

# STATES OF JERSEY



## **DRAFT FINANCIAL REGULATION (MISCELLANEOUS PROVISIONS No. 4) (JERSEY) LAW 201-**

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**Lodged au Greffe on 22nd March 2016  
by the Chief Minister**

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**STATES GREFFE**





Jersey

**DRAFT FINANCIAL REGULATION  
(MISCELLANEOUS PROVISIONS No. 4) (JERSEY)  
LAW 201-**

**European Convention on Human Rights**

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Assistant Chief Minister has made the following statement –

In the view of the Assistant Chief Minister, the provisions of the Draft Financial Regulation (Miscellaneous Provisions No. 4) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator P.F.C. Ozouf**

*Assistant Chief Minister*

Dated: 17th March 2016

## REPORT

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### 1. Introduction

The Draft Financial Regulation (Miscellaneous Provisions No. 4) (Jersey) Law 201- (“the draft Law”) would make amendments to a number of the regulatory Laws administered by the Jersey Financial Services Commission (the “**Commission**”).

The amendments fall into 2 categories. Firstly, to make the Commission’s fee-levying powers consistent; and secondly, to remove certain unnecessary administrative provisions that require the annual renewal of regulatory licences granted under 2 of the regulatory Laws.

The draft Law also makes a miscellaneous amendment dealing with the width of the restriction against carrying on unauthorised business.

The following abbreviations are used in this report –

**BBJL**: Banking Business (Jersey) Law 1991;

**CIFJL**: Collective Investment Funds (Jersey) Law 1988;

**FSJL**: Financial Services (Jersey) Law 1998;

**IBJL**: Insurance Business (Jersey) Law 1996;

**SBJL**: Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008.

### 2. Making consistent the Commission’s fee-levying powers

The Commission has been granted the statutory power under Article 15 of the Financial Services Commission (Jersey) Law 1998 (and under provisions in each of the regulatory Laws that the Commission administers) to require regulated businesses to pay fees.

Following a review of the existing statutory provisions, the need for a number of amendments has been identified, in order to make the fee-levying provisions consistent across the regulatory Laws and ensure that each Law (where it does not do so already) gives the Commission the flexibility to –

- charge periodic fees (such as an annual licence fee); and
- charge discrete fees (i.e. requiring the payment of a fee for the Commission’s carrying-out of a specific requested activity).

The draft Law would amend the BBJL, the FSJL, the IBJL and the SBJL so that they each contain a provision that is the same (*mutatis mutandis*) as existing Article 7(12) of the CIFJL, which provides that: “*The Commission may, in accordance with Article 15 of the Financial Services Commission (Jersey) Law 1998, publish fees that shall be payable by holders of permits [i.e. licence-holders] at such intervals and upon the occurrence of such events as the Commission may determine*”.

It is important to note that the draft Law would make amendments only to the enabling powers. Before the Commission could set any new or revised fee under the proposed amended statutory provisions, it would need to follow the prescribed consultation process set out in Article 15 of the Financial Services Commission (Jersey) Law 1998. As well as requiring consultation, Article 15 also provides for an arbitration mechanism (involving a panel of Jurats) should the Commission be unable to reach agreement on a proposed fee with a body that is representative of those who would be required to pay the fee.

The changes to the BBJL, the FSJL, the IBJL and the SBJL would be effected by means of Articles 1(b), 2, 3(b) and 4 of the draft Law.

### **3. Removing unnecessary administrative provisions**

Under all of the regulatory Laws that the Commission administers, except the BBJL and the IBJL, once a business has been granted a regulatory ‘licence’, it remains valid until such time as it is revoked by the Commission.

However, under Article 9(2) of the BBJL every ‘licence’ (formally known as a “registration”) granted to a bank expires on 31st January each year. This means that all banks must have their registrations renewed every year. This creates a lot of administrative work for both the Commission and the banks. There exists a similar provision in the IBJL requiring ‘licences’ granted thereunder (formally known as “permits”) to be renewed annually.

Articles 1(a) and 3(a) of the draft Law would remove these unnecessary administrative provisions from the BBJL and the IBJL. Article 5 of the draft Law would make a necessary consequential amendment to the Insurance Business (General Provisions) (Jersey) Order 1996.

### **4. Carrying on unauthorised business**

Article 4 of the draft Law makes an amendment to the provision prohibition carrying on unauthorized business in the SBJL. The prohibition, in Article 10 of the SBJL, against carrying on unauthorized business of a kind specified in Schedule 2 to that Law, would be extended to bodies (other than companies) whose registered office is in Jersey, by the amendments made to Article 10 by *Article 4(a) and (b)*.

### **5. Financial and manpower implications**

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

### **6. Human Rights implications**

Article 16 of the Human Rights (Jersey) Law 2000 (the “**2000 Law**”) 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 2000 Law. The Law Officers’ Department have confirmed that they consider that the provisions of the *Draft Financial Regulation (Miscellaneous Provisions No. 4) (Jersey) Law 201-* are compatible with the Convention Rights, and the Chief Minister has therefore been advised to sign the Human Rights Declaration of Compatibility.

No human rights notes are annexed because the Law Officers’ Department has indicated that the draft Law does not give rise to any human rights issues.

## Explanatory Note

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This draft Law would (by *Articles 1(b), 2, 3(b) and 4(c) to (e)*) amend the Banking Business (Jersey) Law 1991, the Collective Investment Funds (Jersey) Law 1988, the Financial Services (Jersey) Law 1998, the Insurance Business (Jersey) Law 1996 and the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, so as to enable the Jersey Financial Services Commission to charge fees to persons who are registered or granted permits, as the case may be, under those Laws at such intervals and upon the occurrence of such events as the Commission may determine. Such fees must be published in accordance with the requirements of Article 15 of the Financial Services Commission (Jersey) Law 1998.

The requirements to renew, annually, registrations made under the Banking Business (Jersey) Law 1991 and permits granted under the Insurance Business (Jersey) Law 1996 would be removed (by *Articles 1(a) and 3(a)*).

The prohibition, in Article 10 of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, against carrying on unauthorized business of a kind specified in Schedule 2 to that Law, would be extended to bodies (other than companies) whose registered office is in Jersey, by the amendments made to Article 10 by *Article 4(a) and (b)*.

*Article 5* would make a minor consequential amendment and *Article 6* would give the title to this Law and bring it into force one month after registration.



Jersey

**DRAFT FINANCIAL REGULATION  
(MISCELLANEOUS PROVISIONS No. 4) (JERSEY)  
LAW 201-**

**Arrangement**

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**Article**

1	Banking Business (Jersey) Law 1991 amended .....	9
2	Financial Services (Jersey) Law 1998 amended .....	9
3	Insurance Business (Jersey) Law 1996 amended .....	10
4	Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 amended .....	10
5	Insurance Business (General Provisions) (Jersey) Order 1996 amended .....	11
6	Citation and commencement .....	11







Jersey

## **DRAFT FINANCIAL REGULATION (MISCELLANEOUS PROVISIONS No. 4) (JERSEY) LAW 201-**

**A LAW** to amend powers conferred on the Jersey Financial Services Commission in relation to fees by amending the Banking Business (Jersey) Law 1991; the Collective Investment Funds (Jersey) Law 1988; the Financial Services (Jersey) Law 1998; the Insurance Business (Jersey) Law 1996 and the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008.

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<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>

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

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### **1 Banking Business (Jersey) Law 1991 amended**

In the Banking Business (Jersey) Law 1991<sup>1</sup> –

- (a) Article 9(2) shall be deleted;
- (b) after Article 48D there shall be inserted the following Article –

#### **“48E Fees**

The Commission may, in accordance with Article 15 of the Financial Services Commission (Jersey) Law 1998<sup>2</sup>, publish fees that shall be payable by registered persons at such intervals and upon the occurrence of such events as the Commission may determine.”.

### **2 Financial Services (Jersey) Law 1998 amended**

In the Financial Services (Jersey) Law 1998<sup>3</sup>, for Article 9(6) there shall be substituted the following paragraph –

“(6) The Commission may, in accordance with Article 15 of the Financial Services Commission (Jersey) Law 1998<sup>4</sup>, publish fees

that shall be payable by registered persons at such intervals and upon the occurrence of such events as the Commission may determine.”.

### 3 Insurance Business (Jersey) Law 1996 amended

In the Insurance Business (Jersey) Law 1996<sup>5</sup> –

- (a) Article 6(2) shall be deleted;
- (b) after Article 43C there shall be inserted the following Article –

#### “43D Fees

The Commission may, in accordance with Article 15 of the Financial Services Commission (Jersey) Law 1998<sup>6</sup>, publish fees that shall be payable by permit holders at such intervals and upon the occurrence of such events as the Commission may determine.”.

### 4 Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 amended

In the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008<sup>7</sup> –

- (a) in Article 10(1), for sub-paragraph (b) there shall be substituted the following sub-paragraph –
  - “(b) a person being –
    - (i) a company incorporated in Jersey, or
    - (ii) a person (other than a natural person or company) whose registered office is in Jersey,shall not carry on such business in any part of the world.”;
- (b) in Article 10(3), for the words “and any company incorporated in Jersey” there shall be substituted the words “and any person mentioned in paragraph (1)(b)”;
- (c) in the heading to Article 20, for the words “Annual fee” there shall be substituted the word “Fees”;
- (d) for Article 20(1) and (2) there shall be substituted the following paragraphs –
  - “(1) A supervisory body may charge a fee payable by each person registered by it under this Law at such intervals and upon the occurrence of such events as the Commission may determine.
  - (2) The Commission may charge a fee payable by each deemed registered person and each regulated person at such intervals and upon the occurrence of such events as the Commission may determine.”;
- (e) in Article 21(1)(c) for the words “an annual fee” there shall be substituted the words “a fee”.

**5 Insurance Business (General Provisions) (Jersey) Order 1996 amended**

Article 3 of the Insurance Business (General Provisions) (Jersey) Order 1996<sup>8</sup> shall be deleted.

**6 Citation and commencement**

This Law may be cited as the Financial Regulation (Miscellaneous Provisions No. 4) (Jersey) Law 201- and shall come into force one month after it is registered.

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- 1 *chapter 13.075*
  - 2 *chapter 13.250*
  - 3 *chapter 13.225*
  - 4 *chapter 13.250*
  - 5 *chapter 13.425*
  - 6 *chapter 13.250*
  - 7 *chapter 08.785*
  - 8 *chapter 13.425.30*