing an appeal under this Article against –
 - (a) a direction imposed by the Commission, the court may confirm or reverse the direction made by the Commission; or
 - (b) a term imposed by a direction made by the Commission, the court may confirm, vary or revoke the term and, in any case, add a new term to the terms imposed by the direction.
- (11) On hearing an appeal under this Article the Court may make such order as to the costs of the appeal as it thinks fit.”.