

STATES OF JERSEY

r

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

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

STATES GREFFE



Jersey

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

European Convention on Human Rights

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

In the view of the Minister for Economic Development the provisions of the Draft Financial Services (Amendment No. 4) (Jersey) Law 200 are compatible with the Convention Rights.

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

REPORT

PROPOSALS TO CHANGE THE FINANCIAL SERVICES (JERSEY) LAW 1998 (the “Law”)

The principal changes to the Law proposed by this amending law (“**Amendment No. 4**”) fall into one of two categories. Some are to ensure that the regulation of relevant financial service business can be demonstrated to be consistent with current international best practice. Other changes are 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. Most of the changes in these categories are also being made to the other three laws that regulate the financial services industry in Jersey or are being made in order to increase consistency in statutory powers and provisions across all four of those laws.

Consistency with International Standards

Article 4 of Amendment No. 4 will expand the criteria for refusing an application for registration and considering the revocation of a registration, most especially on the grounds of any of certain offences having been committed.

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 the standard set by IOSCO^[1] Principle 4 in respect of being able to impose sanctions based on objective criteria for entities and individuals.

Changes to Articles 13, 14, 15 and 32 of the Law (by Articles 7, 8, 9 and 13 respectively of Amendment No. 4) are also being proposed to make explicit in the Law an aspect of regulation that has been operating for some time. By means of these Articles, the regime that governs the acceptability of directors and shareholder controllers etc., (“**Principal Persons**”) of registered businesses will also apply to Compliance Officers, Money Laundering Compliance Officers and Money Laundering Reporting Officers, together referred to as “**Key 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 prescribed criteria. At the same time, the Law will also extend the existing criminal sanctions for breaching any of the requirements, and all the usual protections including a right of appeal to the Royal Court.

Under the powers described above the Commission is able to debar someone from holding any of a limited range of appointments with a particular registered business. Very occasionally, for the protection of the public or of the Island’s reputation as a finance centre, or for similar reasons, it can be appropriate to apply the prohibition more widely, whether in terms of the types of prohibited employment or the range of financial services businesses regulated in Jersey, or both. The ability to apply such a ban is already available under the wide powers of Article 23 of the Law, however, this is not readily apparent. Article 11 of Amendment No. 4 therefore proposes change to Article 23 that is intended to remove any doubt. IAIS^[2] Core Principle 15 expressly stipulates that the supervising authority should have this power, but it is also implied by IOSCO Principle 21 and it is believed that there should be consistency in its provision across all of the laws regulating the finance industry.

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.

Article 6 of Amendment 4 introduces completely new provisions to the Law, which are to ensure compliance with IOSCO Objectives that are part of Principle 21. These new provisions will require a registered business to publicise in a manner directed by the Commission both the fact that it has been registered and 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 the usual safeguard of a right of appeal against any unreasonable decisions of the Commission. The purpose of the IOSCO requirement and the new provisions is to ensure that users of the services

provided by the business have access to relevant information concerning that business.

The same IOSCO Principal, and therefore the same reason, lies behind the other new requirement that Amendment 4 proposes to introduce to the Law, by means of Article 14. The changes that this will make to Article 38 will allow the Commission to publish on its website the names of the senior managers of each registered business and of anyone authorised to act in the name of the business. For Jersey, it is proposed that the requirement should be taken to mean that it will only apply to a registered business that carries on investment business and that the identities to be disclosed will be those who are directors or who otherwise undertake the function of dealer, discretionary investment manager, adviser, or supervisor. There is a small risk that the IMF assessors may not accept that this interpretation of the requirement includes all possible positions, however, it is felt that the scope is reasonable and proportionate. The information to be disclosed on each person will be no more than that person's name and the position he or she holds with respect to the business concerned.

ECHR

The one part of Amendment No. 4 that falls within the category of improving compatibility with ECHR is Article 12 which makes the change to the provisions of the Law for the Commission to make public statements (Article 25), 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 registered business that has been found not to have complied with essential requirements; or it warns the public of potential financial risks, such as from an advertisement by an unauthorised business. The Commission currently only issues public statements to “name and shame” after a full investigation including formal discussions with the person. The amendment will go one step further and ensure that the person will have at least one month's notice of publication in order 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. It is proposed that the Commission should have the authority to decide whether the urgency of the circumstances justify the issuing of the public statement with only a reduced period of notice, or simultaneously with the written notice. Generally, written notice will still have to be given to each person named in the public statement, and this will have to include the reasons for reducing the notice period. 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 23.

Minor changes

The following minor changes are also included in Amendment No. 4 –

- The correction of a drafting error in Article 11 of the Law, which is concerned with the procedure that applies when an application for a licence is refused, a licence is revoked, an attached condition is varied or revoked, or a new condition is attached. In all these situations, the Commission is required to give written notice to the person affected and its decision is delayed for one month, unless the person affected requests otherwise. In addition, the Law currently provides that if the Commission can show that the best interests of the customers or clients of the business are paramount, then the court may order that the period of notice be *increased*. However, it is proposed that in such circumstances, what should happen (and what was really intended), is that the court should be able to rule that the notice period be *reduced*, even if such reduction has not been requested by the business concerned.

In making this change, the opportunity has also been taken to clarify the scope of the court's order making powers in relation to such applications.

- A re-statement of Article 40, 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 42, 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.

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 Financial Services (Amendment No. 4) (Jersey) Law 200 are compatible with the Convention Rights.

Explanatory Note

This proposed Law would amend the Financial Services (Jersey) Law 1998 –

- (a) to make the Jersey Financial Services Commission’s supervisory powers in relation to financial services 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 Financial Services (Jersey) Law 1998 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 4 of the principal Law to harmonize, with the provisions in other financial services Laws, the ancillary powers associated with the power to make Orders and Regulations about definitions.

Article 4 amends Article 9 of the principal Law to give more detail to 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 relating to misconduct are set out in detail.

Article 5 amends Article 11 of the principal Law with respect to the Court’s power to reduce the normal period of notice for certain actions of the Commission concerning registration.

Article 6 introduces a more elaborate provision (inserting Article 11A into the principal Law) about displaying certificates of registration and displaying conditions of registration, again following new standard wording.

Article 7 replaces Article 13 to make it clear that, in deciding whether to object to a person’s having a position of control or a controlling shareholding 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 and –

- (a) to extend the Article to cover objections to key persons;
- (b) to impose a delay on such an objection’s coming into effect;
- (c) to allow this delay to be shortened in some cases;
- (d) to require a notice of objection to set out the reasons for the objection;
- (e) to give particulars of the right of appeal against the objection.

Article 8 amends Article 14 of the principal Law to make more comprehensive the 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 an 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 replaces Article 15 of the principal Law with revised offence provisions relating to Article 14 of the principal Law.

Article 10 makes a minor change to the effect that a power to give directions under Article 16(2) of the principal Law includes a power to vary them by means of another direction.

Article 11 replaces Article 23 of the principal Law with a general power for the Commission to give directions for the enforcement of the Law. The new Article 23 (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 financial services context, can require a business to stop operations, can stop financial services advertisements from being published or require corrective advertisements to be published.

The new Article 23 goes on –

- (a) to require a notice of a direction to set out the reasons for the direction and to give various details of the direction;
- (b) to give particulars of the right of appeal against the objection;
- (c) to provide for a person affected to be able to apply for the withdrawal of a direction or to appeal against it.

Article 12 replaces Article 25 of the principal Law with new, more elaborate, Articles 25 – 25C, 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 25). But under the new Article 25A, the Commission has to give notice of the public statement to persons that the statement names. Under the new Article 25B, 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 25C).

Article 13 amends Article 32 of the principal Law to give the Commission more comprehensive powers to obtain information from a business and from persons associated with a business, including persons in the new category of key persons (See also the notes on *Articles 2* and *8*.)

Article 14 amends Article 38 of the principal Law to make it clear that the Commission can publicly disclose whether a business is registered and details of the conditions attached to the registration of a business as well as the names of certain persons associated with a business.

Article 15 tidies Article 40 of the principal Law, which deals with the service of notices under the Law. The reworded Article 40 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 16 amends Article 42 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 17 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 FINANCIAL SERVICES (AMENDMENT No. 4) (JERSEY) LAW 200

Arrangement

Article

<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Article 1 amended</u>
<u>3</u>	<u>Article 4 amended</u>
<u>4</u>	<u>Article 9 amended</u>
<u>5</u>	<u>Article 11 amended</u>
<u>6</u>	<u>New Article 11A</u>
<u>7</u>	<u>Article 13 etc. substituted</u>
<u>8</u>	<u>Article 14 replaced</u>
<u>9</u>	<u>Article 15 substituted</u>
<u>10</u>	<u>Article 16 amended</u>
<u>11</u>	<u>Article 23 amended</u>
<u>12</u>	<u>Article 25 replaced</u>
<u>13</u>	<u>Article 32 amended</u>
<u>14</u>	<u>Article 38 amended</u>
<u>15</u>	<u>Article 40 substituted</u>
<u>16</u>	<u>Article 42 amended</u>
<u>17</u>	<u>Citation and commencement</u>



Jersey

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

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

Adopted by the States [date to be inserted]

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

Registered by the Royal Court [date to be inserted]

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

1 Interpretation

In this Law “principal Law” means the Financial Services (Jersey) Law 1998^[1].

2 Article 1 amended

In Article 1(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 19;”;

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

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

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

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

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

the employees in the conduct of the business of the registered person;”;

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

- (b) 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 4 amended

In Article 4 of the principal Law –

- (a) paragraph (3) shall be deleted;
- (b) for paragraph (4) there shall be substituted the following paragraph –

“(4) An Order or Regulations under this Article may exclude or modify the effect of the Order or the Regulations on any other enactment which is expressed to have effect in relation to financial service business within the meaning of this Law.”.

4 Article 9 amended

In Article 9 of the principal Law –

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

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

(i) an offence (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^[2],

(C) the Collective Investment Funds (Jersey) Law 1988^[3],

(D) the Insurance Business (Jersey) Law 1996^[4],

(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) in paragraph (3)(e)(iv) the word “or” shall be deleted;

- (c) after paragraph (3)(f) there shall be inserted the following sub-paragraph –

“;

(g) the person who is the applicant has failed to comply with a direction given to the person at any time under Article 16 or 23.”.

5 Article 11 amended

In Article 11 of the principal Law –

- (a) in paragraph (1)(b) after the word “determined” there shall be inserted the words “by the Court”;
- (b) in paragraph (4) for the word “increased” there shall be substituted the word “reduced”;
- (c) for paragraphs (6) and (7) there shall be substituted the following paragraphs –

- “(6) An order under paragraph (4) shall have immediate effect, but any person aggrieved by the order may apply to the Court to vary or set aside the order.
- (7) In respect of an application under paragraph (4), the Court may make such order as it thinks fit, and in respect of an application under paragraph (6), the Court may make such order in respect of the relevant order under paragraph (4) as it thinks fit.”.

6 New Article 11A

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

“11A Display of registration certificate and conditions

- (1) When the Commission registers a person under Article 9(1), it may give that person notice in writing with reasons of the manner in which that person shall display or otherwise make available to members of the public –
 - (a) that person’s registration certificate, or the information contained in the certificate, or both; and
 - (b) a record of such conditions as the Commission may specify –
 - (i) that are prescribed under Article 10(1) and apply to that person,
 - (ii) that are prescribed under Article 10(1) and apply to the carrying on of financial service business by that person, or
 - (iii) that are attached to the registration of that person under Article 10(2).
- (2) Where the Commission under Article 10(2) amends, varies or substitutes a condition or attaches any new condition to the registration of that person it may give that person notice in writing with reasons of the manner in which that person shall display or otherwise make available to members of the public a record of the condition as amended, varied or substituted or the new condition, as the case may be.
- (3) The Commission may at any time amend, vary, substitute or revoke any requirement in any notice it has given to a person under paragraph (1) or (2) by further notice in writing with reasons to the registered person.
- (4) Without prejudice to the generality of paragraphs (1), (2) and (3), a notice under any of those paragraphs may require the certificate, information or record of conditions, as the case may be, to be displayed at any address at which the registered person carries on financial service business or to be published on the internet, or both.
- (5) A notice given under paragraph (1), (2) or (3) shall give particulars of the rights of appeal conferred by paragraph (9).
- (6) A notice under paragraph (1) shall take effect on such date as is specified in the notice.
- (7) Subject to paragraph (8), a notice given under paragraph (2) or (3) shall not take effect before whichever is the latest of the following –
 - (a) one month after the notice is given;

- (b) such date as is specified in the notice for it to take effect;
 - (c) if an appeal is lodged under paragraph (9), the date when the appeal is determined by the Court or withdrawn.
- (8) Paragraph (7) shall not have effect if the Commission and person entitled to the relevant notice agree that it will take effect at a time earlier than that which would apply under paragraph (7).
- (9) Within one month after a person is given notice under paragraph (1), (2) or (3) the person may appeal to the Court on the ground that any requirement contained in the notice is unreasonable having regard to all the circumstances of the case.
- (10) On an appeal under paragraph (9), the Court may make such interim or final order as it thinks fit.
- (11) A registered person who carries on financial service business in breach of requirements in a notice given under this Article which have effect in relation to that business shall be guilty of an offence and liable to a fine of level 2 on the standard scale.”.

7 Article 13 etc. substituted

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

“PART 3

SUPERVISION OF FINANCIAL SERVICE BUSINESS

PRINCIPAL PERSONS, KEY PERSONS AND SHAREHOLDERS

13 Objection to principal persons, key persons or share holdings

- (1) Where it appears to the Commission at any time that, on the information before it, and having regard to the matters set out in Article 9(3), a person who is a principal person, or key person of any class, in relation to a registered person or in respect of whom notice has been given that the person will become such a principal person, or key person of any class, is not a fit and proper person to be a principal person, or key person of that class or of any class, respectively in relation to a registered person, the Commission shall serve on that person and on the registered person concerned a written notice of objection, directing that the person shall not continue to be, or shall not become, a principal person or key person of the relevant class or of any class (as the case requires), respectively.
- (2) Following receipt of a notice under Article 14(2) or (3) that a person has increased his or her holding, or is about to do so, or that the person is about to reduce or dispose of his or her holding, the Commission may serve on that person and on the registered person concerned a written notice of objection, directing that he or she shall not continue to have such increased holding, or shall not increase, reduce, or dispose of the person’s holding, as the case may be.
- (3) A notice of objection served on a person under this Article directing that the person shall not continue to be a principal person, or key person of a particular class or of any class, or shall not continue to have an increased holding shall, subject to paragraph (4), no take effect before –
- (a) the expiration of one month after the notice is given to the person; or
 - (b) the date on which an appeal under paragraph (10) against the notice is determined

by the Court or withdrawn,

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

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

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

- (5) An order under paragraph (4) may be made without prior notice to, and without hearing the registered person concerned.
- (6) An order under paragraph (4) shall have immediate effect, but any person aggrieved by the order may apply to the Court to vary or set aside the order.
- (7) In respect of an application under paragraph (4), the Court may make such order as it thinks fit, and in respect of an application under paragraph (6), the Court may make such order in respect of the relevant order under paragraph (4) as it thinks fit.
- (8) A notice of objection shall –
- (a) if served under paragraph (1), specify the reasons for which it appears to the Commission that the person in question is not fit and proper;
 - (b) if served under paragraph (2), specify the reasons for the objection;
 - (c) draw the attention of the person in relation to whom, or to whose holding, objection is taken, and of the registered person, to the provisions of Article 9(3) and (4), if appropriate;
 - (d) give particulars of the rights of appeal conferred by paragraph (10).
- (9) Paragraph (8)(a) and (b) shall not require the Commission –
- (a) to specify any reason that would in the Commission's opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party; or
 - (b) to specify the same reasons, or reasons in the same manner, in the case of notices to different persons about the same matter.
- (10) A person aggrieved by a notice of objection under this Article may appeal to the Court within one month from the date on which the notice was so served, on the ground that the decision of the Commission is unreasonable having regard to all the circumstances of the case.”.

8 Article 14 replaced

In Article 14 of the principal Law –

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

“14 Notification of change of principal person, key person or shareholding”;

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

9 Article 15 substituted

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

“15 Failure to notify change

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

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

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

10 Article 16 amended

After Article 16(2) of the principal Law 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.”.

11 Article 23 amended

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

“23 Power to issue directions

- (1) If it appears to the Commission in relation to financial service business that –
 - (a) any requirements in relation to the registration of a registered person are no longer satisfied;
 - (b) it is in the best interests of –
 - (i) creditors of a registered person,
 - (ii) persons with whom a registered person has transacted or may transact financial service business (other than trust company business),
 - (iii) persons who have entered or may enter into agreements for the provision of services to be provided by a registered person when carrying on trust company business,
 - (iv) persons who have received or may receive the benefit of services to be provided or arranged by the registered person when carrying on trust company business, or
 - (v) one or more registered persons;
 - (c) it is desirable in order to protect the reputation and integrity of Jersey in financial and commercial matters; or
 - (d) 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 done, or impose any prohibition, restriction or

limitation, or any other requirement, and confer powers, with respect to any transaction or other act, or to any assets, or to any other thing whatsoever;

(b) require that any principal person, key person, or person having functions, in relation to a registered person be removed or removed and replaced by another person acceptable to the Commission;

(c) require that any individual –

(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 formerly registered person to cease operations and to wind up its affairs, in accordance with such procedures and directions as may be specified in the direction, which may provide for the appointment of a person to take possession and control of all documents, records, assets and property belonging to or in the possession or control of the registered person or formerly registered person;

(e) prohibit the issue, re-issue or continuance of a particular financial service advertisement;

(f) require that any particular financial service advertisement be modified in a specified manner;

(g) prohibit the issue, re-issue or continuance of financial service advertisements of any description; or

(h) require that financial service advertisements of any description be modified in a specified manner.

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

(4) The power to give directions under this Article shall include the power by direction to vary or withdraw any direction, as well as the power to issue further directions.

(5) A notice of a direction under this Article shall –

(a) specify the reasons for the giving of the direction;

(b) specify when the direction is to have effect;

(c) give particulars of the provisions of paragraphs (6) and (7); and

(d) give particulars of the rights of appeal conferred by paragraph (8).

(6) Any person to whom a direction is given under paragraph (1) may apply to the Commission to have it withdrawn or varied and the Commission shall withdraw or vary the direction in whole or in part if it considers that there are no longer any grounds under paragraph (1)(a) to (d) which justify the direction or part of the direction concerned.

(7) If the Commission refuses an application under paragraph (6), or grants such an application only in part, it shall give notice in writing of that fact to the applicant.

(8) Any person aggrieved by a direction given to the person under paragraph (1), or a refusal to grant an application under paragraph (6), or the granting of such an application only in part, may appeal to the Court.

(9) Such an appeal may be made only on the ground that the decision to give the direction, to make the refusal or to grant the application only in part (as the case requires) was unreasonable having regard to all the circumstances of the case.

(10) A person's appeal under paragraph (8) shall be lodged with the Court no later than the day that is one month after the day on which notice was served on the person of the

direction, refusal or grant (as the case requires).

- (11) On the appeal, the Court may make such interim or final order as it thinks fit.
- (12) If an appeal is made under paragraph (8) with respect to a direction that makes a requirement referred to in paragraph (2)(c) or (d), the direction shall have no effect until the appeal is determined by the Court or withdrawn.
- (13) In other cases, an appeal made under paragraph (8) with respect to a direction shall not suspend the operation of the direction.
- (14) An appeal made under paragraph (8) in relation to an application under paragraph (6) shall not suspend the operation of the direction in connection with which the application was made.
- (15) A person who fails to comply with any of the provisions of a direction given under this Article shall be guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.
- (16) The record of the conviction of any person for an offence under paragraph (15) shall be admissible in any civil proceedings as evidence of the facts constituting the offence.”.

12 Article 25 replaced

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

“25 Public statements

The Commission may issue –

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

25A Notice of public statement

- (1) If a public statement identifies any person who is registered, the Commission shall serve notice on the person.
- (2) If a public statement identifies any person who is not registered, and at any time before 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 25C in respect of the statement; and
 - (e) if the statement is issued, in accordance with a decision under Article 25B(3) before the day specified in Article 25B(1) in relation to the statement, give the reasons for issuing it before that day.
- (4) Paragraph (3) shall not require the Commission –
- (a) to specify any reason that would in the Commission’s opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party; or
 - (b) to specify the same reasons, or reasons in the same manner, in the case of notices to different persons about the same matter.
- (5) In this Article and Articles 25B and 25C, a reference to the identification of a person in a public statement does not include the identification, in the statement, of the Commission or of any other person in their capacity of exercising functions under this Law.

25B Notice period

- (1) If service is required under Article 25A(1) or (2) in relation to a public statement, the Commission shall not issue the public statement earlier than the expiration of one month from the date of the last such service in relation to the public statement.
- (2) Paragraph (1) shall not apply if –
- (a) each of the persons identified (within the meaning of Article 25A) in the relevant public statement agrees 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 25C(1), and the Court orders that the statement not be issued before any specified date or event, the Commission shall not issue the statement before the date or event so specified.
- (6) In a case to which paragraph (1) applies, if an appeal is made under Article 25C(2) to the Court against a decision to issue a public statement, the Commission shall not issue the statement before the day on which that appeal is determined by the Court or withdrawn.

25C Appeals about public statements

- (1) A person aggrieved by a decision of the Commission under Article 25B(3) may appeal to the Court, in accordance with this Article, against the decision.
- (2) A person aggrieved by a decision of the Commission to issue a public statement that identifies the person may appeal to the Court, in accordance with this Article, against the

decision.

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

13 Article 32 amended

For Article 32(1) of the principal Law there shall be substituted the following paragraphs–

- “(1) The Commission or any duly authorized officer or agent of the Commission may by notice in writing served on a registered person, formerly registered person, or a person who is or was a principal person, or key person, in relation to a registered person or formerly registered person, or any associate of such a principal person, require the person on whom the notice is served –
 - (a) to provide to it or any duly authorized officer or agent of the Commission, at such time and place as may be specified in the notice, information and documents of a specified description;
 - (b) to attend at such place and time as may be specified in the notice and answer questions which the Commission or any duly authorized officer or agent of the Commission reasonably requires the person to answer,being information, documents or questions relating to –
 - (i) the financial service business of the registered person or formerly registered person concerned;
 - (ii) the integrity, competence, financial standing or organisation of that person, of any person who is or was a principal person, or key person, in relation to the registered person or formerly registered person, and of any associate of such a principal person; or
 - (iii) the compliance by any of those persons with this Law and any Regulation, Order or Code of Practice made, or a condition of any grant of registration, or a direction given under this Law,which the Commission, or a duly authorized officer or agent of the Commission, reasonably requires or requires the person to answer for the performance of the Commission's functions under this Law.
- (1A) Where by virtue of paragraph (1) the Commission or any duly authorized officer or agent has power to require the provision of any information or documents from any person mentioned in that paragraph, the Commission, that duly authorized officer or agent shall have the like power to require the provision of such information or documents from any person who appears to be in possession of them.

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

14 Article 38 amended

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

- “(d) to a person by the Commission showing whether or not any person is registered under this Law, including any conditions which are attached to the registration of that person under Article 10(2);
- (da) by the Commission, or any person on its behalf, to the public of the name of –
 - (i) a director of a company that carries on investment business and is registered under this Law,
 - (ii) a director of a company that is a partner in a partnership that carries on investment business and is registered under this Law,
 - (iii) a person employed under a contract of service or a contract for services by a person that carries on investment business and is registered under this Law, such an employee being so employed as –
 - (A) a dealer,
 - (B) a discretionary investment manager,
 - (C) an adviser, or
 - (D) a supervisor;”.

15 Article 40 substituted

For Article 40 of the principal Law, there shall be substituted the following Article–

“40 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 ^[5] 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.”.

16 Article 42 amended

For Article 42(3) and (4) of the principal Law there shall be substituted the following paragraphs–

- “(3) An Order or Regulations made under this Law may contain such transitional, consequential, incidental or supplementary provisions as appear to the Minister or States (respectively) to be necessary or expedient for the purposes of the Order or 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.”.

17 Citation and commencement

- (1) This Law may be cited as the Financial Services (Amendment No. 4) (Jersey) Law 200.
- (2) This Law shall come into force 7 days after it is registered.

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

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

[1] *chapter 13.225*

[2] *chapter 13.075*

[3] *chapter 13.100*

[4] *chapter 13.425*

[5] *chapter 15.360*