

STATES OF JERSEY



DRAFT FINANCIAL REGULATION (MISCELLANEOUS PROVISIONS No. 3) (JERSEY) LAW 201-

**Lodged au Greffe on 24th December 2015
by the Chief Minister**

STATES GREFFE



Jersey

**DRAFT FINANCIAL REGULATION
(MISCELLANEOUS PROVISIONS No. 3) (JERSEY)
LAW 201-**

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Assistant Chief Minister has made the following statement –

In the view of the Assistant Chief Minister, the provisions of the Draft Financial Regulation (Miscellaneous Provisions No. 3) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator P.F.C. Ozouf**
Assistant Chief Minister

Dated: 21st December 2015

REPORT

1. Introduction

The proposed draft Law makes amendments to a number of the Laws administered by the Jersey Financial Services Commission (the “**Commission**”).

Together, the changes constitute routine maintenance of the legislation that is the basis of regulation by the Commission of the financial services industry in Jersey, and of legislation that provides the Commission with powers to supervise financial services firms, and various other businesses, for compliance with their obligations under legislation designed to counter money-laundering and the financing of terrorism.

During 2015, the Commission carried out a 3-month public consultation on the draft Law. Respondents were supportive of the legislative amendments that it would make. Consequently, no changes to the form of the draft Law consulted upon were necessary as a result of the comments received.

The following abbreviations are used in this report –

AIF Regulations: Alternative Investment Funds (Jersey) Regulations 2012;

BBJL: Banking Business (Jersey) Law 1991;

CIFJL: Collective Investment Funds (Jersey) Law 1988;

FSJL: Financial Services (Jersey) Law 1998;

IBJL: Insurance Business (Jersey) Law 1996;

SBJL: Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008,

(together, the “**Regulatory Laws**”).

2. Summary of the changes to the Regulatory Laws

Whilst the draft Law itself is structured so that amendments are set out Law by Law, for ease of describing the changes, this section sets them out thematically.

Revocation of deposit-taking registrations

Article 10 of the BBJL sets out the circumstances when the Commission may revoke the registration of a bank.

Unlike all the other Regulatory Laws, the BBJL does not explicitly provide for the Commission to be able to revoke a registration at the request of the registered bank. Article 2(3) of the draft Law amends Article 10 of the BBJL to address this gap.

Withdrawal of directions

The Regulatory Laws provide the Commission with the power to issue a “direction” to a regulated business (and its officers or employees) requiring it (them) to take certain action or refrain from taking certain action.

Unlike in the FSJL and the SBJL, the provisions in the AIF Regulations, the BBJL, the CIFJL and the IBJL covering directions do not explicitly state that the Commission may “withdraw” one. However, in each of those statutes the Commission is given the power to “vary” a direction. Because “vary” is defined in each of those statutes as including the power to “revoke”, the practice has been to regard “revoking” a direction as analogous to “withdrawing” a direction.

However, to put the position beyond doubt, and to avoid any inconsistency between the Regulatory Laws, the Draft Law would amend the AIF Regulations, the BBJL, the CIFJL and the IBJL to provide the Commission with an explicit power to “withdraw” a direction.

The relevant amendments can be found in Articles 1(5), 2(4), 3(5) and 6(4) of the draft Law.

Principal persons: excluding custodians of shares

The statutory definition of a **principal person**¹ may currently result in persons who hold shares in a regulated business only in a custodial capacity being brought within the scope of the relevant statutory provisions. This is unnecessary: the Commission's interest, from a regulatory perspective, is in the beneficial owner of the shares rather than in a custodian of them, where there is one.

Consequently, the draft Law would amend the Regulatory Laws to exclude from the scope of the principal person provisions a person who: "*holds shares [in the regulated business] only as custodian or its nominee and able to exercise the voting rights attached to the shares only under instructions given in writing (including by electronic means)*". (This wording is based on the European norm as established by Article 9.4 of the Transparency for Listed Companies Directive 2004/109/EC.)

The relevant amendments can be found in Articles 1(2), 2(2), 2(5), 3(2), 4(2), 5(2) and 6(2) of the draft Law.

Licence applications: reports by professionals

The BBJL, the FSJL, and the SBJL provide the Commission with the power to require an applicant for registration to provide a report by a reporting professional approved by the Commission on such aspects of the application information as the Commission may require for the purposes of evaluating the application.

However, no equivalent provision exists in the AIF Regulations, the CIFJL or the IBJL, in respect of applications made for a certificate or permit (as applicable) under those statutes.

This gap is addressed by the proposed amendments in Articles 1(3), 3(3) and 6(3) of the draft Law.

Communication with the Commission by auditors and reporting professionals

With the exception of the SBJL, all of the Regulatory Laws contain an Article that enables an auditor to pass to the Commission, in good faith, relevant information relating to a regulated business – whether or not in response to a request from the Commission – without contravening any duty to which the auditor may be subject (such as a contractual duty of confidentiality).

Similarly, the Regulatory Laws (with the exception of the IBJL and the SBJL) also enable a **reporting professional (such as a lawyer or forensic accountant)** appointed to provide a report to the Commission to pass relevant information to the Commission without contravening any duty to which the reporting professional may otherwise be subject.

However, the current provisions in the Regulatory Laws covering the communication with the Commission by auditors and reporting professionals are inconsistent in several respects and have a number of gaps. The most substantive of these are as follows –

- Unlike the other Regulatory Laws, the IBJL does not contain a statutory provision that enables a reporting professional to pass relevant information to the Commission without contravening any duty to which the reporting professional may otherwise be subject.

¹ Broadly speaking, a "principal person" is a director (or equivalent) of, or a person with a substantial beneficial holding in, a regulated business.

- Except for the FSJL, none of the Regulatory Laws provide reporting professionals with protection from any contravention of a duty when they pass relevant information on principal persons to the Commission, despite the fact that the professional’s report may be regarding a principal person.
- In contrast, not one of the Regulatory Laws provides auditors with protection from any contravention of a duty when they pass relevant information on a principal person to the Commission, despite the fact that when auditing they may become aware of relevant information, for example, on a director of the audited company.
- Whilst the FSJL provides for a reporting professional appointed pursuant to Article 8(5) [Application for registration] to be protected from any contravention of a duty where it provides relevant information relating to a “registered person”, no such protection is afforded where the information relates to “an applicant for registration” – despite the fact that Article 8(5) specifically provides that a reporting professional may be required to produce a report on a person’s application.
- The protection under the BBJL for a reporting professional only extends to a professional appointed pursuant to Article 26(7) [General power to require information and documents] and not to one appointed pursuant to Article 9(7) [Application for registration].
- Not all of the Regulatory Laws provide protection to auditors and reporting professionals where the information that would be communicated to the Commission relates to former regulated businesses, or former principal persons.
- Unlike the other Regulatory Laws, the SBJL does not contain provision for auditors and reporting professionals to be able to pass relevant information to the Commission without contravening any duty to which they may be subject.
- Not all of the Regulatory Laws make it clear that the protection to disclose relevant information to the Commission extends to a past auditor of a regulated business, and not just to the present auditor.

Rather than make piecemeal amendments to each relevant Article in the Regulatory Laws to address these issues, a replacement Regulation for the AIF Regulations, and a replacement Article for each of the BBJL, the CIFJL, the FSJL and the IBJL, has been drafted. This approach has the benefit of ensuring that a consistent style is adopted for those Articles across the Regulatory Laws, which is not the case at the moment. A new Article 33A, consistent with the replacement Articles for the other Regulatory Laws, would be inserted into the SBJL.

These changes would be effected by means of the following Articles in the draft Law: Articles 1(6), 2(6), 3(4), 4(3), 5(3) and 6(5).

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of this draft Law.

Human Rights

No human rights notes are annexed because the Law Officers’ Department has indicated that the draft Law does not give rise to any human rights issues.

Explanatory Note

This Law makes the following amendments to the Laws governing financial regulation:

- (a) an amendment to clarify that definitions relating to shareholding exclude the situation where a person holds shares only as a custodian or its nominee without independent voting rights;
- (b) an amendment that enables the Commission to require an applicant to be registered under the relevant law to furnish documents as well as information and to require a report by an auditor, accountant or other qualified person approved by the Commission on specified aspect of the particulars, information and documents required by the Commission;
- (c) an amendment to make it clear that the Commission may withdraw directions given to persons it regulates;
- (d) a revision of the provision that prevents any contravention of professional duty by persons appointed to make reports as referred to in (b) above in communicating with the Commission. The amendment widens the scope of the communications afforded protection by the provision.

The amendments to the Collective Investment Funds (Jersey) Law 1988 are in *Article 1*. The amendments to the Banking Business (Jersey) Law 1991 are in *Article 2*. They relate only to amendments (a), (c) and (d) as amendment (b) is already covered in the Law. Paragraph (3) also adds a provision enabling the Commission to revoke a registration at the request of the registered person.

The amendments to the Insurance Business (Jersey) Law 1996 are in *Article 3*.

The amendments to the Financial Services (Jersey) Law 1998 are in *Article 4*. These relate only to amendments (a) and (d) above (as the substance of the other amendments is already contained in the Law).

The amendments to the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 are in *Article 5*. These too relate only to amendments (a) and (d) above, in the latter case a new Article being inserted to deal with the matter from scratch.

The amendments to the Alternative Investment Funds (Jersey) Regulation 2012 are in *Article 6*.

Article 7 provides for the citation of the Law and for it to come into force 7 days after it is registered.



Jersey

**DRAFT FINANCIAL REGULATION
(MISCELLANEOUS PROVISIONS No. 3) (JERSEY)
LAW 201-**

Arrangement

Article

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Jersey

DRAFT FINANCIAL REGULATION (MISCELLANEOUS PROVISIONS No. 3) (JERSEY) LAW 201-

A LAW to amend further the Collective Investment Funds (Jersey) Law 1988, the Banking Business (Jersey) Law 1991, the Insurance Business (Jersey) Law 1996, the Financial Services (Jersey) Law 1998, the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 and the Alternative Investment Funds (Jersey) Regulations 2012.

<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 Amendment of Collective Investment Funds (Jersey) Law 1988

- (1) The Collective Investment Funds (Jersey) Law 1988¹ is amended as follows.
- (2) In Article 1(1), at the end of paragraph (b)(i) of the definition of “principal person”, there shall be added the following continuation text –

“other than a person holding shares only as a custodian or its nominee and able to exercise the voting rights attached to the shares only under instructions given in writing (including by electronic means).”.
- (3) For Article 6(2) there shall be substituted the following paragraph –

“(2) Without limiting paragraph (1)(d) the Commission may –

 - (a) require an applicant to provide such information and documents relating to the collective investment fund to which the applicant’s function relates, verified in such manner as the Commission may require, for the purposes of considering whether to grant or refuse a permit under Article 7(1);
 - (b) by written notice require the applicant, or any person who is to be a principal person in relation to the applicant, to provide

a report by an auditor or accountant, or other qualified person approved by the Commission, on such aspects of the particulars required by paragraph (1)(d), or the information and documents required by paragraph (2)(a), as the Commission may specify.”.

- (4) For Article 8A(3) there shall be substituted the following paragraph –
- “(3) Without limiting paragraph (2)(c) the Commission may –
- (a) require an applicant to provide such information and documents relating to the collective investment fund to which the applicant’s function relates, verified in such manner as the Commission may require, for the purposes of considering whether to grant or refuse a certificate under Article 8B(1);
 - (b) by written notice require the applicant, or any person who is to be a principal person in relation to the applicant, to provide a report by an auditor or accountant, or other qualified person approved by the Commission, on such aspects of the particulars required by paragraph (2)(c), or the information and documents required by paragraph (3)(a), as the Commission may specify.”.
- (5) In Article 13(4) after the word “vary” there shall be inserted the words “or withdraw”.
- (6) For Article 32 there shall be substituted the following Article –

“32 Communication with Commission by auditors and approved professionals

- (1) No duty to which an auditor or an approved professional may be subject is contravened by reason of his or her communicating in good faith to the Commission, whether or not in response to a request made by it, any information or opinion on a matter to which this Article applies and which is relevant to any function of the Commission under this Law.
- (2) In relation to an auditor, this Article applies to any matter of which the auditor becomes aware in his or her capacity as auditor and which relates to the business or affairs of –
 - (a) a holder or former holder of a permit;
 - (b) a certificate holder or former certificate holder;
 - (c) a fund service provider or former fund service provider in relation to a certified fund;
 - (d) a collective investment fund or former collective investment fund;
 - (e) a principal person, or former principal person, of a person mentioned in subparagraphs (a) to (d); or
 - (f) a company that is a holding company or subsidiary in relation to a person mentioned in subparagraphs (a) to (d).
- (3) In relation to an approved professional, this Article applies to any matter of which that person becomes aware in his or her capacity as

the person making the report and which relates to the business or affairs of –

- (a) an applicant for a permit or a certificate;
- (b) a holder of a permit;
- (c) a certificate holder;
- (d) a fund service provider in relation to a certified fund;
- (e) a collective investment fund;
- (f) a former holder of a permit;
- (g) a former certificate holder;
- (h) a former fund service provider in relation to a certified fund;
- (i) a former collective investment fund;
- (j) a principal person or proposed principal person of a person mentioned in sub-paragraphs (a) to (e);
- (k) a former principal person of a person mentioned in sub-paragraphs (b) to (i); or
- (l) a company that is a holding company or subsidiary in relation to a person mentioned in sub-paragraphs (a) to (i),

in relation to whom the report is made.

(4) The Minister may by Order specify circumstances in which an auditor or approved professional is required to communicate any information or opinion to the Commission on a matter to which this Article applies, and which is relevant to any function of the Commission under this Law.

(5) Orders under this Article may be made only –

- (a) on the recommendation of the Commission; and
- (b) after consultation with such persons as appear to the Commission to represent the interests of auditors, approved professionals, holders of permits, certificate holders and fund service providers in relation to certified funds.

(6) A person who contravenes an Order made under this Article is guilty of an offence and liable to imprisonment for a term of 6 months and a fine.

(7) In this Article –

‘approved professional’ means a person appointed to make a report as referred to in Article 6(2)(b), Article 8A(3)(b) or Article 9(6);

‘auditor’ means an auditor of –

- (a) a holder or a former holder of a permit;
- (b) a certified fund, a former certified fund or a fund service provider or a former fund service provider in relation to a certified fund; or
- (c) a collective investment fund or former collective investment fund,

and includes –

- (d) a person who was the auditor of a holder of a permit or former holder of a permit at any time during the period the permit was held; and
- (e) a person who was the auditor of a certificate holder or former certificate holder, a fund service provider or former fund service provider in relation to a certified fund at any time during the period in which the certificate in relation to the fund was in force.”.

2 Amendment of Banking Business (Jersey) Law 1991

- (1) The Banking Business (Jersey) Law 1991² is amended as follows.
- (2) In Article 1, at the end of paragraph (e) of the definition of “controller” there shall be added the words “other than a person holding shares giving rise to that voting power only as a custodian or its nominee and able to exercise the voting rights attached to the shares only under instructions given in writing (including by electronic means),”.
- (3) After Article 10(3) there shall be added the following paragraph –
 - “(4) The Commission may also revoke a registration at the request of the registered person.”.
- (4) In Article 21(4) for the words “a direction given under this Article” there shall be substituted the words “or withdraw any direction, as well as the power to issue further directions”.
- (5) At the end of Article 25(2) there shall be inserted the words “, other than a person holding shares giving rise to that voting power only as a custodian or its nominee and able to exercise the voting rights attached to the shares only under instructions given in writing (including by electronic means)”.
- (6) For Article 34 there shall be substituted the following Article –

“34 Communication with Commission by auditors and approved professionals

- (1) No duty to which an auditor of a registered person or an approved professional may be subject is contravened by reason of his or her communicating in good faith to the Commission, whether or not in response to a request made by it, any information or opinion on a matter to which this Article applies and which is relevant to any function of the Commission under this Law.
- (2) In relation to an auditor of a registered person, this Article applies to any matter of which the auditor becomes aware in his or her capacity as auditor and which relates to the business or affairs of –
 - (a) the registered person or former registered person, or any associated body of such a person; or
 - (b) a director, controller or manager, or former director, controller or manager, of a registered person or former registered person.

- (3) In relation to an approved professional, this Article relates to any matter of which that person becomes aware in his or her capacity as the person making the report and which relates to the business or affairs of –
- (a) a registered person, former registered person or applicant for registration, or any associated body of such a person;
 - (b) a director, controller or manager, or a proposed director, controller or manager of a registered person or applicant for registration; or
 - (c) a former director, controller, or manager of a registered person or former registered person,
- in relation to whom the report is made.
- (4) The Minister may by Order specify circumstances in which an auditor or an approved professional is required to communicate any information or opinion to the Commission on a matter to which this Article applies, and which is relevant to any function of the Commission under this Law.
- (5) Orders under this Article may be made only –
- (a) on the recommendation of the Commission; and
 - (b) after consultation with such bodies as appear to the Commission to represent the interests of auditors, approved professionals and registered persons.
- (6) A person who contravenes an Order made under this Article is guilty of an offence and liable to imprisonment for a term of 6 months and a fine.
- (7) In this Article –
- ‘approved professional’ means a person appointed to make a report as referred to in Article 9(7) or Article 26(7);
- ‘associated body’, in relation to a registered person or an applicant for registration, means any body mentioned in paragraph (j), (k) or (l) of the definition ‘defined person’ in Article 26(15);
- ‘auditor’ includes a person who was an auditor of a registered person or former registered person at any time during the period of the person’s registration.”.

3 Amendment of Insurance Business (Jersey) Law 1996

- (1) The Insurance Business (Jersey) Law 1996³ is amended as follows.
- (2) In Article 1(1), in the definition of “shareholder controller” after the word “subsidiary” there shall be inserted the words “, other than a person holding shares giving rise to that voting power only as a custodian or its nominee and able to exercise the voting rights attached to the shares only under instructions given in writing (including by electronic means)”.
- (3) After Article 6(1) there shall be inserted the following paragraph –
- “(1A) Without limiting paragraph (1)(b) the Commission may –

- (a) require an applicant to provide such information and documents as the Commission may require relating to the applicant and the applicant's business, verified in such manner as the Commission may require for the purposes of considering whether to grant or refuse a permit under Article 7(1);
- (b) by written notice require the applicant or any person who is, or is to be, the chief executive, a director or shareholder controller of the applicant to provide a report by an auditor or accountant, or other qualified person approved by the Commission, on such aspects of the particulars required by paragraph (1)(b), or the information and documents required by paragraph (1A)(a), as the Commission may specify.”.

(4) For Article 21 there shall be substituted the following Article –

“21 Communication with Commission by auditors and approved professionals

- (1) No duty to which an auditor of a permit holder or an approved professional may be subject is contravened by reason of his or her communicating in good faith to the Commission, whether or not in response to a request made by it, any information or opinion on a matter to which this Article applies and which is relevant to any function of the Commission under this Law.
- (2) In relation to an auditor of a permit holder, this Article applies to any matter of which the auditor becomes aware in his or her capacity as auditor and which relates to the business or affairs of –
 - (a) the permit holder or former permit holder, as the case may be;
 - (b) a director, chief executive or shareholder controller, or former director, chief executive or shareholder controller, of a permit holder or former permit holder; or
 - (c) a company that is a holding company or subsidiary in relation to a permit holder or former permit holder.
- (3) In relation to an approved professional, this Article applies to any matter of which that person becomes aware in his or her capacity as the person making the report and which relates to the business or affairs of –
 - (a) an applicant for a permit;
 - (b) a permit holder;
 - (c) a former permit holder;
 - (d) a director, chief executive or shareholder controller, or a proposed director, chief executive or shareholder controller, of a permit holder or an applicant for a permit;
 - (e) a former director, chief executive or shareholder controller of a permit holder or former permit holder; or
 - (f) a company that is a holding company or subsidiary in relation to a person mentioned in sub-paragraphs (a) to (c),

in relation to whom the report is made.

(4) The Minister may by Order specify circumstances in which an auditor or an approved professional is required to communicate any information or opinion to the Commission on a matter to which this Article applies, and which is relevant to any function of the Commission under this Law.

(5) Orders under this Article may be made only –

(a) on the recommendation of the Commission; and

(b) after consultation with such bodies as appear to the Commission to represent the interests of auditors, approved professionals and permit holders.

(6) A person who contravenes an Order made under this Article is guilty of an offence and liable to imprisonment for a term of 6 months and a fine.

(7) In this Article –

‘approved professional’ means a person appointed to make a report as referred to in Article 6(1A)(b) or Article 10(6);

‘auditor’ includes a person who was an auditor of a permit holder or former permit holder at any time during the period when the permit was held.”.

(5) In Article 36(4) for the words “a direction given under this Article” there shall be substituted the words “or withdraw any direction, as well as the power to issue further directions”.

4 Amendment of Financial Services (Jersey) Law 1998

(1) The Financial Services (Jersey) Law 1998⁴ is amended as follows.

(2) In Article 1(1), at the end of paragraph (b)(i) of the definition of “principal person”, there shall be added the following continuation text –

“other than a person holding shares only as a custodian or its nominee and able to exercise the voting rights attached to the shares only under instructions given in writing (including by electronic means)”.

(3) For Article 18 there shall be substituted the following Article –

“18 Communication with Commission by auditors and approved professionals

(1) No duty to which an auditor of a registered person or an approved professional may be subject is contravened by reason of his or her communicating in good faith to the Commission, whether or not in response to a request made by it, any information or opinion on a matter to which this Article applies and which is relevant to any function of the Commission under this Law.

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- (2) In relation to an auditor of a registered person, this Article applies to any matter of which the auditor becomes aware in his or her capacity as auditor and which relates to the business or affairs of –
- (a) the registered person or former registered person;
 - (b) a principal person or former principal person of a registered person or former registered person; or
 - (c) a company that is a holding company or subsidiary in relation to that registered person or former registered person.
- (3) In relation to an approved professional, this Article relates to any matter of which that person becomes aware in his or her capacity as the person making the report and which relates to the business or affairs of –
- (a) an applicant for registration;
 - (b) a registered person;
 - (c) a former registered person;
 - (d) a principal person or proposed principal person of an applicant for registration or a registered person;
 - (e) a former principal person of a registered person or former registered person; or
 - (f) a company that is a holding company or subsidiary in relation to a person mentioned in sub-paragraphs (a) to (c),
- in relation to whom the report is made.
- (4) The Minister may by Order specify circumstances in which an auditor or an approved professional is required to communicate any information or opinion to the Commission on a matter to which this Article applies, and which is relevant to any function of the Commission under this Law.
- (5) Orders under this Article may be made only –
- (a) on the recommendation of the Commission; and
 - (b) after consultation with such bodies as appear to the Commission to represent the interests of auditors, approved professionals and registered persons.
- (6) A person who contravenes an Order made under this Article is guilty of an offence and liable to imprisonment for a term of 6 months and a fine.
- (7) In this Article –
- ‘approved professional’ means a person appointed to make a report as referred to in Article 8(5) or 32(6);
- ‘auditor’ includes a person who was an auditor of a registered person or former registered person at any time during the period of the person’s registration.”

5 Amendment of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008

- (1) The Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008⁵ is amended as follows.
- (2) In Article 1(1), at the end of paragraph (b)(i) of the definition of “principal person”, there shall be added the following continuation text –
“other than a person holding shares only as a custodian or its nominee and able to exercise the voting rights attached to the shares only under instructions given in writing (including by electronic means),”.
- (3) After Article 33 there shall be inserted the following Article –

“33A Communication with supervisory body by auditors and approved professionals

- (1) No duty to which an auditor of a person carrying on a supervised business or an approved professional may be subject is contravened by reason of his or her communicating in good faith to a suitable supervisory body, whether or not in response to a request made by it, any information or opinion on a matter to which this Article applies and which is relevant to any function of the suitable supervisory body under this Law.
- (2) In relation to an auditor of a person carrying on a supervised business, this Article applies to any matter of which the auditor becomes aware in his or her capacity as auditor and which relates to the business or affairs of –
 - (a) a person who is or was carrying on a supervised business;
 - (b) a principal person or former principal person of a person who is or was carrying on a supervised business; or
 - (c) a company that is a holding company or subsidiary in relation to a person who is or was carrying on a supervised business.
- (3) In relation to an approved professional, this Article relates to any matter of which that person becomes aware in his or her capacity as the person making the report and which relates to the business or affairs of –
 - (a) an applicant for a Level 1 registration;
 - (b) a person who is or was carrying on a supervised business;
 - (c) a principal person or proposed principal person of that applicant or a person carrying on a supervised business; or
 - (d) a former principal person of a person who is or was carrying on a supervised business; or
 - (e) a company that is a holding company or subsidiary in relation to a person mentioned in sub-paragraphs (a) or (b),
in relation to whom the report is made.
- (4) The Minister may by Order specify circumstances in which an auditor or an approved professional is required to communicate any

information or opinion to a suitable supervisory body on a matter to which this Article applies, and which is relevant to any function of the suitable supervisory body under this Law.

- (5) Orders under this Article may be made only –
 - (a) on the recommendation of the relevant supervisory body; and
 - (b) after consultation with such bodies as appear to the relevant supervisory body to represent the interests of auditors, approved professionals and persons carrying on supervised business.
- (5) A person who contravenes an Order made under this Article is guilty of an offence and liable to imprisonment for a term of 6 months and a fine.
- (6) In this Article –

‘approved professional’ means a person appointed to make a report as referred to in Article 13(4) or 30(6);

‘auditor’ includes a person who was an auditor of a person who is or was carrying on a supervised business at any time during the time such business was carried on.”.

6 Amendment of Alternative Investment Funds (Jersey) Regulations 2012

- (1) The Alternative Investment Funds (Jersey) Regulations 2012 are amended as follows.
- (2) In Regulation 4, at the end of paragraph (b)(i) of the definition of “principal person”, there shall be added the following continuation text –

“other than a person holding shares only as a custodian or its nominee and able to exercise the voting rights attached to the shares only under instructions given in writing (including by electronic means),”.
- (3) For Regulation 8(3) there shall be substituted the following paragraph –

“(3) Without limiting paragraph (2)(c) the Commission may –

 - (a) require an applicant to provide such information and documents relating to the AIF to which the applicant’s function relates, verified in such manner as the Commission may require, for the purposes of considering whether to grant or refuse a certificate under Regulation 9;
 - (b) by written notice require the applicant, or any person who is to be a principal person in relation to the applicant, to provide a report by an auditor or accountant, or other qualified person approved by the Commission, on such aspects of the particulars required by paragraph (2)(c), or the information and documents required by paragraph (3)(a), as the Commission may specify.”.
- (4) In Regulation 20(4) after the word “vary” there shall be inserted the words “or withdraw”.

- (5) For Regulation 41 there shall be substituted the following Regulation –

“41 Communication with Commission by auditors and approved professionals

- (1) No duty to which an auditor or an approved professional may be subject is contravened by reason of his or her communicating in good faith to the Commission, whether or not in response to a request made by it, any information or opinion on a matter to which this Regulation applies and which is relevant to any function of the Commission under these Regulations.
- (2) In relation to an auditor, this Regulation applies to any matter of which the auditor becomes aware in his or her capacity as auditor and which relates to the business or affairs of –
- (a) an AIF or former AIF;
 - (b) a certificate holder or former certificate holder;
 - (c) a service provider or former service provider in relation to an AIF;
 - (d) an AIF entity or former AIF entity;
 - (e) a principal person, or former principal person, of a person mentioned in sub-paragraphs (a) to (d); or
 - (f) a company that is a holding company or subsidiary in relation to a person mentioned in sub-paragraphs (a) to (d).
- (3) In relation to an approved professional, this Regulation applies to any matter of which that person becomes aware in his or her capacity as the person making the report and which relates to the business or affairs of –
- (a) an applicant for a certificate;
 - (b) an AIF;
 - (c) a certificate holder;
 - (d) a service provider in relation to an AIF;
 - (e) an AIF entity;
 - (f) a former AIF;
 - (g) a former certificate holder;
 - (h) a former service provider in relation to an AIF;
 - (i) a former AIF entity;
 - (j) a principal person or proposed principal person of a person mentioned in sub-paragraphs (a) to (e);
 - (k) a former principal person of a person mentioned in sub-paragraphs (b) to (i); or
 - (l) a company that is a holding company or subsidiary of a person mentioned in sub-paragraphs (a) to (i),
- in relation to whom the report is made.

- (4) The Minister may by Order specify circumstances in which an auditor or approved professional is required to communicate any information or opinion to the Commission on a matter to which this Regulation applies, and which is relevant to any function of the Commission under these Regulations.
- (5) Orders under this Regulation may be made only –
 - (a) on the recommendation of the Commission; and
 - (b) after consultation with such persons as appear to the Commission to represent the interests of auditors, approved professionals, certificate holders and service providers in relation to AIFs.
- (6) A person who contravenes an Order made under this Regulation is guilty of an offence and liable to imprisonment for a term of 6 months and a fine.
- (7) In this Regulation –

‘approved professional’ means a person appointed to make a report as referred to in Regulation 8(3) or 14(2);

‘auditor’ means an auditor of –

 - (a) an AIF or a former AIF;
 - (b) a service provider or a former service provider in relation to an AIF; or
 - (c) an AIF entity or former AIF entity,

and includes –

 - (d) a person who was the auditor of a certificate holder or former certificate holder, a service provider or former service provider in relation to an AIF at any time during the period in which the certificate in relation to the AIF was in force.”.

7 Citation and commencement

This Law may be cited as the Financial Regulation (Miscellaneous Provisions No. 3) (Jersey) Law 201- and comes into force 7 days after it is registered.

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- ¹ *chapter 13.100*
 - ² *chapter 13.075*
 - ³ *chapter 13.425*
 - ⁴ *chapter 13.225*
 - ⁵ *chapter 08.785*