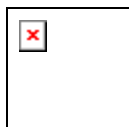


DRAFT FINANCIAL SERVICES COMMISSION (AMENDMENT No. 3) (JERSEY) LAW 200

**Lodged au Greffe on 13th March 2001
by the Finance and Economics Committee**



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REPORT

Introduction

The Financial Services Commission (Amendment No. 3) (Jersey) Law 200 addresses a number of unrelated amendments to the Financial Services Commission (Jersey) Law 1998.

Background

The Financial Services Commission (Jersey) Law 1998 establishes the Jersey Financial Services Commission (the Commission) as a statutory body corporate and sets out, *inter alia*, the functions and powers of the Commission, its guiding principles, and the basis for the appointment of its Commissioners.

Provisions of the Law

The Law will -

- ◆ establish a basis for appointing a Chairman to the Board of Commissioners (the Board), where a nominee is already a member of the Board, and permit the Board to nominate a chairman to preside at its meetings in the absence of both the Chairman and Deputy Chairman (Articles 3 and 7);
- ◆ remove the Commission's role in the promotion of the Island as a centre for financial services, since this is no longer felt to be compatible with its primary regulatory functions. This is also in line with a recommendation in the 1998 Edwards' Report. Promotion of financial services is to be undertaken by a separate promotional body (Article 4);
- ◆ confirm the Commission's ability to exercise such functions in relation to financial services (or such incidental or ancillary matters) as are required or authorised by or under any enactment with effect in the Island, and limit the Commission's liability in damages for anything that it does or omits to do in the performance of these functions, where it acts in good faith. This limitation of liability is already an integral feature of the Commission's regulatory and registration legislation (Articles 2, 4, and 6);
- ◆ amend the wording of the provision giving the Commission powers incidental to its functions, in line with legislation passed by the States to establish a competition regulatory authority in Jersey (Article 5).

Conclusion

The Law will ensure that the Financial Services Commission (Jersey) Law 1998 continues to offer a structure for the efficient and effective operation of the Commission.

There are no additional financial or manpower implications for the States.

Explanatory Note

This draft Law will amend the Financial Services Commission (Jersey) Law 1998 by -

- (1) inserting a wider definition of “enactment” (*Article 2*);
- (2) providing for the States to appoint a Commissioner nominated by the Finance and Economics Committee to be Chairman of the Commission (*Article 3*);
- (3) removing the Commission’s role in promoting the Island as a centre for financial services (*Article 4(a)*);
- (4) giving the Commission responsibility for functions in respect of financial services that are authorized by or under any enactment (*Article 4(b)*);
- (5) revising the wording of the provision giving the Commission powers incidental to its functions (*Article 5*);
- (6) removing any liability in damages in the absence of bad faith of the Commission, the Commissioners or the Commission’s officers, servants or agents in respect of the Commission’s functions under or authorized by or under any enactment, or of the States or any Committee of the States in respect of any functions delegated to the Commission (*Article 6*);
- (7) providing for the Commissioners to elect a Commissioner to chair a meeting in the absence of the Chairman and Deputy Chairman (*Article 7*).

FINANCIAL SERVICES COMMISSION (AMENDMENT No. 3) (JERSEY) LAW 200-

A LAW to amend further the Financial Services Commission (Jersey) Law 1998; sanctioned by Order of Her Majesty in Council of the

(Registered on the _____ day of _____ 200-)

STATES OF JERSEY

The _____ day of _____ 200-

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

ARTICLE 1

In this Law “principal Law” means the Financial Services Commission (Jersey) Law 1998,^[1] as amended.^[2]

ARTICLE 2

In Article 1(1) of the principal Law^[3] after the definition of “the Committee” there shall be inserted the following definition -

“ ‘enactment’ includes any enactment of the United Kingdom or Community instrument (within the meaning of Article 1 of the European Communities (Jersey) Law 1973) which has effect in the Island;”.

ARTICLE 3

In Article 3 of the principal Law^[4] -

(a) for paragraph (1A) there shall be substituted the following paragraph -

“(1A) The States shall appoint -

(a) the Commissioners from persons nominated by the Committee; and

(b) a Commissioner nominated by the Committee to be Chairman of the Commission,

and the appointments shall be debated in camera.”; and

(b) in paragraph (3) the words “who shall preside at any meeting of the Commission which is not attended by the Chairman” shall be deleted.

ARTICLE 4

In Article 5(1) of the principal Law^[5] -

(a) sub-paragraph (b) shall be deleted; and

(b) for sub-paragraph (e)(i) there shall be substituted the following clause -

“(i) as are required or authorized by or under any enactment; or”.

ARTICLE 5

For Article 8(1) of the principal Law^[6] there shall be substituted the following paragraph -

“(1) The Commission shall have power to do anything that is calculated to facilitate or is incidental or conducive to the performance of any of its functions.”.

ARTICLE 6

After Article 8 of the principal Law^[7] there shall be inserted the following Article -

“ARTICLE 8A

Limitation of liability

(1) No person or body to whom this Article applies shall be liable in damages for anything done or omitted in the discharge or purported discharge of any function under, or authorized by or under, this Law or any other enactment unless it is shown that the act or omission was in bad faith.

(2) This Article applies to -

- (a) the Commission, any Commissioner or any person who is, or is acting as, an officer, servant or agent of the Commission or who is performing any duty or exercising any power on behalf of the Commission; and
- (b) the States or any Committee of the States in respect of any delegation of functions to the Commission.”.

ARTICLE 7

For Paragraph 3(b) of Part II of the First Schedule to the principal Law^[8] there shall be substituted the following sub-paragraph -

“(b) the Chairman or, in his absence, the Deputy Chairman, shall preside, but if neither is present the Commissioners present shall elect one of their number to preside;”.

ARTICLE 8

This Law may be cited as the Financial Services Commission (Amendment No. 3) (Jersey) Law 200- and shall come into force on the seventh day following its registration.

^[1] Volume 1998, page 231.

^[2] Volume 1998, page 283 and Volume 1999, page 401.

^[3] Volume 1998, page 233.

^[4] Volume 1998, pages 235 and 283 and Volume 1999, page 401.

^[5] Volume 1998, page 236.

^[6] Volume 1998, page 239.

^[7] Volume 1998, page 240.

^[8] Volume 1998, page 252.