

# STATES OF JERSEY

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## **DRAFT BANKING 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 BANKING 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 Banking Business (Amendment No. 6) (Jersey) Law 200 are compatible with the Convention Rights.

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

## REPORT

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### PROPOSALS TO CHANGE THE BANKING BUSINESS (JERSEY) LAW 1991 (the “Law”)

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Apart from one particular change, the principal changes to the Law proposed by this amending law (“**Amendment No. 6**”), fall into one of two categories. The first category is to ensure that the regulation of deposit-taking business is consistent with current international best practice, being international standards set specifically for banking businesses, or those set in relation to other types of financial business which are also applicable to deposit-taking 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 proposes two important changes to Article 10 of the Law, which sets out the basis for refusing an application for registration and considering the revocation of a registration. Firstly, the proposal is for the Law to oblige the Commission to refuse to register a shell bank, as defined by Recommendation 18 of the Financial Action Task Force (“**FATF**”). Under the proposal the Commission will also be obliged to revoke the registration of a shell bank (although the Commission’s registration policy has precluded the acceptance of such banks). These measures are essential for the Island to comply with the express requirements of the FATF recommendation.

Secondly, Article 4 of Amendment No. 6 proposes an expansion of grounds for refusal of an application or revocation of a registration in the event of certain offences being committed. Although the Law, and the laws under which other financial services businesses in Jersey are regulated, currently allows 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 IOSCO<sup>[1]</sup> Principle 4 and IAIS<sup>[2]</sup> Core Principle 6. Although neither of these standards is directly relevant to banking business, it is considered important for the measures to be applied consistently across all the regulatory laws.

The Law uniquely has a requirement for a registered person to display its registration certificate, however, there is currently no requirement for any conditions attached to its registration also to be displayed. Such information can be essential to any member of the public contemplating transactions of a financial nature with or through any regulated financial services business; for example, if a condition limits the scope of the activities that the business may undertake. Accordingly, Article 6 of Amendment No. 6 proposes a change to Article 13 of the Law that will alter and extend the existing requirement so that it is in line with the provisions proposed for the other regulatory laws in order to comply with IOSCO Principle 21. Under these provisions a registered business will be required to publicise in a manner directed by the Commission not just the fact that it has been registered but also such conditions attaching to the registration as the Commission may specify (typically any that limit the scope of its activities). The provisions will also include safeguards concerning the right to appeal.

Articles 7, 8 and 14 of Amendment No. 6 propose several changes to Articles 14, 15 and 24 of the Law that relate to the acceptability of individuals associated with a registered business who can influence its management and control. In particular, they will establish clear criteria for assessing if such persons are fit and proper to occupy such positions and therefore a basis for the Commission to decide whether or not to exercise its power to object. At present, when the Commission is notified of an intended appointment, it is only required to act if it wishes to object; the proposals include a requirement to confirm whether or not it objects. Another aspect of the proposed changes (which again is proposed for inclusion in all the regulatory laws), is for the provisions of the regime that apply to directors and controllers to apply also to Compliance Officers, Money Laundering Compliance Officers and Money Laundering Reporting Officers, together referred to as “**Key Persons**”.

To date, the Commission has been notified on a voluntary basis of the intended appointment and subsequent changes of Key Persons and has been provided with confidential personal information about each. It is now proposed that notification 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 directors and controllers, as well as all the usual protections, including a right of appeal to the Royal Court.

The Commission's powers in respect of issuing directions under the Law at present are limited to directions in connection with advertising. Article 13 of Amendment No. 6 proposes to rectify this position by incorporating within the Law powers of direction that are consistent with those available under other laws regulating the finance industry in Jersey.

The new powers for giving directions have been drafted to include the proposed changes to the other laws that will make readily apparent the breadth of the Commission's powers 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.

Unlike most of the applications of the powers under this Article, the Law will expressly require that at least one month's notice must be given of such a ban, within which an appeal to the Royal Court may be made. Furthermore, although the ban could be for an indefinite period, as with any direction, the recipient of it may apply to the Commission at any time for the direction to be varied or withdrawn and may appeal to the Court if the Commission refuses to do so.

At present, banking business is the only area of financial services business in the Island for which there is no statutory power for the Commission to issue Codes of Practice. Article 12 of Amendment No. 6 proposes to rectify this with a new Article, Article 19A, in the Law that has substantially the same provisions as in the other laws. Under those provisions a person who fails to follow a code of practice will be liable to regulatory sanctions.

Article 16 of Amendment No. 6 proposes the introduction of a new provision for the appointment of a person to manage part or all of the affairs of persons in so far as they relate to the carrying on of deposit-taking business. The circumstances under which such an appointment may be made are to be those that are prescribed by an Order. A power for the Commission to apply to the Court for such an appointment to be made is already available under the Financial Services (Jersey) Law 1998 and has been proposed for inclusion in the Collective Investment Funds (Jersey) Law 1988, to assist in complying with IOSCO Principle 9, as well as in the Insurance Business (Jersey) Law 1996. However, here the proposal is for the Commission to have the ability to make the appointment without reference to the courts because it is anticipated that, although the need for such action is remote, if it should be necessary, then time will be of the essence and access to the courts may be limited (e.g. at a weekend).

## **ECHR**

The principal part of Amendment No. 6 that falls within the second category of improving compatibility with the ECHR is that addressed by Article 20. This makes the very important change to the provisions of the Law for the Commission to make public statements (Article 48), by introducing a right of appeal for anyone named in a public statement 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, or partial sanction, by “naming and shaming” a person that has been found not to have complied with essential requirements; or it is to warn the public of potential financial risks, such as from an advertisement by an unauthorised business. In the first case, the public statement will only be issued after a full investigation by the Commission. However the Amendment would ensure that the person “named and shamed” will have at least one month's notice of publication within which an appeal to the Royal Court can be made. 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 justifies the issuing of the public statement with only a reduced period of notice, or simultaneously with the written notice. Generally a written notice will still have to be given to each person named in the public statement which will have to include 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 21.

### **Minor Changes**

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

- A change to the definition of “court” to remove the limitation in referring only to the “Inferior Number”.
- A change to the definition of “relevant supervisory authority”. The current definition has been found to be unnecessarily restrictive in facilitating co-operation with supervisory authorities in other jurisdictions because it requires that the authority discharges functions that correspond to those of the Commission. The proposed change will allow such co-operation to take place where the other authority discharges functions that are *similar* to those of the Commission.
- A re-statement of the provisions relating to the notice to be given of regulatory decisions, so that it is clear that the reasons for decisions must always be included in the notice unless the action has been taken at the request of the registered person; and to detail the applicability of other requirements to different circumstances when a notice is given.
- A re-statement of 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.
- A re-statement of the provisions relating to the appeal itself to ensure consistency in the provisions both within the Law and across all the regulatory laws.
- To extend the scope of investigations that may be conducted by an inspector appointed under Article 28 of the Law, to include compliance with secondary legislation, a Code of Practice, conditions of registration or directions given under the Law.
- A re-statement of Article 49, concerning the serving of notices, so that it is consistent in its references to other documents, including directions, and to registered or principal office.
- Changes to Article 51 to include transitional differential power in standardised wording that will apply to the making of Regulations as well as Orders.

### **Further Change concerning Transfer of Business**

Under Article 20 of Amendment No. 6, it is proposed that Article 48D and a Schedule to the Law be added to make detailed provisions for the orderly transfer of business from one registered person to another. At present, such business normally has to be transferred by means of a law passed by the States. As far as possible the provisions are identical to those already available under other regulatory laws.

### **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 Banking 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 Banking Business (Jersey) Law 1991–

- (a) to make the Jersey Financial Services Commission’s supervisory powers in relation to banking 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 Banking Business (Jersey) Law 1991 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 14*

*Article 3* replaces Article 5 of the principal Law to widen the power to amend definitions in that Law, and requires that to be done by Regulations, not Ministerial Order.

*Article 4* replaces Article 10 of the principal Law to set out in more detail the power to refuse or revoke registration, 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 a requirement of some sort of significant connection with Jersey, grounds relating to fitness, and grounds relating to misconduct.

*Article 5* replaces Article 11 of the principal Law (dealing with conditions of registration) with an Article worded to harmonize with a new standard provision in other regulatory Laws.

*Article 6* introduces a more elaborate provision (replacing Article 13 of the principal Law) about displaying certificates of registration and displaying conditions of registration, again following new standard wording.

*Article 7* makes it clear that, in deciding whether or not to object under Article 14 of the principal Law to someone’s taking a controlling shareholding, or otherwise assuming a controlling interest, in a business, the Commission may take into account the same matters as it may take into account in deciding whether to grant or revoke registration. *Article 7* also amends Article 14 to make it clear that there is power to serve notice under that Article.

*Article 8* makes it clear that the Commission may take into account the same matters in deciding whether to object under Article 15 of the principal Law to a person’s having a controlling shareholding in a business.

*Article 9* makes minor changes, including to the effect that a power to give directions under Article 17 of the principal Law includes a power to vary them by means of another direction.

*Article 10* introduces a new general provision (Article 17A of the principal Law) requiring 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 18A of the principal Law.

*Article 11* replaces Article 18 of the principal Law with new Articles 18 and 18A, (harmonized with similar Articles in other Laws regulating the finance industry in Jersey). Article 18 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 18A of the principal Law 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.

*Article 12* sets out a new Article 19A in the principal Law, allowing codes of practice to be made and indicating how these are to apply.

*Article 13* replaces Article 21 of the principal Law with a general power for the Commission to give directions for the enforcement of the Law. The new Article 21 (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 a banking business context, can require a business to stop operations, can stop banking advertisements from being published or require corrective advertisements to be published.

*Article 14* replaces Article 24 of the principal Law with a more detailed provision against a person's assuming certain positions in a business, or assuming positions of control in a business, without notifying the Commission and obtaining the Commission's approval in advance.

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 15* elaborates Article 28 of the principal Law, concerning the appointment of persons to investigate the affairs of a business.

*Article 16* introduces a new Article 37A in the principal Law allowing the Commission to appoint managers of businesses in circumstances prescribed by Order of the Minister.

*Article 17* updates a standard provision (Article 44 of the principal Law) allowing the Commission to assist bodies similar to it overseas.

*Article 18* amends Article 45 of the principal Law to make it clear that the Commission can publicly disclose information to assist a person appointed to manage a business or disclose details of the conditions attached to the registration of a business.

*Article 19* makes consequential changes.

*Article 20* replaces Article 48 of the principal Law with new, more elaborate, Articles 48- 48C, 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 48). But under the new Article 48A, the Commission has to give notice of the public statement to persons that the statement names. Under the new Article 48B, 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 48C).

*Article 21* inserts a new Article 48D in the principal Law (and *Article 24* adds a Schedule to the principal Law) to allow the merger of deposit-taking businesses to take place with the approval of the Court and without the necessity of a privately sponsored Law.

*Article 22* replaces Article 49 of the principal Law, which deals with the service of notices under the Law. The new Article 49 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 23* amends Article 51 of the principal Law to clarify that 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 25* 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 BANKING BUSINESS (AMENDMENT No. 6) (JERSEY) LAW 200**

### **Arrangement**

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#### **Article**

<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Article 1 amended</u>
<u>3</u>	<u>Article 5 substituted</u>
<u>4</u>	<u>Article 10 substituted</u>
<u>5</u>	<u>Article 11 substituted</u>
<u>6</u>	<u>Article 13 substituted</u>
<u>7</u>	<u>Article 14 amended</u>
<u>8</u>	<u>Article 15 amended</u>
<u>9</u>	<u>Article 17 amended</u>
<u>10</u>	<u>New Article 17A</u>
<u>11</u>	<u>Article 18 replaced</u>
<u>12</u>	<u>New Article 19A</u>
<u>13</u>	<u>Article 21 substituted</u>
<u>14</u>	<u>Article 24 substituted</u>
<u>15</u>	<u>Article 28 amended</u>
<u>16</u>	<u>New Article 37A</u>
<u>17</u>	<u>Article 44 amended</u>
<u>18</u>	<u>Article 45 amended</u>
<u>19</u>	<u>Article 47 amended</u>
<u>20</u>	<u>Article 48 replaced</u>
<u>21</u>	<u>Article 48D inserted</u>
<u>22</u>	<u>Article 49 replaced</u>
<u>23</u>	<u>Article 51 amended</u>
<u>24</u>	<u>New Schedule</u>
<u>25</u>	<u>Citation and commencement</u>

### **SCHEDULE**

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#### **NEW SCHEDULE**





Jersey

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

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

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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 Banking Business (Jersey) Law 1991<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 19A;”;

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

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

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

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

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

the employees in the conduct of the business in respect of which the registered person is registered;”;

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

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

“ ‘wholly-owned subsidiary’ has the meaning given in Article 4;”;

(b) for the definition “Court” there shall be substituted the following definition –

“ ‘Court’ means the Royal Court;”;

(c) in the definitions of “deposit”, “deposit-taking business”, “holding company” and “subsidiary company” the words “but subject to any Order under Article 5”, wherever occurring, shall be deleted;

(d) for the definition “former registered person” there shall be substituted the following definition –

“ ‘former registered person’ means a person –

(a) who was formerly a registered person under the Investors (Prevention of Fraud) (Jersey) Law 1967 or under this Law; and

(b) who continues to have a liability in respect of any deposit for which it had a liability at a time when the person was a registered person under the Investors (Prevention of Fraud) (Jersey) Law 1967<sup>[2]</sup> or under this Law;”;

(e) for the definition “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 5 substituted

For Article 5 of the principal Law there shall be substituted the following Article–

#### “5 Power to amend definitions

- (1) The States may by Regulations amend any definition in Article 1, 2, 3 or 4 or in the Schedule.
- (2) Without prejudice to the generality of paragraph (1), Regulations under that paragraph amending the definition of deposit-taking business may provide for taking into account as activities of an institution the activities of any person who is connected with it in such a manner as is specified in the Regulations.
- (3) 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 a deposit or deposit-taking business within the meaning of this Law.”.

### 4 Article 10 substituted

For Article 10 of the principal Law there shall be substituted the following Article–

#### “10 Refusal or revocation of registration

- (1) The Commission shall refuse to grant an application for registration, or where registration has been granted shall revoke the registration, if the applicant or registered person –

- (a) has no physical presence in Jersey involving meaningful decision-making and management; and
  - (b) is not subject to supervision by a relevant supervisory authority by reason of that person's connection with any other institution or person.
- (2) For the purposes of paragraph (1)(b), 'connection' has the same meaning as in Article 3A of the Income Tax (Jersey) Law 1961<sup>[3]</sup>.
- (3) If a person ('person A') applies for registration, or is already registered, the Commission may refuse to register the person, or revoke the registration, on one or more of the following grounds –
- (a) having regard to the information before the Commission as to –
    - (i) the integrity, competence, financial standing, structure and organization of person A,
    - (ii) the persons employed by or associated with person A for the purposes of person A's business or who are directors, controllers, or managers, in relation to person A, or
    - (iii) the description of business that person A proposes to carry on or carries on, the Commission is not satisfied that person A is a fit and proper person to be registered;
  - (b) person A has, at any time and whether or not in relation to his or her application, in any case where information was required under this Law to be given in any connection –
    - (i) failed to provide any such information, or
    - (ii) provided information that was untrue or misleading in any material particular;
  - (c) person A has at any time failed to comply in any material respect with any condition prescribed or attached under Article 11 to a current or previous registration held by person A;
  - (d) person A or any person employed by or associated with person A for the purpose of person A'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 Collective Investment Funds (Jersey) Law 1988<sup>[4]</sup>,
      - (C) the Financial Services (Jersey) Law 1998<sup>[5]</sup>,
      - (D) the Insurance Business (Jersey) Law 1996<sup>[6]</sup>,
      - (E) any Regulation or Order made under any of those Laws,
    - (iii) any similar offence to those listed in clause (ii) under the laws of any country or territory 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;

- (e) it appears to the Commission, as a result of information provided under Article 9, or information otherwise obtained, that –
  - (i) it is not in the best interests of persons who may deposit, or have deposited, money with person A that person A should be registered or should continue to be registered,
  - (ii) in order to protect the reputation and integrity of Jersey in financial or commercial matters, person A should not be registered or should not continue to be registered, or
  - (iii) it is not in the best economic interests of Jersey that person A should be registered or should continue to be registered;
- (f) the Commission has reason to believe that there has been a failure at any time on the part of person A to follow a code of practice;
- (g) person A has failed to comply with a direction given to the person at any time under Article 17 or 21’.

## 5 Article 11 substituted

For Article 11 of the principal Law there shall be substituted the following Article–

### “11 Conditions of registration

- (1) The Minister may, on the recommendation of the Commission, prescribe by Order conditions that are applicable to the registration of all persons under Article 9 or to the registration of a class of persons.
- (2) The Commission –
  - (a) may attach additional conditions to the registration of a person under Article 9; and
  - (b) may vary conditions applying to the registration of a person whether by virtue of paragraph (1) or by virtue of subparagraph (a).
- (3) Without prejudice to the generality of paragraphs (1) and (2), the conditions may include matters that the Commission considers to be desirable in the interests of depositors or potential depositors, whether for the purpose of safeguarding the assets of the person registered or otherwise.
- (4) The conditions may, in particular –
  - (a) require the registered person to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict its business in a particular way;
  - (b) impose limitations on the acceptance of deposits, the granting of credit or the making of investments;
  - (c) prohibit the registered person from soliciting deposits either generally or from persons who are not already depositors with that registered person;
  - (d) prohibit the registered person from entering into any other transaction or class of transactions;
  - (e) require that the registered person shall at all times have appointed a senior officer approved by the Commission responsible for ensuring compliance with the terms and conditions of the registration.
- (5) A person who fails to comply with a condition imposed under this Article, being a condition that has effect in relation to the person, shall be guilty of an offence and liable to imprisonment for 2 years and to a fine’.

**6 Article 13 substituted**

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

**“13 Display of registration certificate and conditions**

- (1) When the Commission registers a person under Article 9(1), it may give that person notice in writing of the manner in which that person shall display or otherwise make available to members of the public –
  - (a) that person’s registration certificate, or the information contained in the certificate, or both; and
  - (b) a record of such conditions as the Commission may specify, being conditions –
    - (i) to which the person’s registration is subject by virtue of an Order under Article 11(1), or
    - (ii) to which the person’s registration is subject under Article 11(2).
- (2) Where the Commission under Article 11(2) varies a condition or attaches any new condition to the registration of a person 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 record of the conditions as varied or the new condition, as the case may be.
- (3) The Commission may at any time vary any requirement in any notice it has given under paragraph (1) or (2) by further notice to the registered person.
- (4) Without prejudice to the generality of paragraphs (1), (2) and (3), a notice under any of those paragraphs may require the certificate, information or record of conditions, as the case may be, to be displayed at any address at which the registered person carries on deposit-taking business or to be published on the internet, or both.
- (5) A 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 18.
- (7) A registered person who carries on a deposit-taking business in breach of any requirements in a notice given under this Article which have effect in relation to that business shall be guilty of an offence and liable to a fine of level 2 on the standard scale.”.

**7 Article 14 amended**

In Article 14 of the principal Law–

- (a) after paragraph (3) the following paragraph shall be inserted–

“(3A) The Commission shall serve notice, on the person from whom notice was received under this Article, stating whether the Commission objects or does not object to his or her becoming a controller, as referred to in paragraph (1);”;

- (b) in paragraph (4)(c) after the words “the criteria” there shall be inserted the words “(including those set out in Article 10);”;
- (c) in paragraph (5)(b) for the words “Article 18” there shall be substituted the words “Article 18A”.

**8 Article 15 amended**

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



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

## 9 Article 17 amended

In Article 17 of the principal Law–

(a) after paragraph (2) there shall be inserted the following paragraph–

“(2A) The power to give directions under this Article shall include the power by direction to vary a direction given under this Article.”;

(b) in paragraph (4)(b) after the word “determined” there shall be inserted the words “by the Court”.

## 10 New Article 17A

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

### “17A Notice of acts and reasons

(1) The Commission shall give notice as follows –

- (a) if under Article 10 it refuses an application for registration, it shall give notice to the applicant;
- (b) if under Article 10 it revokes a person’s registration, it shall give notice to the person;
- (c) if under Article 11, at the time of a person’s registration it attaches a condition to the registration, or at any time after a person’s registration, it attaches an additional condition to the person’s registration, or varies the conditions attached to the person’s registration, it shall give notice to the person;
- (d) if under Article 39 it refuses permission or grants permission subject to one or more conditions or restrictions, it shall give notice to the applicant for the permission;
- (e) if under any Order under this Law it refuses consent, refuses approval, or imposes a requirement, it shall give notice to the relevant registered person (if any) and any other person in respect of whom the refusal or imposition is made.

(2) A notice required under this Article, or a notice under Article 13, 15, 17(2) or 21(6) shall –

- (a) set out the terms of the refusal, revocation, attachment or imposition of conditions, imposition or variation of requirements, objection, conditions or restrictions, direction, or partial grant, of which it is notice;
- (b) except in the case of an objection under Article 15, set out the terms of the relevant conditions, requirements, or restrictions (including conditions, requirements or restrictions as varied);
- (c) give the reasons for the refusal, revocation, attachment, imposition, variation, objection, giving of directions, or partial grant (except in the case of a revocation, attachment, or variation, made on the application of the relevant registered person); and
- (d) except in the case of a notice under Article 17(2), give particulars of the rights of appeal conferred by Article 18A.

(3) A notice required under Article 21(1), 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 21(5) and (6); and
  - (d) give particulars of the rights of appeal conferred by Article 18A.
- (4) If under this Article the Commission is required to give reasons in a notice, that requirement shall not require the Commission –
- (a) to specify any reason that would in the Commission’s opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party; or
  - (b) to specify the same reasons, or reasons in the same manner, in the case of notices to different persons about the same matter.”.

## 11 Article 18 replaced

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

### “18 Delay in taking effect

- (1) Any of the following acts of the Commission shall not take effect until one month after notice of them is given under this Law, such date as is specified in the notice, or, if an appeal is lodged under this Law against the act or the decision relating to the act, before the appeal is determined by the Court or withdrawn, whichever is the latest time –
  - (a) a revocation under Article 10;
  - (b) an attachment under Article 11(2) of an additional condition to a person’s registration, or variation under that paragraph of the conditions attached to a person’s registration, at any time after the registration of the person;
  - (c) the imposition of a requirement under Article 13(2) or (3);
  - (d) an objection under Article 15.
- (2) Paragraph (1) shall not however have effect if –
  - (a) the persons entitled to notice of the act agree 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 registered person has transacted or may transact deposit-taking business that paragraph (1) should not have effect, or should cease to have effect in a particular case, or that the period specified in paragraph (1) should be reduced, the Court may so order.
- (4) An order under paragraph (3) may be made without prior notice to and without hearing the registered person concerned.
- (5) The order shall have immediate effect, but any person aggrieved by the order may apply to the Court to vary or set aside the order.
- (6) In respect of an application under paragraph (3), the Court may make such order as it thinks fit, and in respect of an application under paragraph (5), the Court may make such order in respect of the relevant order under paragraph (3) as it thinks fit.

### 18A Appeals

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

- (a) a refusal under Article 10;
- (b) a revocation under Article 10;
- (c) an attachment under Article 11(2) of a condition at the time of a person's registration to the registration, or of an additional condition to a person's registration after that time, or variation under that paragraph of the conditions attached to a person's registration;
- (d) the imposition of a requirement under Article 13;
- (e) an objection under Article 14, 15 or 24;
- (f) the giving of a direction under Article 21;
- (g) the refusal of an application under Article 21(5) or granting of such an application only in part;
- (h) a refusal of permission, or grant of permission subject to one or more conditions or restrictions, under Article 39;
- (i) 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) against the giving of a direction that makes a requirement referred to in Article 21(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) against the giving of a direction shall not suspend the operation of the direction.
- (7) An appeal made under paragraph (1)(g) in relation to an application under Article 21(5) shall not suspend the operation of the direction in connection with which the application was made.”.

## 12 New Article 19A

After Article 19 of the principal Law there shall be inserted the following Article–

### “19A Codes of practice

- (1) The Commission may, after consulting any persons or bodies the Commission considers are representative of the interests concerned –
  - (a) issue a code of practice that sets out sound principles for the conduct of deposit-taking business;
  - (b) amend a code of practice; and
  - (c) indicate in a code of practice if and to what extent it is or is not to apply to a class of deposit-taking business or a particular deposit-taking business.
- (2) The Commission shall publish a code of practice in a manner that is likely to bring it to the attention of those affected by it.

- (3) A failure to follow a code of practice does not of itself render a person liable to proceedings of any kind, or invalidate any transaction.
- (4) In proceedings under this Law or otherwise, a code of practice is admissible in evidence if it appears to the court conducting the proceedings to be relevant to a question arising in the proceedings, and is to be taken into account in determining such a question.
- (5) A copy, certified in writing on behalf of the Commission to be an accurate copy –
  - (a) of a code of practice; or
  - (b) of a part of a code of practice,
 is admissible in evidence in legal proceedings as of equal validity with the original and as evidence of any fact stated in it of which direct oral evidence would be admissible.
- (6) If a document purports on its face to be a copy of a code of practice or part of a code of practice, certified in accordance with paragraph (5), it shall be unnecessary for the purposes of paragraph (5) to prove the official position or handwriting of the person signing on behalf of the Commission.”.

### 13 Article 21 substituted

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

#### “21 Power to issue directions

- (1) If it appears to the Commission that –
  - (a) any requirements in relation to the registration of a person are no longer satisfied;
  - (b) it is in the best interests of persons with whom a registered person has transacted or may transact deposit-taking business, or in the best interests of the creditors of a registered person;
  - (c) it is in the best interests of one or more registered persons;
  - (d) it is desirable in order to protect the reputation and integrity of Jersey in financial and commercial matters; 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 registered person, 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 registered person (or any registered person at all);
  - (d) require a registered person or former registered person to cease operations and to wind up its affairs, in accordance with such procedures and directions as may be specified in the direction, which may provide for the appointment of a person to

- take possession and control of all documents, records, assets and property belonging to or in the possession or control of the registered person or former registered person;
- (e) prohibit the issue, re-issue or continuance of a particular advertisement relating to deposit-taking business;
  - (f) require that any particular advertisement relating to deposit-taking business be modified in a specified manner;
  - (g) prohibit the issue, re-issue or continuance of advertisements (relating to deposit-taking business) of any description; or
  - (h) require that advertisements (relating to deposit-taking business) of any description be modified in a specified manner.
- (3) A direction under this Article 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.
  - (8) The record of the conviction of a person for an offence under paragraph (7) is admissible in civil proceedings as evidence of the facts constituting the offence.”.

#### **14 Article 24 substituted**

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

##### **“24 Notification of change of director etc.**

- (1) A person shall not become a director, controller, key person of any class or manager of a registered person unless –
  - (a) he or she has notified the Commission in writing of his or her intention to become such a director, such a controller, key person of such a class or such a manager; and
  - (b) the Commission has notified the person in writing that there is no objection to his or her becoming such a director, such a controller, key person of such a class or such a manager.
- (2) If the intended director, controller, key person or manager is to be a full time employee of the registered person, the notification to the Commission may be made by the registered person instead.
- (3) The Commission shall serve notice on the person in relation to whom notice was received under paragraph (1) or (2), stating whether the Commission objects or does not object to his or her becoming a director, controller, key person of the relevant class or manager, of a registered person, as referred to in paragraph (1).

- (4) A registered person shall give written notice to the Commission of the fact that any person has become or ceased to be a director, controller, key person or manager of the registered person.
- (5) A notice required to be given under paragraph (4) shall be given before the end of the period of 14 days beginning with the day on which the registered person becomes aware of the relevant facts.
- (6) The Commission may by notice in writing wholly or partly dispense from the obligation imposed by paragraph (4) any registered person whose principal place of business is outside Jersey.
- (7) A notice of objection under this Article shall –
  - (a) subject to paragraph (8), specify the reasons for the Commission's objection; and
  - (b) give particulars of the rights of appeal conferred by Article 18A.
- (8) Paragraph (7) shall not require the Commission –
  - (a) to specify any reason that would in the Commission's opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party; or
  - (b) to specify the same reasons, or reasons in the same manner, in the case of notices to different persons about the same matter.
- (9) A person who –
  - (a) fails to give a notice required by paragraph (1)(a) or (4); or
  - (b) becomes a director, controller, key person of any class, or manager, of a registered person without having been served with a notice by the Commission under paragraph (1)(b) to the effect that the Commission does not object to the person's so becoming a director, controller, key person of the relevant class or of any class, or manager,
 shall be guilty of an offence.
- (10) A person shall not be guilty of an offence under paragraph (9) if he or she shows that he or she did not know of the acts or circumstances by which, as the case may be, he or she, or another person, became a director, controller, key person of the relevant class, or manager, of the registered person.
- (11) Despite paragraph (10), if the person subsequently becomes aware of the relevant acts or circumstances, he or she shall be guilty of an offence unless he or she gives the Commission written notice of the fact that he or she, or another person, became, as the case may be, a director, controller, key person of the relevant class, or manager, of the registered person, within 14 days of becoming aware of that fact.
- (12) A person guilty of an offence under paragraph (9) or (11) shall be liable to imprisonment for a term of 2 years and to a fine”.

## 15 Article 28 amended

For Article 28(1) of the principal Law there shall be substituted the following paragraphs–

- “(1) If it appears to the Commission desirable to do so in the interests of the depositors or potential depositors of a registered person, the Commission may appoint one or more competent persons to investigate and to report to the Commission on –
  - (a) the nature, conduct or state of the registered person's business or a particular aspect of it;
  - (b) the ownership or control of the registered person;

- (c) the compliance by the registered person with this Law or with any Regulations, Order or code of practice made or issued under this Law;
- (d) the compliance by the registered person with a condition of the person's grant of registration under this Law; or
- (e) the compliance by the registered person with a direction given to the person under this Law.

(1A) The Commission shall give written notice of the appointment to the registered person concerned.”.

## 16 New Article 37A

After Article 37 of the principal Law there shall be inserted the following Article–

### “37A Commission may appoint a manager in prescribed circumstances

- (1) The Minister may, on the recommendation of the Commission, by Order prescribe circumstances in which the Commission may appoint 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 deposit-taking business.
- (2) An Order made under paragraph (1)–
  - (a) may contain such incidental or supplementary provisions as the Minister thinks necessary or expedient; and
  - (b) may contain different provisions for different classes of deposit-taking business.
- (3) The Commission may, if it is satisfied there exist in respect of a person carrying on deposit-taking business, 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 the person in so far as they relate to the carrying on of deposit-taking business.
- (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 a deposit-taking business.
- (5) A person aggrieved by the Commission's decision to appoint a person in accordance with paragraph (3), may, within 1 month of being informed of the decision, appeal to the Court on the ground that the decision was unreasonable having regard to the circumstances of the case.
- (6) On the appeal the Court may –
  - (a) confirm the decision of the Commission to make the appointment;
  - (b) order the Commission to amend the terms of appointment of the person as the Court may specify; or
  - (c) order the Commission to cancel the appointment.”.

## 17 Article 44 amended

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

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

**18 Article 45 amended**

In Article 45 of the principal Law–

- (a) at the end of paragraph (1)(a) there shall be added“or 37A”.
- (b) for the full-stop at the end of paragraph (1)(d) there shall be substituted“;”;
- (c) after paragraph (1)(d) there shall be added the following sub-paragraph –
  - “(e) to a person by the Commission showing whether or not any person is registered under this Law, including any conditions which apply to that person or which are attached to the registration of that person under Article 11(2)”.

**19 Article 47 amended**

In Article 47 of the principal Law–

- (a) in paragraph (1)(a) for“Article 10(1)’ there shall be substituted “Article 10(3)’;
- (b) for paragraph (1)(b) there shall be substituted the following sub-paragraph –
  - “(b) the power to attach or vary conditions pursuant to Article 11(2)’”.

**20 Article 48replaced**

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

**“48 Public statement**

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



#### **48A Notice of public statement**

- (1) If a public statement identifies any person who is registered, the Commission shall serve notice on the person.
- (2) If a public statement identifies any person who is not registered, and at any time before 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 48C in respect of the statement; and
  - (e) if the statement is issued, in accordance with a decision under Article 48B(3) before the day specified in Article 48B(1) in relation to the statement, give the reasons for issuing it before that day.
- (4) Paragraph (3) shall not require the Commission –
  - (a) to specify any reason that would in the Commission’s opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party; or
  - (b) to specify the same reasons, or reasons in the same manner, in the case of notices to different persons about the same matter.
- (5) In this Article and Articles 48B and 48C, a reference to the identification of a person in a public statement does not include the identification, in the statement, of the Commission or of any other person in their capacity of exercising functions under this Law.

#### **48B Notice period**

- (1) If service is required under Article 48A(1) or (2) in relation to a public statement, the Commission shall not issue the public statement before the expiration of one month following the date of the last such service in relation to the public statement.
- (2) Paragraph (1) shall not apply if –
  - (a) each of the persons identified (within the meaning of Article 48A) in the relevant public statement agrees 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 48C(1), and the

Court orders that the statement not be issued before any specified date or event, the Commission shall not issue the statement before the date or event so specified.

- (6) In a case to which paragraph (1) applies, if an appeal is made under Article 48C(2) to the Court against a decision to issue a public statement, the Commission shall not issue the statement before the day on which that appeal is determined by the Court or withdrawn.

#### **48C Appeals and orders about public statements**

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

#### **21 Article 48D inserted**

Before Article 49 of the principal Law there shall be inserted the following Article–

##### **“48D Transfer of deposit-taking business**

The Schedule shall have effect to regulate any transfer of deposit-taking business from one registered deposit taker to another.”.

#### **22 Article 49 replaced**

For Article 49 of the principal Law there shall be substituted the following Article–

##### **“49 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>[7]</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.”.

## 23 Article 51 amended

For Article 51(2A) and (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.”.

## **24 New Schedule**

The Schedule set out in the Schedule to this Law shall be added at the end of the principal Law.

## **25 Citation and commencement**

- (1) This Law may be cited as the Banking Business (Amendment No. 6) (Jersey) Law 200.
- (2) This Law shall come into force 7 days after it is registered.

## **SCHEDULE**

(Article 24)

### **NEW SCHEDULE**

#### **“SCHEDULE**

(Article 48D)


#### **TRANSFER OF DEPOSIT-TAKING BUSINESS**

- 1 Where it is proposed to carry out a scheme under which the whole or part of the deposit-taking business carried on in or from within Jersey by a registered person (the ‘transferor’) is to be transferred to another body whether incorporated or not (the ‘transferee’) the transferor or transferee may apply to the Court for an order sanctioning the scheme.
- 2 If such a scheme involves a compromise or arrangement the provisions of Articles 125 to 127 of the Companies (Jersey) Law 1991<sup>[8]</sup> shall have effect in the case of a company to which that Law applies as regards that compromise or arrangement, but without prejudice to the operation of the provisions of this Schedule in relation to the scheme.
- 3 The Court shall not determine an application under this Schedule unless the application is accompanied by a report on the terms of the scheme by an independent auditor and the Court is satisfied that the requirements of paragraph 4 have been complied with.
- 4 Those requirements are –
  - (a) that a notice has been published in the Jersey Gazette stating that the application has been made and giving the address of the offices at which, and the period for which, copies of the documents mentioned in sub-paragraph (d) will be available as required by that sub-paragraph;
  - (b) except where the Court has otherwise directed, that a statement –
    - (i) setting out the terms of the scheme, and
    - (ii) containing a summary of the report mentioned in paragraph 3 sufficient to indicate the opinion of the auditor on the likely effects of the scheme on the customers of the transferor and transferee concerned,has been sent to each of those customers and to every member of the transferor and transferee;
  - (c) that a copy of the application to the Court, of the report mentioned in paragraph 3 and of any statement sent out under sub-paragraph (b) has been served on the Commission and that a period of not less than 21 days has elapsed since the date of service;
  - (d) that copies of the application to the Court and of the report mentioned in paragraph 3 have been open to inspection at offices in Jersey of the transferor and transferee for a period of not less than 21 days beginning with the date of the first publication of a notice in accordance with sub-paragraph (a).
- 5 The transferor or transferee shall, on payment of such fee as may be prescribed by rules of court, furnish a copy of the application and of the report mentioned in paragraph 3 to any person who asks for one at any time before an order sanctioning the scheme is made on the application to the Court.
- 6 On an application to the Court under this Schedule –
  - (a) the Commission; and

- (b) any person (including any employee of the transferor or the transferee) who alleges that the person would be adversely affected by the carrying out of the scheme,

shall be entitled to be heard.

- 7 The Court shall not make an order sanctioning the scheme unless it is satisfied that the transferee is, or immediately after the making of the order will be, authorized to carry on the deposit-taking business to be transferred under the scheme.
- 8 No transfer described in paragraph 1 shall be carried out unless the scheme relating to the transfer has been sanctioned by the Court in accordance with this Schedule.
- 9 Where the Court makes an order under this Schedule sanctioning a scheme, the Court may, either by that order or by a subsequent order, make provision for all or any of the following matters –
  - (a) the transfer to the transferee of the whole or a part of the undertaking and of the property or liabilities of the transferor;
  - (b) the allotting or appropriation by the transferee of any shares, debentures, policies, deposits or other like interests in the transferee which under the scheme are to be allotted or appropriated by the transferee to or for any person;
  - (c) the continuation by or against the transferee of any legal proceedings pending by or against the transferor;
  - (d) the dissolution, without winding up, of the transferor;
  - (e) such incidental, consequential and supplementary matters as are necessary to secure that the scheme shall be fully and effectively carried out.
- 10 Where such order provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee, and in the case of any property, if the order so directs, freed from any other hypothec, security interest or other charge which is by virtue of the scheme to cease to have effect, except that property so transferred vests in the transferee subject to any obligations and liabilities however arising that bound the transferor in relation to that property on the date of the order.
- 11 Where a scheme is sanctioned by an order of the Court under this Schedule the transferee shall, within 10 days from the date on which the order is made or such longer period as the Commission may allow, deposit 2 copies of the order with the Commission.
- 12 A person who fails to comply with paragraph 5 shall be guilty of an offence and liable to a fine of level 4 on the standard scale.
- 13 A person who fails to comply with paragraph 11 shall be guilty of an offence shall be liable to a fine of level 3 on the standard scale.
- 14 In this Schedule –
  - ‘arrangement’ includes a reorganization of a company’s share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods;
  - ‘customer’, in respect of a transferor or transferee, means –
    - (a) a person who has money deposited with the transferor or transferee;
    - (b) a person who has money borrowed from the transferor or transferee; or
    - (c) a person who owes to the transferor or transferee interest or any other obligation on money borrowed from the transferor or transferee;



‘liabilities’ includes duties;

‘obligations’ includes a requirement or restriction imposed by an enactment affecting the development, use or disposition of property or a transaction in relation to property;

‘property’ includes property, rights and powers of every description.”.

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[1] *IOSCO – International Organisation of Securities Commissions*

[2] *IAIS – International Association of Insurance Supervisors*

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[1] *chapter 13.075*

[2] *chapter 13.450*

[3] *chapter 24.750*

[4] *chapter 13.100*

[5] *chapter 13.225*

[6] *chapter 13.425*

[7] *chapter 15.360*

[8] *chapter 13.125*