

STATES OF JERSEY



DRAFT BANKING BUSINESS (AMENDMENT No. 7) (JERSEY) LAW 201-

**Lodged au Greffe on 25th January 2011
by the Minister for Economic Development**

STATES GREFFE



Jersey

DRAFT BANKING BUSINESS (AMENDMENT No. 7) (JERSEY) LAW 201-

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. 7) (Jersey) Law 201- are compatible with the Convention Rights.

(Signed) **Senator A.J.H. Maclean**

REPORT

This primary purpose of this Law is to amend the Banking Business (Jersey) Law 1991 (“the principal Law”), so as to allow the Minister for Economic Development (“the Minister”) to make Orders in relation to accounting and audit of persons registered under the principal Law.

This Law also updates the definition in the principal Law of the term “auditor”. At present, that definition refers to Articles 113 and 109 of the Companies (Jersey) Law 1991. As a result of changes to that Law in recent years (in particular the substitution of the whole of Part 16 in April 2010), those Articles are no longer directly relevant to the definition. The amendment under this Law will provide clarity by removing the necessity to trace the combined effect of those changes for the intended meaning to be understood.

The scope and detailed terms of the additional powers for making Orders are equivalent to those already in force under Article 17 of the Financial Services (Jersey) Law 1998. They include the ability for an Order made under these powers to prescribe the circumstances when a failure to comply with the Order will constitute an offence, and the maximum penalty for each offence within the limits set by the enabling power.

The ability to make such Orders is needed to allow the statutory provisions in relation to accounting and financial reporting by persons registered under the principal Law to be re-written and updated in line with proposals that were the subject of a public consultation conducted by the Jersey Financial Services Commission (“the Commission”), between February and April of 2010. The detailed provisions that will give effect to these proposals will be the subject of a further public consultation to be conducted by the Commission when the new Order has been drafted.

The regulatory provisions in relation to auditors of registered persons, including their appointment and their powers and duties, are also being revised across all sectors of the financial services industry in Jersey. These provisions are currently being drafted and will be the subject of a separate public consultation to be conducted by the Commission early in 2011. It is intended that, for those regulated under the principal Law, one new Order will be made that will contain both the new requirements for accounting and the new provisions relating to auditors.

The present provisions relating to financial accounts of registered persons and the appointment of auditors are set out partly in the principal Law, and partly in the Banking Business (General Provisions) (Jersey) Order 2002 (“the GPO”). The introduction of the enabling power will have no direct effect on any financial services business, but it will allow improvements in the way that banking business is regulated in the Island so as to be consistent with international standards and future development of those standards. It will also achieve a greater degree of consistency across all sectors of the industry, which will be especially beneficial to banks that are subject to regulation under other Laws in the Island.

The new powers are to be introduced to the principal Law by substituting them for the existing provisions of Article 33. That Article is currently concerned with the giving of notices to the Commission and others when the appointment of an auditor comes to an end. Those provisions, with or without amendment, are to be transferred to the Order that will be made under the new Ministerial powers. The commencement

provisions of this Law have therefore been determined to ensure that no substitution will take place until that new Order is ready.

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of this Draft Law.

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 January 2011 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. 7) (Jersey) Law 201- are compatible with the Convention Rights.

Explanatory Note

This Law amends the Banking Business (Jersey) Law 1991.

Article 1 defines, for the purposes of this Law, the Banking Business (Jersey) Law 1991 as the “principal Law”.

Article 2 updates the definition of “auditor” in the principal Law by correcting an out-of-date reference to the Companies (Jersey) Law 1991.

Article 3 substitutes Article 33 of the principal Law. Article 33 currently makes provision for a registered person to notify the Commission in certain circumstances concerning resignation, removal and replacement of auditors. That provision is replaced by a general power enabling the Minister to make Orders relating to the accounting and audit of registered persons. The power is equivalent to that which exists in the Financial Services (Jersey) Law 1998 relating to the accounting and audit of registered persons under that Law.

Article 4 sets out the title of the Law and provides that it will come into force on such day as the States may by Act appoint.



Jersey

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Arrangement

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Jersey

DRAFT BANKING BUSINESS (AMENDMENT No. 7) (JERSEY) LAW 201-

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

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 the “principal Law” means the Banking Business (Jersey) Law 1991¹.

2 Article 1 amended

For the definition “auditor” in Article 1 of the principal Law there shall be substituted the following definition –

“ ‘auditor’ has the same meaning as in Part 16 of the Companies (Jersey) Law 1991²;”.

3 Article 33 substituted

For Article 33 of the principal Law there shall be substituted the following Article –

“33 Power to make Orders relating to accounts and auditors

- (1) The Minister may, on the recommendation of the Commission, by Order provide for matters relating to the accounting and audit of registered persons.

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- (2) Without prejudice to the generality of paragraph (1), an Order under paragraph (1) may provide for –
- (a) the keeping of accounting records by registered persons;
 - (b) the duty of a registered person to prepare annual financial statements giving a true and fair view of the registered person’s affairs;
 - (c) the qualification of auditors and their appointment by registered persons;
 - (d) the form and content of auditors’ reports to be obtained by registered persons;
 - (e) the submission of annual financial statements and auditors’ reports to the Commission and the time limits in which they should be submitted;
 - (f) the powers and duties of auditors including their right of access to the accounting and other records of registered persons; and
 - (g) the form and content of financial statements.
- (3) An Order under paragraph (1) may make a contravention of any of its provisions an offence for which a person is liable to either or both of the following –
- (a) imprisonment for a length of time specified in the Order not exceeding 2 years;
 - (b) a fine (whether specified to be on the standard scale or otherwise).”.

4 Citation and commencement

This Law may be cited as the Banking Business (Amendment No. 7) (Jersey) Law 201- and shall come into force on such date as the States may by Act appoint.

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- ¹ *chapter 13.075*
² *chapter 13.125*