

STATES OF JERSEY



DRAFT FINANCIAL SERVICES COMMISSION (AMENDMENT No. 5)(JERSEY) LAW 200

Lodged au Greffe on 29th July 2008
by the Minister for Economic Development

STATES GREFFE



Jersey

DRAFT FINANCIAL SERVICES COMMISSION (AMENDMENT No. 5)(JERSEY) LAW 200

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Minister for Economic Development has made the following statement –

In the view of the Minister for Economic Development the provisions of the Draft Financial Services Commission (Amendment No. 5) (Jersey) Law 200 are compatible with the Convention Rights.

(Signed) **Senator P.F.C. Ozouf**

REPORT

The purpose of this Law is to restore the application of Article 8(2) of the Financial Services Commission (Jersey) Law 1998 (the “1998 Law”) as it relates to unclassified funds to that prevailing before the Collective Investment Funds (Jersey) Law 1988 (the “1988 Law”) was amended by the Collective Investment Funds (Amendment No. 4) (Jersey) Law 2008 (“Amendment No. 4”).

This amendment to the 1998 Law would expand the defined expression “supervised entity” so as to include a certificate holder in relation to an unclassified fund. The expression “supervised entity” is used to describe the entities in relation to which the Jersey Financial Services Commission may exercise the powers described in Article 8(2) of the 1998 Law.

Article 8(2) provides for the Commission to have the power, as part of its routine examination of a supervised entity –

- (a) to require the entity to supply information in a format and at times specified by the Commission;
- (b) to require the entity to provide answers to questions; and
- (c) to require the entity to allow officers or agents of the Commission to enter the entity’s premises.

Amendment No. 4 amended the 1988 Law to make new provision for the grant of certificates to companies, unit trusts and partnerships that relate to unclassified funds (as defined in Article 1 of the 1988 Law).

Previously “functionary permits” were granted under the 1988 Law in relation to unclassified funds (as well as in relation to a class of collective investment fund known as a recognized fund). Such permit holders are already covered by Article 8(2) of the 1998 Law. However, following the enactment of Amendment No. 4, permits issued under the 1988 Law now only related to recognized funds.

Accordingly, this amending Law is needed to restore the application of Article 8(2) in relation to unclassified funds to that which prevailed before the enactment of Amendment No. 4.

Financial and manpower implications

This draft Law will have no implications for the financial or manpower resources of the States.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). On 25th July 2008 the Minister for Economic Development made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Minister for Economic Development the provisions of the Draft Financial Services Commission (Amendment No. 5) (Jersey) Law 2008 are compatible with the Convention Rights.

Explanatory Note

This Law amends the Financial Services Commission (Jersey) Law 1998 (the “1998 Law”) consequentially upon amendments to the Collective Investment Funds (Jersey) Law 1988 (the “1988 Law”) made by the Collective Investment Funds (Amendment No. 4) (Jersey) Law 2008.

The 1988 Law, as amended, makes new provision for the grant of certificates to companies, unit trusts and partnerships that are, or relate to, unclassified funds.

This amendment to the 1998 Law would expand the defined expression “supervised entity” so as to include such a certificate holder. The expression “supervised entity” is used to describe the entities in relation to which the Jersey Financial Services Commission may exercise the powers described in Article 8(2) of the 1998 Law which are part of the Commission’s general power described in paragraph (1) of that Article.



Jersey

DRAFT FINANCIAL SERVICES COMMISSION (AMENDMENT No. 5)(JERSEY) LAW 200

A LAW to amend further the Financial Services Commission (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 Article 8 of the Financial Services Commission (Jersey) Law 1998 amended

In Article 8(4) of the Financial Services Commission (Jersey) Law 1998^[1], for sub-paragraph (a) there shall be substituted the following sub-paragraph –

“(a) a person granted –

- (i) a permit under Article 7 of the Collective Investment Funds (Jersey) Law 1988 to hold himself or herself out as being, a functionary of a collective investment fund, or
- (ii) a certificate under Article 8B of that Law in relation to an unclassified fund;”.

2 Citation and commencement

This Law may be cited as the Financial Services Commission (Amendment No. 5) (Jersey) Law 200 and shall come into force 7 days after it is registered.

