

# STATES OF JERSEY

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

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**Lodged au Greffe on 25th September 2007  
by the Minister for Economic Development**

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**STATES GREFFE**





Jersey

## **DRAFT INSURANCE BUSINESS (AMENDMENT No. 6) (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 Insurance Business (Amendment No. 6) (Jersey) Law 200 are compatible with the Convention Rights.

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

## REPORT

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### AMENDMENTS TO THE INSURANCE BUSINESS (JERSEY) LAW 1996 (“the Law”)

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The principal changes proposed by this amending law (“**Amendment No. 6**”) fall into one of two categories. The first category is to ensure that the regulation of insurance business is consistent with current international best practice, being international standards set specifically for insurance businesses, or those set in relation to other types of financial business which are also applicable to insurance businesses. The second category is to achieve a greater degree of compatibility with the European Convention on Human Rights (“**ECHR**”). All the changes are proposed in order to develop the financial regulatory laws in preparation for the International Monetary Fund (“**IMF**”) assessment in 2008.

The principal changes are explained below under these two categories.

#### **Consistency with International Standards**

Article 4 of Amendment No. 6 expands the basis for refusing an application for a permit, as set out in Article 7 of the Law, especially on the grounds of the committing of certain offences. The same criteria will also apply to considering the revocation of a permit. Although the Law currently allows the Jersey Financial Services Commission (the “**Commission**”) to exercise its powers of refusal or revocation in such circumstances, improved transparency of the use of these powers is considered to be important in clearly demonstrating compliance with Core Principle 6 set by the International Association of Insurance Supervisors (the “**IAIS**”) in respect of licensing.

Articles 5 and 13 of Amendment No. 6 propose the introduction of a new provision to the Law (Article 7A) to amend the permitted disclosure provision (Article 32 of the Law). These proposed amendments will require a permit holder to publicise in a manner directed by the Commission both the fact that it has been granted a permit and such conditions attaching to the permit as the Commission may specify (typically any that limit the scope of its activities). The purpose of such disclosure is to ensure that the customers and clients of financial service businesses have access to relevant information concerning that business. The provisions will also include the usual safeguard of a right of appeal against any unreasonable decisions of the Commission, and allow time in which to prepare to comply or to lodge the appeal, as appropriate.

Article 6 of Amendment No. 6 will permit the Commission to apply to the Court for the appointment of a person to manage part or all of the affairs of a person in so far as they relate to the carrying on of insurance business. The circumstances under which such an application may be made are to be those that are prescribed by an Order.

Article 8 of Amendment No. 6 proposes amendments to Article 23 of the Law. This will apply the regime that governs the acceptability of directors and shareholder controllers etc., (“**Principal Persons**”) of registered businesses to Compliance Officers, Money Laundering Compliance Officers and Money Laundering Reporting Officers, together referred to as “**Key Persons**”. The expansion of the Articles is considered important in clearly demonstrating compliance with Core Principle 7 set by the IAIS in respect of suitability of persons.

Through the requirements of Codes of Practice, the Commission must already be notified of the intended appointment and subsequent changes of Key Persons and must be provided with confidential personal information about each. It is now proposed that these obligations should become a legal requirement, along with the ability of the Commission to object if an appointee does not satisfy the appropriate criteria. At the same time, the Law will also extend to Key Persons the criminal sanctions for breaching any of the requirements that currently apply to Principal Persons, as well as all the usual protections, including a right of appeal to the Royal Court.

As the Commission’s powers in respect of issuing directions within the insurance sector are somewhat limited, principally relating to matters associated with advertising, Article 14 of Amendment No. 6 proposes to incorporate within the Law powers of direction that will be consistent with those contained in the other financial service business laws. For example, it will be readily apparent that the Commission has the power to impose a ban on the activities a person may undertake in relation to financial services businesses regulated in Jersey.

The ability of the supervising authority to impose such a ban is an express stipulation of IAIS Core Principle 15 and one that is felt to be vital in relation to all areas of financial business when its use is necessary for the protection of the public or of the Island’s reputation as a finance centre.

#### **ECHR**

The most significant part of Amendment No. 6 that falls within the second category of improving compatibility with ECHR is Article 17 which introduces a right of appeal for anyone named in a public statement by the Commission who considers that the statement or any part of it is unreasonable.

A public statement normally serves one of two purposes (occasionally both together) – either it functions as a sanction by “naming and shaming” a person (corporate or natural) that has been found not to have complied with essential requirements; or it acts to warn the public of potential financial risks, such as those caused by an advertisement by an unauthorised business. While at present a public statement that “names and shames” will only be issued after a full investigation by the Commission following the principles of natural justice, the amendment will provide that the person will have at least one month’s notice of publication to make an appeal to the Royal Court. In the event of there being an appeal, the public statement will be withheld until the appeal has been determined.

Where the primary purpose is to warn the public, it is more usual for urgent action to be taken and therefore it is proposed that the Commission should have the authority to decide that the urgency of the circumstances justify the issuing of the public statement with a reduced period of notice. Generally a written notice will have to be given to each person named in the public statement including the reasons for reducing the notice period as well as the reasons for issuing the public statement. Whilst there will also be the same right of appeal, the public statement will not be suspended pending determination of the appeal unless the court makes an interim order for this to happen.

The full appeals regime will also apply in future to the authority that the Commission has to publicise a direction it issues under Article 36 of the Law.

Another change in order to comply with the ECHR comprises a substitution of Articles 8 and 9 of the Law with three new Articles, together with some consequential changes. Article 8 is currently concerned only with rights of appeal against decisions of the Commission regarding the grant or refusal of an application for a permit; the attaching or variation of conditions; and revocation of a permit.

Article 9 presently provides for the Commission to apply to the Court to order that a regulatory decision takes effect immediately when it is desirable to protect the interests of existing or potential clients of the insurance business. It also provides for such orders to be made without hearing the person concerned with no recourse if the person is aggrieved by the order.

It is proposed that the three new Articles will –

- Re-state (in the new Article 8), the provisions relating to notice being given of regulatory decisions providing greater consistency and requiring the reasons for decisions always to be included in the notice unless the action has been taken at the request of the permit holder;
- Re-state (in the new Article 8A), the provisions relating to when a regulatory decision takes effect, both at the outset and in the event of an appeal. In general, the decision does not take effect for at least one month after notice has been given and is further delayed pending the determination of any appeal. The primary exceptions to this rule are when a public statement is issued urgently to protect the public; and any direction other than one that bans a person from undertaking employment in regulated financial service businesses or a direction for a business to be wound up. The ability for the Commission to apply to the Court as under the present Article 9 (see above) has been retained but it is now proposed that there will also be a right of appeal for the person concerned if the Court makes the order without hearing that person.
- Re-state the rights of appeal against decisions of the Commission so that they are clear and consistent, and without any prohibition on subsequent applications to higher courts.

### **Minor changes**

The following minor changes are also included in Amendment No. 6 –

- To facilitate consistency across the laws regulating the finance industry, Article 1 of the Law has been amended to include a definition of relevant supervisory authority, and Article 31(2) of the Law has been consequentially amended. The intention is that the Commission should be able to share, as relevant, information with authorities that undertake functions similar to that of the Commission.
- Changes to Article 41, with a consequential change to Article 3, to include transitional differential power in standardized wording that will apply to the making of Regulations as well as Orders.

- A re-statement of Article 44, concerning the serving of notices, so that it is consistent in its references to other documents, including directions, and to registered or principal office.

### **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 21st September 2007 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 Insurance Business (Amendment No. 6) (Jersey) Law 2007 are compatible with the Convention Rights.

## Explanatory Note

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This proposed Law would amend the Insurance Business (Jersey) Law 1996 –

- (a) to make the Jersey Financial Services Commission’s supervisory powers in relation to insurance business more comprehensive;
- (b) to make the concomitant procedural safeguards more comprehensive, including in the domain of appeals;
- (c) in so doing to harmonize those powers and safeguards, and a number of provisions, with those in other Jersey financial services legislation.

*Article 1* defines the Insurance Business (Jersey) Law 1996 as the principal Law in the proposed Law.

*Article 2* tidies some definitions in Article 1 of the principal Law and adds others (for example definitions of “compliance officer”, “money laundering compliance officer”, “money laundering reporting officer” and “key person”). See also the note on *Article 8*

*Article 3* amends Article 2 of the principal Law to harmonize, with the provisions in other financial services Laws, the ancillary powers associated with the power to make Regulations about definitions.

*Article 4* amends Article 7 of the principal Law to set out in more detail the power to refuse or revoke a permit, and to harmonize the provision with a standard provision being inserted in other Laws regulating the finance industry in Jersey. A number of grounds are set out in detail, including grounds relating to fitness, and grounds relating to misconduct.

*Article 5* introduces Article 7A into the principal Law. This deals with displaying permits and displaying conditions to which permits are subject, again following new standard wording.

*Article 6* introduces new general provisions (Article 8, 8A, 9 and 9A of the principal Law) that are harmonized with similar Articles in other Laws regulating the finance industry in Jersey.

The new Article 8 requires the Commission to give notice of its administrative actions, the reasons for these, the detail of these, and particulars of any right of appeal that is available against those actions under (the new) Article 9 of the principal Law.

The new Article 8A imposes a delay on the coming into effect of a range of administrative actions of the Commission. That delay, however, may be reduced with the agreement of the parties affected by the relevant administrative action or by order of the Royal Court.

The new Article 9 continues an existing right of appeal to the Royal Court on the ground that an administrative action appealed against was unreasonable, but extends the range of administrative actions against which an appeal may be made.

The new Article 9A in the principal Law allows the Commission to apply for the appointment by the Royal Court of managers of businesses in circumstances prescribed by Order of the Minister.

*Article 7* amends Article 10 of the principal Law as a consequence of the introduction of Commission powers to supervise key persons.

*Article 8* replaces Article 23 of the principal Law with a more detailed provision against a person’s holding certain positions in a business, or holding positions of control in a business, without notifying the Commission or contrary to an objection by the Commission.

The relevant positions include that of director or, for the first time in the principal Law, that of a key person. A key person is one who monitors a business’s compliance with legislation in general or money laundering legislation in particular, or records activities that may be money laundering activities and come to the notice of a business.

*Article 9* clarifies that in Article 24(4) of the principal Law notice about solvency margins is to be in writing and *Article 10* makes the same point in relation to Commission notices about the appointment and duties of actuaries.

*Article 11* inserts ancillary provisions about directions under Article 28 (Location of assets) to the effect that those directions may be of limited or unlimited duration and may be varied by means of another direction.

*Article 12* updates a standard provision (Article 31 of the principal Law) allowing the Commission to assist bodies similar to it overseas.

*Article 13* amends Article 32 of the principal Law to make it clear that the Commission can publicly disclose information like the fact that a permit has been granted to a person or details of the conditions attached to a permit.

*Article 14* replaces Article 36 of the principal Law with a general power for the Commission to give directions for the enforcement of the Law. The new Article 36 (harmonized with similar Articles in other Laws regulating the finance industry in Jersey) sets out what factors the Commission is to consider in making a direction, and makes it clear that a direction can (for example) stop individuals from performing certain roles, or any role, in an insurance business context, can require an insurance business to stop operations, can stop insurance advertisements from being published or require corrective advertisements to be published.

*Article 15* amends Article 41 of the principal Law to clarify that Orders and Regulations under the principal Law may be expressed to apply differently in different circumstances, may make full or partial use of the power to make them and may be expressed to be subject to conditions, reflecting the wording of Article 11(4) of the Interpretation (Jersey) Law 1954.

*Article 16* amends Article 42 for the sake of consistency in vocabulary across the principal Law.

*Article 17* replaces Article 43 of the principal Law with new, more elaborate, Articles 43 – 43C, harmonized with similar Articles in other Laws regulating the finance industry in Jersey.

These new Articles allow the Commission to make public statements about contraventions of the Law, or of Regulations or Orders, or of codes of conduct or directions (new Article 43). But under the new Article 43A, the Commission has to give notice of the public statement to persons that the statement names. Under the new Article 43B, the notice must normally be given before the statement is made. Appeals may be made against proposed or actual public statements, and against Commission decisions to make public statements early (Article 43C).

*Article 18* replaces Article 44 of the principal Law, which deals with the service of notices under the Law. The new Article 44 also includes a provision that a document is not to be regarded as given to the Commission until the Commission has in fact received it.

*Article 19* sets out the short title of the proposed Law and specifies that it shall come into force 7 days after its registration in the Royal Court.







Jersey

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

### **Arrangement**

#### **Article**

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<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Article 1 amended</u>
<u>3</u>	<u>Article 2 amended</u>
<u>4</u>	<u>Article 7 amended</u>
<u>5</u>	<u>New Article 7A</u>
<u>6</u>	<u>Articles 8 and 9 replaced</u>
<u>7</u>	<u>Article 10 amended</u>
<u>8</u>	<u>Article 23 substituted</u>
<u>9</u>	<u>Article 24 amended</u>
<u>10</u>	<u>Article 25 amended</u>
<u>11</u>	<u>Article 28 amended</u>
<u>12</u>	<u>Article 31 amended</u>
<u>13</u>	<u>Article 32 amended</u>
<u>14</u>	<u>Article 36 substituted</u>
<u>15</u>	<u>Article 41 amended</u>
<u>16</u>	<u>Article 42 amended</u>
<u>17</u>	<u>Article 43 replaced</u>
<u>18</u>	<u>Article 44 substituted</u>
<u>19</u>	<u>Citation and commencement</u>





Jersey

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

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

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*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 –

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### **1 Interpretation**

In this Law “principal Law” means the Insurance Business (Jersey) Law 1996<sup>[1]</sup>.

### **2 Article 1 amended**

In Article 1 of the principal Law –

(a) 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.”;

- (b) 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 the same as, or similar to, a function of the Commission;”.

### 3 Article 2 amended

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

- “(2) Regulations made under this Article may include provisions that exclude or modify the effect of the Regulations on any other enactment which is expressed to have effect in relation to insurance business to which Article 5 applies.”.

### 4 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 (whether under the law of Jersey or of a country or territory outside Jersey) involving fraud or other dishonesty,
  - (ii) an offence under –
    - (A) this Law,
    - (B) the Banking Business (Jersey) Law 1991<sup>[2]</sup>,
    - (C) the Collective Investment Funds (Jersey) Law 1988<sup>[3]</sup>,
    - (D) the Financial Services (Jersey) Law 1998<sup>[4]</sup>,
    - (E) any Regulation or Order made under any of those Laws,
  - (iii) any offence similar to those listed in clause (ii) under the law of a country or territory outside Jersey,
  - (iv) where clause (ii) or (iii) does not apply, an offence under any enactment (whether of Jersey or of a country or territory outside Jersey) relating to building societies, companies, consumer credit, consumer protection, credit unions, friendly societies, industrial and provident societies, insider dealing, insolvency, insurance, money laundering or terrorist financing, or
  - (v) an offence (whether under the law of Jersey or of a country or territory outside Jersey) of perjury or conspiracy to pervert the course of justice;”;

- (b) for paragraph (4)(g) and (h) there shall be substituted the following sub-paragraphs –

“(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 a code of practice.”;

(c) paragraph (10) shall be repealed.

## 5 **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, being conditions –
    - (i) to which the person’s permit is subject under Article 7(1), or
    - (ii) to which the person’s permit is subject by virtue of an Order under Article 7(8).
- (2) Where the Commission varies or attaches any new condition to the grant of a permit under Article 7(5) it may give the holder of the permit notice 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 notice under paragraph (1) shall take effect on such date as is specified in the notice.
- (6) A notice under paragraph (2) or (3) shall take effect in accordance with Article 8A.
- (7) 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.”.

## 6 **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 in the permit as the permit holder;
  - (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, 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 or the refusal; and
  - (b) give particulars of the rights of appeal conferred by Article 9.
- (4) A notice of a direction under Article 28 or 36 shall –
- (a) give the reasons for the giving of the direction;
  - (b) specify when the direction is to have effect;
  - (c) give particulars of the provisions of Article 36(5) and (6); and
  - (d) give particulars of the rights of appeal conferred by Article 9.
- (5) 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 by the Court 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 with the Commission 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) If an appeal is made under paragraph (1)(e) with respect to a direction that makes a requirement referred to in Article 36(2)(c) or (d), the direction shall have no effect until the appeal is determined by the Court or withdrawn.
- (6) In other cases, an appeal made under paragraph (1)(e) with respect to a direction shall not suspend the operation of the direction.
- (7) An appeal made under paragraph (1)(f) in relation to an application under Article 36(5) shall not suspend the operation of the direction in connection with which the application was made.

## **9A Commission may apply to Court for appointment of manager in prescribed**



## **circumstances**

- (1) The Minister may, by Order on the recommendation of the Commission, 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 relate to the carrying on of insurance business to which Article 5 applies.
- (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.”.

## **7 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”.

## **8 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 a 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 of 6 months and to a fine.”.

## **9 Article 24 amended**

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

## **10 Article 25 amended**

In Article 25 of the principal Law –

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

“(4) A person appointed under paragraph (1) shall have such duties and responsibilities as may be prescribed and where such person contravenes or fails to comply with any Order made under this paragraph, the Commission may, by notice in writing, require the permit holder to terminate his or her appointment within such period as the Commission may specify in the notice.”;

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

“(6) The Commission may, by notice in writing, require the permit holder to cause the person appointed under paragraph (1) to take such action as the Commission may specify in the notice within such period as the Commission may specify in the notice.”.

## 11 Article 28 amended

After Article 28(1) of the principal Law there shall be inserted the following paragraphs–

“(1A) A direction under this Article may be of unlimited duration or of a duration specified in the notice of the direction.

(1B) The power to give directions under this Article shall include the power by direction to vary a direction given under this Article.”.

## 12 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.”.

## 13 Article 32 amended

After Article 32(1)(c) of the principal Law there shall be added the following subparagraph –

“;

(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)..

## 14 Article 36 substituted

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; or

(e) it is in the best economic interests of Jersey,

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 –
    - (i) not perform a specified function (or any function at all) for,
    - (ii) not engage in specified employment (or any employment at all) by, or
    - (iii) not hold a specified position (or any position at all) in the business of, 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 his or her 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 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 a direction given under this 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 (e) 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 and to a fine”.

## 15 Article 41 amended

For Article 41(3) of the principal Law there shall be substituted the following paragraphs–

- “(3) Regulations made under this Law may contain such transitional, consequential, incidental or supplementary provisions as appear to the States to be necessary or

expedient for the purposes of the Regulations.

- (4) The power to make Orders, or the power to make Regulations, under this Law may be exercised –
  - (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of case; and
  - (b) so as to make, as respects the cases in relation to which it is exercised –
    - (i) the full provision to which the power extends or any lesser provision (whether by way of exception or otherwise),
    - (ii) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or classes of case, or different provision as respects the same case or class of case for different purposes of the Order or Regulations,
    - (iii) any such provision either unconditionally or subject to any specified condition.”.

## **16 Article 42 amended**

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

“(b) amend any such code.”.

## **17 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 28 or 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 –
    - (i) in the best interests of persons who have transacted or may transact insurance business with the person, or
    - (ii) in the best interests of the public.

#### **43A Notice of public statement**

- (1) If a public statement identifies a permit holder, 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 the Commission issues the public statement it is reasonably practicable for the Commission to serve notice on the person, the Commission shall do so.
- (3) A notice under paragraph (1) or (2) 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(3) 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 with the Commission 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.”.

#### **18 Article 44 substituted**

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

#### **“44 Service of notices**

- (1) No notice or other document 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 or principal 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 <sup>[5]</sup> in its application to this Article, the proper address of any person to or on whom a notice, direction or other 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 notice, direction or other 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 notice, direction or other 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."

## **19 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 force 7 days after it is registered.



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- [\[1\]](#) *chapter 13.425*
- [\[2\]](#) *chapter 13.075*
- [\[3\]](#) *chapter 13.100*
- [\[4\]](#) *chapter 13.225*
- [\[5\]](#) *chapter 15.360*