

**DRAFT INVESTMENT BUSINESS (JERSEY) LAW 199**

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by the Finance and Economics Committee

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## Report

The draft Investment Business (Jersey) Law 199 ("the draft Law") will provide for the supervision of stockbrokers, investment advisers and discretionary investment managers and has been developed after an extensive consultation exercise over the past few years.

The primary aim of the draft Law is further to protect the interests of investors, both resident and non-resident, in their dealings with investment businesses conducted in or from Jersey. Investment business legislation exists in many countries and is a requirement in all European Union countries. It is a condition of membership of the London Stock Exchange that members are properly regulated and in this regard a temporary arrangement has had to be entered into for several Jersey stockbrokers pending suitable legislation in Jersey. Jersey, as a member of the International Organization of Securities Commissions ("IOSCO"), is expected to have in place such legislation. The Finance and Economics Committee ("the Committee") believes that it is right for Jersey properly to supervise investment business. As with banking and insurance there is a general public expectation that such businesses should be subject to supervision.

Aside from the protection of the interests of international clients this draft Law will benefit a large number of Jersey residents - any person who, for instance, seeks advice on life assurance or endowment policies, or who wishes to invest his savings or lottery winnings can expect an adviser to be registered under this draft Law. The subordinate legislation and framework, particularly the Codes of Practice to be issued under Article 17 of the draft Law, will provide for the qualifications and experience which such an adviser should possess and detail the financial resources, professional indemnity insurance, separation of client assets from business assets, audit, internal financial controls and such like. Where access or control of clients' funds can be gained there will be a requirement that at least two individuals must be in effective control of the business - known as the "four-eyes principle".

Where someone carries on investment business without registering under the draft Law a prison term of up to seven years awaits (Article 6). Where registration is obtained the Committee will have the power to attach conditions (Article 9) and to approve the persons who can be involved in any significant way with such a business including

the power to require the removal of directors (Articles 11 to 14).

Compliance and investigation powers are provided for in Articles 29 to 32. These contain the ability to request documents and information, to apply to the Court to appoint inspectors to carry out an investigation and to enter and search premises with a Bailiff's warrant. Supplementing the control, investigation and compliance powers, the draft Law provides for a number of offences including breach of a condition (Article 9), failure to provide information to the Committee (Article 25) and obstruction of investigations (Article 32) - all carrying maximum prison sentences of up to 2 years. The provision of false information to the Committee (also Article 25) carries a maximum prison sentence of five years and inducing someone to invest based on false statements (Article 27) carries the maximum penalty found in the draft Law of up to 10 years' imprisonment.

Other provisions within the draft Law include matters relating to accounts and auditors (Articles 15 and 16), the treatment of contracts entered into by unregistered persons (Article 19), powers of intervention and the making of public statements regarding defaulting businesses (Articles 21 to 23), the control of advertising (Article 28) and co-operation with overseas regulators (Article 33). The confidentiality of information obtained under the Law and the restricted ability to disclose such information is found in Articles 34 to 36 which also cover information transfers to or from another regulator.

Articles 24 and 26 provide for the States to make Regulations covering compensation schemes and "cooling-off" periods respectively. "Cooling-off" periods allow investors to change their minds about entering particular investment transactions.

The First Schedule details the investments which are covered by the draft Law and the Second Schedule details exemptions from the draft Law for activities or people who would otherwise require registration. The most important of these exemptions are those covering trustees and trust companies relating to their trust business. These will be supervised under a separate law currently being developed by the Committee.

The draft Law follows closely the United Kingdom's Financial Services Act of 1986. There are a number of reasons for following the United Kingdom Act -

- \* the majority of Jersey investment businesses have United Kingdom connections;
- \* a large number of staff in Jersey are United Kingdom trained or have taken United Kingdom examinations;
- \* the majority of life insurance products come from United Kingdom providers;
- \* many businesses are applying, or are required to apply by their parent companies, regulatory practices as if they were in the United Kingdom;
- \* United Kingdom investment business qualifications are well provided for in the Island by Highlands College and the private sector; and
- \* the Island will be better placed to benefit from solutions found to many of the complex issues which have had to be addressed in the United Kingdom over the past 10 years.

The consultation phase has been managed by a Steering Group under the direction of the Financial Services Department and including representatives of the various professional bodies and associations whose members will be affected by the Law. In addition, representations were considered from financial advisers, investment managers, bankers, stockbrokers, lawyers, accountants, trust and company administrators, insurers and other interested parties. Consultation has also taken place with United Kingdom and international regulators.

The result is a draft Law which the Finance and Economics Committee believes will provide for the effective supervision of investment business in Jersey, be generally acceptable to the industry and compare favourably with investment business legislation in other jurisdictions.

### Explanatory Note

This draft law makes provision for the supervision of investment business.

The draft Law is divided into four Parts.

#### Part I - Preliminary

*Articles 1 and 2* contain interpretation provisions for the purposes of the Law. In particular *Article 2* defines an investment and investment business.

*Article 3* provides that to the extent specified in the *Second Schedule* the activities described in that Schedule shall not be treated as investment business.

*Article 4* gives to the States power to amend the definitions contained in Articles 1 and 2, and to the Committee power to amend the exemptions contained in Article 6, the provisions in the *First Schedule* specifying investments, and those in the *Second Schedule* specifying exemptions.

*Article 5* outlines the powers and duties of the Finance and Economics Committee ("the Committee") under the Law, which include the duty generally to supervise the persons registered under the Law. *Paragraph (2)* confers legal immunity on the Committee, and persons acting on its behalf in the exercise of its functions under the Law, except when acting in bad faith.

#### Part II - Registration of investment business

*Article 6* prohibits (subject to specified exceptions) the carrying on of investment business by persons unless they are registered under the Law and acting in accordance with the terms of their registration.

*Article 7* provides for the method of application for registration. It will be in such form as the Committee may from time to time determine and be accompanied by the prescribed fee.

The Committee may register a person with or without attaching conditions or may refuse to register a person by virtue of *Article 8*.

Where a person is registered, a registration certificate is issued (*paragraph (2)*). *Paragraph (3)* sets out the grounds on which the Committee may refuse to register a person, and *paragraph (4)* sets out the circumstances when registration may be revoked. *Paragraphs (6) and (7)* allow the Committee to prescribe fees to be paid by registered persons.

*Article 9* empowers the Committee to prescribe conditions in respect of registered persons, and different conditions may be prescribed for different classes of persons or different classes of investment business. *Paragraph (2)* allows the Committee to attach conditions to a grant of registration and to vary it or attach new conditions. Failure to comply with a condition is an offence (*paragraph (4)*). *Paragraph (5)* provides that the record of conviction for an offence of failing to comply with a condition is admissible in civil proceedings as evidence of the fact of a breach of condition, whilst *paragraph (6)* allows for conditions prescribed under *paragraph (1)* to indicate that a Code of Practice issued under *Article 17* is to be wholly or partially disregarded.

*Article 10* deals with rights of appeal. Where the Committee revokes a registration, attaches a new condition to a person's registration or varies such a condition, such revocation, new condition or variation will not take effect until whichever is the later of a period of one month or the date on which any appeal against it is determined or abandoned (*paragraph (1)*). *Paragraph (1)* may cease to have effect if the Committee in the interests of persons transacting business with a registered person applies to the Court for an order to that effect (*paragraph (4)*). *Paragraphs (6) and (7)* provide for an application to the Court to vary or set aside the order. Where the Committee refuses to register a person, revokes a registration, attaches conditions to a person's registration or varies a condition, *paragraph (2)* provides that the applicant or registered person may require the Committee to furnish to him a statement in writing of its reason for the decision. A person aggrieved by a decision may appeal under *paragraph (3)* to the Royal Court on the grounds that the decision was unreasonable in all the circumstances.

### Part III - Supervision of investment business

*Article 11* deals with objections to principal persons (as defined in *Article 1(1)*) and to changes in holdings. Where it appears to the

Committee that a principal or intending principal person is not a fit and proper person for that role, it may serve a written notice of objection directing that he shall cease to be so or shall not become one (*paragraph (1)*). *Paragraph (2)* provides that where, pursuant to *Article 12(2)* or (3), the Committee is advised by notice that a person has or is about to increase his holding or to be about to reduce or dispose of his holding, the Committee may serve on that person a written notice of objection directing him not to do so. There is provision in *paragraph (3)* for certain notices not to take effect before the expiration of a period of one month or the date any appeal against notices served under this *Article* (for which provision is made by *paragraph (10)*) is determined or withdrawn.

*Paragraph (4)* provides for the Committee to apply to the Court for an order that *paragraph (3)* shall not have effect or that the period specified in it should be increased. *Paragraphs (6) and (7)* provide for an application to the Court to vary or set aside the order. *Paragraph (8)* sets out the information which a notice of objection must contain. In the reasons for objection to be stated in a notice, the Committee will not be required to disclose confidential information which would be prejudicial to a third party (*paragraph (9)*).

*Article 12* provides that no person shall become a principal person in relation to a registered person (as described in *paragraph (4)*) unless he notifies the Committee of his intention to do so and he receives from the Committee a notice that the Committee has no objection to his doing so (*paragraph (1)*). Similarly, no person who is a shareholder controller (as defined in *Article 1(1)*) may increase, reduce or dispose of his holding to a specified proportion unless he has made and received a similar notification (*paragraph (2)*). *Paragraph (3)* imposes on a registered person who becomes aware of a change in a principal person or a change in holdings to give written notice to the Committee within one month of becoming so aware. A notice from the Committee under *paragraphs (1) or (2)* will lapse if within one year the person has not become a principal person or has not increased, reduced or disposed of his shares, as the case may be (*paragraph (9)*).

*Article 13* makes it an offence to fail to give a notice to the Committee in accordance with *Article 12* and spells out the penalties.

Where a person is guilty of an offence under Article 12, *Article 14* gives to the Committee and to the Court powers in respect of shares in the company where the registered person concerned is a company and the principal person concerned is a shareholder controller of that company. These include the power of the Committee to direct that a transfer of shares is void, that no voting rights shall be exercised in respect of the shares, that no further shares shall be issued in right of them and that no payment shall be made of any sum due on the shares (*paragraph (2)*). The Court may, on the application of the Committee order the sale of the shares (*paragraph (3)*) to take effect after the period when an appeal may be brought under Article 11 or until the determination or withdrawal of the appeal (*paragraph (4)*). The proceeds of sale of shares sold under this Article are to be paid to the Viscount for the benefit of persons beneficially interested in them (*paragraph (6)*). Failure to comply with a notice served or order made under this Article is an offence (*paragraph (9)*).

*Article 15* provides for the Committee to make Orders regarding accounts and auditors (*paragraph (1)*) and provides the maximum penalty for a contravention of any provision of those Orders (*paragraph (3)*).

*Article 16* allows auditors and accountants appointed under the Law to communicate with the Committee whether or not in response to a request made by it any information or opinion on a matter to which the Article is expressed by *paragraphs (2) and (3)* to apply and which is relevant to any function of the Committee under the Law. *Paragraph (4)* allows the Committee, after consultation with bodies representing the interests of accountants and registered persons, to make Orders specifying circumstances in which matters to which the Article applies are to be communicated to the Committee. Failure to comply with such an Order is an offence (*paragraph (5)*).

*Article 17* provides for the preparation of Codes of Practice for the purpose of establishing sound principles for the conduct of investment business.

A registered person is required to arrange proper protection for client assets where he has control of them by *Article 18*, and the Committee may prescribe the manner in which certain client assets are to be protected. A failure to comply is an offence.

*Article 19* governs the enforceability of agreements as defined in *paragraph (1)* when Article 6 has been contravened either by an investment business or a third party. The basic position is as stated in *paragraph (2)* i.e. such agreements are unenforceable; however such an agreement may be enforced where the Court is satisfied that it is just and equitable that it be so (*paragraph (4)*). *Paragraph (2)* makes provision for monies and property to be recovered, together with compensation, which the parties may agree or the Court may, if asked, determine (*paragraph (3)*). *Paragraph (7)* makes it plain that the party with whom the agreement was made may, if he so chooses, treat the agreement as valid and enforce it accordingly.

*Article 20* empowers the Committee to issue directions in relation to investment business where specified circumstances exist. For the most part they would impose requirements on registered persons to do, or not to do things, remove persons, cease operations and prohibit the issue or modify investment advertisements. Failure to comply with directions would constitute an offence.

*Article 21* empowers the Court to issue injunctions and remedial orders on the application of the Committee where there is a likelihood that a contravention or repetition of a contravention of specified provisions of the Law will take place.

Where a person has contravened Article 21 or has failed to comply with a Code of Practice, the Committee may issue a public statement concerning that person. The Committee may also issue a public statement concerning a person believed by the Committee to be carrying on investment business if it would be in the interests of investors or potential investors to do so. (*Article 22*).

*Article 23* describes the Court's powers of intervention on an application by the Committee where it satisfies the Court either that a registered person is not fit to carry on investment business, or that he has or is likely to have committed specified contraventions, or that it is desirable for the protection of persons carrying on investment business. The Court may make his business subject to such supervision, restraint or conditions as it may specify or restore the parties to the position they were in before, and it may require that all assets or assets of a specified

description be transferred by a person whose appointment is approved by the Court.

*Article 24* allows the States by Regulations to establish schemes for compensation where registered persons are unable to satisfy claims in respect of civil liability incurred in connection with investment business.

*Article 25* makes it an offence to provide false information to the Committee or persons entitled to it under the Law and for a registered person to fail to provide information to the Committee.

*Article 26* allows the States to make Regulations providing for the rescission of agreements or withdrawal of offers within such periods as may be provided for in the Regulations.

*Article 27* makes it an offence for a person to make misleading statements and carry out misleading practices in order to induce persons to enter into agreements constituting investment business or exercise rights conferred by such an agreement (*paragraph (1)*). *Paragraph (2)* makes it an offence to engage in market manipulation (e.g. by entering into a spurious transaction at inflated prices); however by virtue of *paragraph (3)* it is a defence for the accused to prove that he reasonably believed that what he did would not create a false or misleading impression.

*Article 28* empowers the Committee to make Orders relating to the contents of advertisements for investment business. The Orders may be of general or particular application. Anyone who issues or causes to be issued in the Island an advertisement which contravenes the Orders will be guilty of an offence, but a defence is provided by *paragraph (4)* in the case of a person whose business it is to publish advertisements, if he is able to prove that he was not responsible for the contents of the advertisement and did not know and had no reason to believe that the publication of it would be an offence.

*Article 29* empowers the Committee to require a registered person to provide it with information and documents and to answer questions concerning them either because it requires it for the performance of its functions under the Law, or because it has grounds for suspecting that the offence of carrying on investment business whilst unregistered, or

that of making misleading statements or carrying on misleading practices has been committed. A power of entry to premises is given to officers or agents of the Committee for the purpose of obtaining the information or documents (*paragraph (3)*). A failure to comply with this Article or an obstruction of a person exercising a power of entry is an offence (*paragraph (9)*).

If the Committee considers it desirable in the interests of persons transacting investment business with a registered person, *Article 30* allows it to appoint one or more competent persons to investigate and report to the Committee on that registered person and his business. A duty is imposed on the registered person, any principal person in relation to him and his officers, employees, bankers, auditors and legal advisers to provide documents required of them by the persons appointed, and to attend before them and answer such questions as may reasonably be required of them (*paragraph (3)*). A power of entry to premises is given to the person appointed (*paragraph (5)*). Persons who fail to provide the documents or to attend to answer questions or obstruct an appointed person in the exercise of his power of entry commit an offence (*paragraph (7)*). A person is not required by virtue of this Article to disclose information or produce documents which would be the subject of legal professional privilege (*paragraph (8)*).

*Article 31* provides for the issue of a Bailiff's warrant to enter and search premises where he is satisfied that there is reasonable cause to believe that a person has carried on investment business without being a registered person contrary to Article 6, or has made misleading statements and, in each case, has failed to comply with a notice to provide information or assist in the investigation of a contravention. A warrant may also be issued where there is a reasonable suspicion that potential evidence of a contravention may be removed from the premises, tampered with or destroyed (*paragraph (1)*). A warrant issued under this Article authorises a police officer and any person named in the warrant to enter premises specified in the warrant and to take documents, copy documents and require any person named in the warrant to provide an explanation of the documents, to answer questions relevant for determining whether the person concerned has been guilty of a contravention, and to state to the best of his knowledge and belief where information or documents may be found (*paragraph (2)*). There is provision for the length of time for which the documents may be retained (*paragraph (4)*) and for copies to be supplied to a person

requiring them for the purposes of his business (*paragraph (5)*) and an exemption for information and documents subject to legal professional privilege (*paragraph (8)*). A person who obstructs the exercise of any power conferred by a warrant commits an offence (*paragraph (6)*).

*Article 32* provides that a person guilty of falsifying, concealing, destroying or otherwise disposing of information or documents, or causing these things to be done in respect of information or documents when he knows or suspects that an investigation is being carried out or about to be carried out under *Article 30*, or that the documents are likely to be required under *Article 12* or *29* is guilty of an offence.

The Committee may exercise those of its powers under the Law specified in *paragraph (1)* of *Article 33* at the request or for the purpose of assisting the authority in another country or territory who there exercises the authority exercised by the Committee under this Law. *Paragraph (3)* sets out the criteria to which the Committee may have regard in deciding whether or not to exercise the powers specified in *paragraph (1)*. Provision is made for the contribution of the costs of the exercise of the Committee's powers by the overseas authority (*paragraph (4)*).

*Article 34* prohibits, with exceptions which are made in the *Article* and by the succeeding *Articles* in this Part of the Law, the disclosure of any information obtained for the purposes of the Law relating to the business or other affairs of a person without the consent of the person to whom it relates and the person from whom it was obtained.

*Article 35* sets out all the disclosures which, notwithstanding *Article 34*, are permitted. These include disclosures which facilitate the discharge of the Committee's functions, including disclosures to the auditor of a registered person, and to qualified persons from whom the Committee seeks advice in order to assist it properly to discharge its functions under the Law, disclosures to supervisory authorities in other countries pursuant to *Article 33*, disclosures in connexion with criminal proceedings under the Law, or disciplinary proceedings against accountants. Further exceptions are made in relation to disclosures to the Attorney General or a police officer by the Committee in connexion with a prosecution in the Island, and to persons responsible for a scheme for compensating investors.

*Article 36* extends *Articles 34* and *35* to information supplied to the Committee by a supervisory authority in a country or territory outside the Island.

#### Part IV - Supplementary

*Article 37* makes provision as to the service of notices.

*Article 38* makes provision for legal proceedings. Partners, directors, managers, secretaries or other similar officers of partnerships, companies or unincorporated associations that have committed offences under the Law are also guilty of the offence if they consented to, connived at or their neglect contributed to the offence (*paragraph (4)*) and the same provision is made with regard to principal persons (*paragraph (3)*). *Paragraph (5)* makes provision for secondary parties to offences under the Law to be dealt with as principal offenders, *paragraph (6)* provides that no proceedings under the Law shall be instituted without the consent of the Attorney General, and *paragraphs (7) and (8)* provide a time limit for the commencement of proceedings.

*Article 39* empowers the Committee to make Orders for the carrying into effect of the Law and for prescribing matters that are to be prescribed.

*Article 40* contains transitional provisions to allow persons who apply for registration under *Article 7* before a date appointed by the Committee to carry on investment business between the date of their application and the date of its being granted or refused, provided it is carried on in accordance with the terms of the application (*paragraph (1)*). *Paragraph (2)* empowers the Committee to impose conditions to apply during this period.

*Article 41* provides for the consequential amendment of the enactments set out in the *Third Schedule*.

*Article 42* gives the short title to the Law and contains commencement provisions.

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## INVESTMENT BUSINESS (JERSEY) LAW 199

*Investment Business (Jersey) Law 199*

**A LAW** to make provision for the supervision of investment business, and generally to provide for purposes connected therewith and incidental thereto, sanctioned by Order of Her Majesty in Council of the

(Registered on the \_\_\_\_\_ day of \_\_\_\_\_ 199 )

## STATES OF JERSEY

The day of \_\_\_\_\_ 1999

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

## PART I

## PRELIMINARY

*Definitions, exemptions and functions*

## ARTICLE 1

## General interpretation

- (1) For the purposes of this Law -
- “applicant” has the meaning given in Article 7;
- “associate”, in relation to a person means -
- (a) the person’s husband, wife, child or stepchild;

- (b) his partner;
- (c) any company of which he is a director;
- (d) where the person is a company, any director or employee of the company, any company in the same group as the company, and any director or employee of such a company; and

- (e) any person with whom the first mentioned person has an agreement, arrangement or other obligation -
- (i) to act together in exercising voting power;
- (ii) with respect to the acquisition, holding or disposal of shares or other interests in a body corporate, partnership or other association;

“auditor” means a person qualified under Article 113 of the Companies (Jersey) Law 1991<sup>1</sup> for appointment as auditor of a company under Article 109 of that Law;

“client” means any person with or for whom a registered person transacts or has transacted investment business;

“client asset” means any property belonging to a client including monies and investments;

“collective investment fund” has the meaning given in Article 2 of the Collective Investment Funds (Jersey) Law 1988;<sup>2</sup>

“the Committee” means the Finance and Economics Committee;

<sup>1</sup> Volume 1990-1991, page 982, and R & O 8941.

<sup>2</sup> Volume 1988-1989, page 137, and R & O 8081.

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“company” (except for the purposes of paragraph 1 of the First Schedule) means any body corporate incorporated with or without limited liability in any part of the world;

“Court” means the Royal Court;

“documents” includes accounts, deeds, writings and information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its provision or production include references to providing or producing a copy of the information in legible form;

“group” in relation to a company, means that company, any other company which is its holding company or subsidiary and any other company which is a subsidiary of that holding company;

“holding company” has the meaning given in Article 2 of the Companies (Jersey) Law 1991;<sup>3</sup>

“industrial and provident society” means a society registered or deemed to be registered under the Industrial and Provident Societies Acts 1965 to 75 as applied to the Island by the Industrial and Provident Societies (Channel Islands) Order 1965;<sup>4</sup>

“investment” has the meaning given in Article 2, subject to any Order under Article 4;

“investment advertisement” means any advertisement containing -

- (a) an invitation to transact investment business to which this Law applies; or

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- (b) information which is intended or might reasonably be presumed to be intended to lead directly or indirectly to the transaction of such investment business,

and includes any means of bringing such an invitation or such information to the notice of any person and references to an advertisement shall be construed accordingly;

“investment business” has the meaning given in Article 2, subject to Article 3 and to any Order under Article 4;

“partnership” includes a partnership constituted under the law of a country or territory outside the Island;

“prescribed” means prescribed by Order;

“principal person” means -

in relation to a person -

- (a) being a sole trader, the proprietor;  
(b) being a company -

- (i) a person who, either alone or with any associate or associates -

- (A) directly or indirectly holds ten per cent or more of the share capital issued by the company; or

- (B) is entitled to exercise or control the exercise of not less than ten per cent of the voting power in general meeting of the company or of any other company of which it is a subsidiary; or

<sup>3</sup> Volume 1990-1991, page 890.

<sup>4</sup> Volume 1966-1967, page 43, and Volume 1979-1981, page 165.

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- (C) has a holding in the company directly or indirectly which makes it possible to exercise significant influence over the management of the company;
- (ii) a director or equivalent by whatever name called;
- (iii) a person in accordance with whose directions, whether given directly or indirectly, any director of the company, or director of any other company of which the company is a subsidiary, is accustomed to act (but disregarding advice given in a professional capacity);
- (c) being a partnership -
- (i) a partner;
- (ii) where a partner is a company, any person who, in relation to that company, falls within subparagraphs (i), (ii) or (iii) of paragraph (b); and

in relation to a person whose registered office and principal place of business is outside the Island, includes a person who, either alone or jointly with one or more other persons, is responsible for the conduct of the person's investment business in the Island; and

in relation to a person who has become bankrupt, includes a person who has been appointed as liquidator or administrator of the person's affairs;

"registered person" means a person registered by the Committee under Article 8 and, where paragraph (1) of Article 40 applies, includes an applicant to whom that paragraph applies for the time being, and "registered" shall be construed accordingly;

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"registration" means registration by the Committee under this Law, and "terms of registration", in a case where paragraph (1) of Article 40 applies, shall be construed as a reference to the terms of a person's application;

"relevant supervisory authority", in relation to a country or territory outside the Island means an authority discharging in that country or territory supervisory functions in respect of banking, insurance or investment business or other financial services corresponding to those of the Committee;

"shareholder controller" has the meaning given by subparagraph (i) of paragraph (b) of the definition of "principal person";

"subsidiary" has the meaning given in Article 2 of the Companies (Jersey) Law 1991;

"unit" has the meaning given in Article 1 of the Collective Investment Funds (Jersey) Law 1988.

(2) Unless the context otherwise requires, references in this Law to any other enactment shall be construed as references to that enactment as amended, extended or applied by or under any other enactment and to any enactment which repeals and re-enacts the first-mentioned enactment with or without further amendment.

(3) A reference in this Law to a numbered Article or Schedule without further identification, is a reference to the Article or Schedule so numbered in this Law.

(4) A reference in any Article or other division of this Law to a paragraph, sub-paragraph or note by number or letter only, and without further identification, is a reference to the paragraph, sub-paragraph or note of that number or letter contained in the Article or division of this Law in which such reference occurs.

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- (5) In this Law a note contained in a paragraph of a Schedule forms part of that paragraph.

## ARTICLE 2

**Meaning of “investment” and “investment business”**

- (1) In this Law, unless the context otherwise requires, “investment” means any asset, right or interest falling within any paragraph of the First Schedule and not excepted by virtue of further provisions contained in that paragraph.
- (2) Subject to Article 3, for the purposes of this Law, “investment business” means the carrying on of any of the following activities, by way of business -
- (a) dealing in investments, that is, buying, selling, subscribing for or underwriting investments, either as principal or as agent;
  - (b) discretionary investment management, that is, deciding as agent to buy, sell, subscribe for or underwrite investments on behalf of a principal;
  - (c) giving investment advice, that is, giving to persons in their capacity as investors or potential investors advice on the merits of -
    - (i) the purchase, sale, subscription for or underwriting of a particular investment; or
    - (ii) the exercise of rights conferred by an investment, to acquire, dispose of, underwrite or convert an investment.
- (3) In sub-paragraph (a) of paragraph (2) -
- (a) “buying” includes any acquisition;

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- (b) “selling” includes any disposal.
- (4) In sub-paragraph (b) of paragraph (3) “disposal” includes -

- (a) in the case of an investment consisting of rights under a contract or other arrangements, assuming the corresponding liabilities under the contract or arrangements;
- (b) in the case of any other investment, issuing or creating the investment or granting the rights or interests of which it consists;
- (c) in the case of an investment consisting of rights under a contract, surrendering, assigning or converting those rights.

## ARTICLE 3

**Exemptions**

The activities described in the Second Schedule shall not be treated as investment business for the purposes of this Law, to the extent which is respectively specified for them in that Schedule.

## ARTICLE 4

**Power to vary definitions and exemptions**

- (1) The Committee may by Order amend -
  - (a) the exemptions conferred by -
    - (i) clause (ii) of sub-paragraph (a) of paragraph (2) of Article 6; and
    - (ii) sub-paragraph (b) of paragraph (2) of Article 6; and

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(b) the First and Second Schedules.

(2) The States may by Regulations amend the definitions and ancillary provisions in Articles 1 and 2.

(3) An Order or Regulations made under this Article may contain different provisions for different classes of person, of business or profession, or of investment business, or with respect to any provisions of this Law.

(4) An Order or Regulations under this Article may contain such transitional, incidental or supplementary provisions as the Committee or the States, as the case may be, thinks necessary or expedient, and may exclude or modify the effect of the Order or the Regulations, as the case may be, on any other enactment which is expressed to have effect in relation to investment business within the meaning of this Law.

## ARTICLE 5

**Functions of the Finance and Economics Committee**

(1) The Committee shall have the powers conferred on it by this Law and the duty generally to supervise the persons registered by it in the exercise of those powers.

(2) Neither the States, nor the Committee nor any person who is a member of the Committee, or who is acting as an officer, servant or agent of the Committee or performing any duty on behalf of the Committee, shall be liable in damages for anything done or omitted in the discharge or purported discharge of the functions of the Committee under this Law or any Regulations or Orders made or purportedly made, under this Law, unless it is shown that the act or omission was in bad faith.

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## PART II

## REGISTRATION OF INVESTMENT BUSINESS

*Investment Business*

## ARTICLE 6

**Prohibition of carrying on unauthorised investment business**

(1) Subject to paragraph (2), and to paragraph (1) of Article 40 -

(a) no person shall carry on investment business in or from within the Island; and

(b) no person who is a company incorporated in the Island shall carry on such business in any part of the world,

unless that person is for the time being a registered person under this Law, and acting in accordance with the terms of his registration.

(2) This Law shall not apply to -

(a) the doing of anything by or on behalf of -

(i) the States, the Viscount or the Judicial Greffier; or

(ii) any other person or institution whom the Committee may from time to time prescribe (subject to such conditions or restrictions as the Committee may prescribe);

(b) any transaction prescribed by the Committee (subject to such conditions or restrictions as the Committee may prescribe).

(3) Any person who holds himself out as carrying on investment business in or from within the Island, and any company

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incorporated in the Island which holds itself out as carrying on investment business shall, for the purposes of this Article, be treated as carrying on such business.

(4) A person who contravenes this Article shall be guilty of an offence and liable to imprisonment for a term not exceeding seven years or a fine, or both.

*Registration*

## ARTICLE 7

**Application for registration**

(1) A person to whom this Law applies who intends to carry on investment business (referred to in this Law as an "applicant") shall make an application to the Committee to be registered under Article 8 for the purposes of this Law.

(2) The Committee may prescribe classes of investment business in respect of which application may be made.

(3) An application under paragraph (1) shall -

- (a) be in such form as the Committee may from time to time determine;
- (b) contain or be accompanied by such information and documents as the Committee may require, relating to the applicant and his business, to persons who are principal persons in relation to the applicant and verified in such manner as the Committee may require; and
- (c) be accompanied by such fees as may be prescribed by the Committee.

(4) At any time after receiving an application and before determining it the Committee may, at its discretion, by written notice order the applicant or any person who is or is to be a principal person in

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relation to the applicant to provide such additional information or documents as the Committee reasonably requires for the determination of the application, verified in such manner as the Committee may require, and such requirements may differ as between different applications.

(5) The Committee may by written notice require the applicant or any person who is to be a principal person in relation to the applicant to provide a report by an auditor or accountant, or other qualified person approved by the Committee, on such aspects of any information and documents required by or under paragraph (3) or (4) as the Committee may specify.

(6) An applicant who, while his application is awaiting determination by the Committee under Article 8 -

- (a) determines to bring about any alteration in; or
- (b) becomes aware of any event which may affect in any material respect,

any information or documents supplied by him to the Committee in connection with the application shall forthwith give written notice of that matter to the Committee.

(7) An applicant may, by written notice to the Committee, withdraw his application under this Article at any time before it is granted or refused, but Article 40 shall not apply to any fresh application made by that applicant, except insofar as the Committee so directs in writing.

## ARTICLE 8

**Registration or refusal of application, or revocation of registration**

(1) On an application under Article 7, the Committee may either register a person with or without attaching conditions under paragraph (2) of Article 9 or may refuse to register a person.

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- (2) Whenever the Committee registers a person it shall issue to that person a registration certificate.
- (3) The Committee may refuse to register a person on one or more of the following grounds, namely that -
- (a) having regard to the information before the Committee as to the -
- (i) integrity, competence, financial standing, structure and organisation of the applicant;
- (ii) persons employed by or associated with the applicant for the purposes of his business or who are principal persons in relation to the applicant;
- (iii) description of business which the applicant proposes to carry on,
- the Committee is not satisfied that the applicant is a fit and proper person to be registered;
- (b) the applicant has at any time and whether or not in relation to the application, in any case where information was required under this Law in any connection -
- (i) failed to provide any such information; or
- (ii) provided to the Committee information which was untrue or misleading in any material particular;
- (c) the applicant has at any time failed to comply with any condition prescribed or attached under Article 9 to a current or previous registration held by him or prescribed or imposed under paragraph (2) of Article 40 in any material respect;

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- (d) the applicant or any person employed by or associated with him for the purposes of his business has been convicted -
- (i) of an offence under this Law; or
- (ii) of any offence involving dishonesty;
- (e) it appears to the Committee, as a result of information provided in pursuance of requirements of or under Article 7, or information otherwise obtained, that -
- (i) in the best interests of persons who may transact investment business with the applicant;
- (ii) in order to protect the reputation and integrity of the Island in financial and commercial matters; or
- (iii) in the best economic interests of the Island;
- the applicant should not be registered; or
- (f) the Committee has reason to believe that at any time there has been a failure on the part of the applicant to follow a Code of Practice issued under Article 17.
- (4) The Committee may revoke a registration under this Law at any time -
- (a) at the request of the registered person;
- (b) if the registered person has not commenced his business in or from within the Island within one year of the date of his registration;
- (c) if the registered person ceases to conduct his business in or from within the Island;



- (d) if the registered person is a company incorporated in the Island and ceases to conduct his business in any part of the world;
- (e) on one or more of the grounds set out in paragraph (3), which shall apply in such a case with the substitution for references to the applicant of references to a registered person;
- (f) if there is a failure to comply with a notice of objection served under Article 11; or
- (g) without prejudice to paragraph (7), if the registered person fails to pay any fee prescribed under paragraph (6).
- (5) Where, under this Article, the Committee refuses to register a person or revokes a registration it shall give notice in writing to the applicant or registered person concerned.
- (6) The Committee may prescribe fees to be paid by a registered person, and the intervals at which such fees are to be paid.
- (7) If a registered person fails to pay any fee prescribed under paragraph (6) there shall be payable by that person a prescribed late payment fee.

## ARTICLE 9

**Conditions of registration**

- (1) The Committee may -
  - (a) prescribe conditions which shall apply to registered persons and to the carrying on of investment business by registered persons; and
  - (b) in like manner, and from time to time, vary any such condition, or prescribe new conditions; and

- such conditions may make different provision for different classes of persons, or for different classes of investment business.
- (2) The Committee may attach conditions to any particular grant of registration under Article 8, and may from time to time vary any such condition or attach new conditions.
  - (3) Where, under paragraph (2), the Committee attaches a condition to a registration, varies a condition attached to a registration, or attaches a new condition, it shall give notice in writing to the registered person concerned.
  - (4) If any registered person fails to comply with any condition prescribed under paragraph (1) or attached under paragraph (2), he shall for each such contravention be liable to imprisonment for a term not exceeding two years or a fine, or both.
  - (5) The record of the conviction of any person for an offence under paragraph (4) shall be admissible in any civil proceedings as evidence of the fact of the breach of a condition prescribed or attached under this Article.
  - (6) Conditions prescribed under paragraph (1) or attached under paragraph (2) may indicate that a Code of Practice issued under Article 17 is to be wholly or partly disregarded for the purposes of paragraph (4) of that Article.

## ARTICLE 10

**Procedure on refusal or revocation, or new or varied condition**

- (1) Where the Committee, acting under Article 8, revokes a registration, or, acting under paragraph (2) of Article 9, attaches a new condition to the registration of a particular person or varies any condition so attached, subject to paragraph (4), such revocation, new condition or variation shall not take effect before the expiration of -
  - (a) a period of one month from the date on which notice in writing was given to the registered person under

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paragraph (5) of Article 8, or, as the case may be, under paragraph (3) of Article 9;

(b) the date on which any appeal against the revocation, new condition or variation is determined or withdrawn,

whichever is later, unless the registered person requests that it should take effect at an earlier date.

(2) Where the Committee -

(a) acting under Article 8, refuses to register a person or revokes a registration; or

(b) acting under paragraph (2) of Article 9, attaches a condition (or a new condition) to the registration of a particular person or varies any condition so attached,

the applicant or the registered person, as the case may be, may require the Committee to furnish him within fourteen days with a statement in writing of its reasons for that decision.

(3) Any person aggrieved by such refusal or revocation, or by the conditions attached to his registration, or by any new condition so attached or by any variation of such conditions, may appeal to the Court, either in term or in vacation, within one month from the date on which notice in writing has been given to him under paragraph (5) of Article 8 or, as the case may be, under paragraph (3) of Article 9 on the ground that the decision of the Committee was unreasonable having regard to all the circumstances of the case.

(4) If, on the application of the Committee, the Court is satisfied that it is desirable in the best interests of persons who have transacted or may transact investment business with a registered person that paragraph (1) should not have effect, or should cease to have effect in a particular case, or that the period suggested in sub-paragraph (a) of that paragraph should be increased, the Court may so order.

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(5) An order under paragraph (4) may be made without prior notice to and without hearing the registered person concerned.

(6) Where an order is made under paragraph (4) it shall have immediate effect but any person aggrieved by such an order may apply to the Court, either in term time or in vacation, to vary or set aside the order on the ground that the order was unreasonable having regard to all the circumstances of the case.

(7) On an application under this Article, the Court may make such order as it thinks fit.

(8) Nothing in paragraph (1) or (2) derogates from or otherwise affects a condition prescribed under paragraph (1) of Article 9.

## PART III

## SUPERVISION OF INVESTMENT BUSINESS

*Principal persons and shares*

## ARTICLE 11

**Objection to principal person and to changes in holdings**

(1) Where it appears to the Committee at any time that, on the information before it, and having regard to the matters set out in paragraph (3) of Article 8 (grounds for refusal to grant registration), a person who is a principal person in relation to a registered person or in respect of whom notice has been given that he will become such a principal person is not a fit and proper person to be a principal person in relation to a registered person, the Committee shall serve on that person and on the registered person concerned a written notice of objection, directing that he shall not continue to be, or shall not become, a principal person.

(2) Following receipt of a notice under paragraph (2) or (3) of Article 12 that a person has increased his holding, or is about to do so, or that he is about to reduce or dispose of his holding, the Committee may serve on that person and on the registered person concerned a written notice of objection, directing that he shall not continue to have such increased holding, or shall not increase, reduce, or dispose of his holding, as the case may be.

(3) A notice of objection served on a person directing that he shall not continue to be a principal person or shall not continue to have an increased holding shall, subject to paragraph (4), not take effect before the expiration of -

- (a) a period of one month from the date of the notification being given to the person;
- (b) the date on which an appeal under paragraph (10) against the notification is determined 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 Committee, the Court is satisfied that it is desirable in the best interests of persons who have transacted or may transact investment business with a registered person that paragraph (3) should not have effect, or should cease to have effect in a particular case, or that the period specified in sub-paragraph (a) of that paragraph should be increased, 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) Where an order is made under paragraph (4) it shall have immediate effect but any person aggrieved by such an order may apply to the Court, either in term time or in vacation, to vary or set aside the order on the ground that the order was unreasonable having regard to all the circumstances of the case.

(7) On an application under this Article, the Court may make such order as it thinks fit.

(8) A notice of objection shall -

- (a) if served under paragraph (1), and subject to paragraph (9), specify the reasons for which it appears to the Committee that the person in question is not fit and proper;

(b) if served under paragraph (2), and subject to paragraph (9), specify the reasons for such objection;

(c) draw the attention of the person to whom or to whose holding objection is taken and of the registered person to the provisions of paragraphs (3) and (4) of Article 8, if appropriate; and

(d) give particulars of the rights of appeal conferred by paragraph (10).

(9) Sub-paragraphs (a) and (b) of paragraph (8) shall not require the Committee to include in its reasons for objection any confidential information the disclosure of which would, in the Committee's opinion, be prejudicial to a third party.

(10) Any person aggrieved by a notice served on him under this Article may appeal to the Court, either in term or in vacation, within one month from the date on which such notice was given, on the ground that the decision of the Committee is unreasonable having regard to all the circumstances of the case; but this paragraph shall not apply to a person in any case in which he has failed to give a notice or become or continued to be a principal person or increased, reduced or disposed of his holding, in circumstances in which his doing so constitutes an offence under Article 13.

## ARTICLE 12

**Notification of change of principal person and changes in holdings**

(1) No person shall become a principal person in relation to a registered person unless he has notified the Committee in writing of his intention to become such a principal person and the Committee has notified him in writing that there is no objection to his becoming such a principal person.

(2) No person who is a shareholder controller shall increase, reduce or dispose of his holding in the company concerned so that the proportion of the share capital or voting rights held by him in the company reaches, exceeds or falls below 20 per cent, 33 per cent or 50 per cent, or so that the company becomes the subsidiary of such person or ceases to be such subsidiary, as the case may be, unless he has notified the Committee in writing of his intention to increase, reduce or dispose of such holding, as the case may be, and the Committee has notified him in writing that there is no objection to his so doing.

(3) Subject to paragraph (5), a registered person shall, before the end of one month beginning with the day on which he becomes aware that any person has become or is about to become, or has ceased to be a principal person in relation to him, or has increased, reduced or disposed of his holding, as the case may be, or is about to do so for the purposes of paragraph (2), give written notice to the Committee of that fact.

(4) For the purposes of paragraphs (1) and (3) a person shall be treated as -

- (a) becoming a principal person in relation to a registered person if, being a principal person in one or more capacities, he becomes a principal person in any additional capacity; and
- (b) ceasing to be a principal person in relation to a registered person if, being a principal person in one or more

capacities, he ceases to be a principal person in one or more such capacities.

(5) The obligations imposed by paragraph (3) shall not apply in any case where a registered person has complied with an equivalent obligation under another enactment under which the Committee exercises a supervisory function or where the Committee by notice in writing waives the obligations, wholly or in part.

(6) A notice under paragraph (1), (2) or (3) that a person has become or is about to become a principal person, or has increased, reduced or disposed of his holding or is about to do so, as the case may be, shall include such information regarding the person in question as may be required by the Committee.

(7) A notice under paragraph (2) or (3) that a person has ceased to be a principal person or has reduced or disposed of his holding or is about to do so, as the case may be, shall include a statement of the reasons for the change.

(8) Following receipt of a notice under paragraph (1), (2) or (3), the Committee may, by giving written notice, require the person concerned or the registered person to provide such additional information or documents as the Committee may require in order to decide whether to serve a notice of objection under Article 11.

(9) A notice given by the Committee under paragraph (1) or (2) that there is no objection shall lapse if the person concerned does not become a principal person, or the increase, reduction or disposal, as the case may be, does not take place within one year following the giving of the notice by the Committee.

## ARTICLE 13

**Failure to notify change of principal person or changes in holdings**

- (1) A registered person who fails to give a notice required by paragraph (3) of Article 12 shall be guilty of an offence and liable to imprisonment for a term not exceeding six months or a fine, or both.
- (2) Any person who -
- (a) fails to give a notice required by paragraph (1) or (2) of Article 12 or becomes a principal person, or increases, reduces or disposes of his holding before having been served with a notice by the Committee under paragraph (1) or (2) of Article 12, as the case may be; or
- (b) becomes or continues to be a principal person or continues to have an increased holding, or increases, reduces or disposes of, his holding, as the case may be, following service on him of a notice of objection under Article 11 in that connection,
- shall be guilty of an offence.

(3) A person shall not be guilty of an offence under paragraph (2) if he shows that he did not know of the acts or circumstances by which he became a principal person or whereby his holding was increased, reduced or disposed of, as the case may be; but where a person subsequently becomes aware of the relevant acts or circumstances he shall be guilty of an offence unless he gives the Committee written notice of the fact that he has become such a principal person or increased, reduced or disposed of his holding, as the case may be, within fourteen days of becoming aware of that fact.

(4) A person guilty of an offence under paragraph (2) or (3) shall be liable to imprisonment for a term not exceeding two years or a fine, or both.

## ARTICLE 14

**Powers of Committee and Court in respect of shares**

- (1) The powers conferred by this Article shall be exercisable where a person has contravened paragraph (2) of Article 13 and -
- (a) the registered person concerned is a company; and
- (b) the person concerned is a shareholder controller of that company.
- (2) The Committee may, by notice in writing served on the person concerned, direct that any specified shares to which this Article applies shall, until further notice, be subject to one or more of the following restrictions -
- (a) any transfer of, or agreement to transfer, those shares or, in the case of unissued shares, any transfer of or agreement to transfer the right to be issued with them, shall be void;
- (b) no voting rights shall be exercisable in respect of the shares;
- (c) no further shares shall be issued in right of them or in pursuance of any offer made to their holder;
- (d) except in liquidation, no payment shall be made of any sum due from the registered person on the shares, whether in respect of capital or otherwise.
- (3) Subject to paragraph (4), the Court may, on the application of the Committee, order the sale of any specified shares to which this Article applies and, if they are for the time being subject to any restrictions under paragraph (2), that they shall cease to be subject to those restrictions.

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- (4) No order shall be made under paragraph (3) in a case where a notice of objection was served under Article 11 -
- (a) until the end of the period within which an appeal can be brought against the notice of objection; and
- (b) if such an appeal is brought, until it has been determined or withdrawn.
- (5) Where an order has been made under paragraph (3) the Court may, on the application of the Committee, make such further order relating to the sale or transfer of the shares as it thinks fit.
- (6) Where shares are sold in pursuance of an order under this Article the proceeds of sale, less the costs of the sale, shall be paid to the Viscount for the benefit of the persons beneficially interested in them; and any such person may apply to the Court for an order that the whole or part of the proceeds be paid to him by the Viscount.

(7) This Article applies -

- (a) to all shares in the registered person referred to in paragraph (1) held by the person concerned, or by any associate of his, which were not so held immediately before he became a principal person, or increased his holding; or which were so held immediately before he reduced or disposed of his holding; as the case may be; and
- (b) where the person concerned became a principal person, or increased his holding, or reduced, or disposed of his holding, as a result of the acquisition or disposal by him or any associate of his of shares in another company, to all the shares in that company which are held by him or any associate of his and were not so held before he became a principal person or increased his holding, or which were so held immediately before he reduced or disposed of his holding.

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- (8) A copy of the notice served on the person concerned under paragraph (2) shall be served on the registered person referred to in paragraph (1) and on any company referred to in sub-paragraph (b) of paragraph (7) and, if it relates to shares held by an associate of the principal person concerned, on that associate.
- (9) Any person who fails to comply with a notice served on him under paragraph (2) or an order made under paragraph (3) shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding two years or a fine, or both.

## ARTICLE 15

**Power to make Orders relating to accounts and auditors**

- (1) The Committee may by Order provide for matters relating to the accounting and audit of registered persons.
- (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 registered persons 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 Committee 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;
- (g) the form and content of financial statements.
- (3) An Order made under paragraph (1) may make a contravention of any of its provisions an offence for which a person is liable to imprisonment for a term not exceeding two years or a fine, or both.

#### ARTICLE 16

##### **Communication by auditors, accountants and others with the Committee**

- (1) No duty to which -
  - (a) an auditor, whether appointed by virtue of an Order made pursuant to Article 15 or not, of a registered person; or
  - (b) a person appointed to make a report under paragraph (5) of Article 7 or paragraph (4) of Article 29,

may be subject shall be regarded as contravened by reason of his communicating in good faith to the Committee, whether or not in response to a request made by it, any information or opinion on a matter to which this Article applies and which is relevant to any function of the Committee under this Law.

(2) In relation to an auditor of a registered person, this Article applies to any matter of which he becomes aware in his capacity as auditor and which relates to the business or affairs of the registered person or of any company which is a holding company or subsidiary in relation to it.

(3) In relation to a person to whom sub-paragraph (b) of paragraph (1) applies, this Article relates to any matter of which he becomes aware in his capacity as the person making the report and

which relates to the business or affairs of the registered person, or of any principal person in relation to whom his report is made.

(4) The Committee may, after consultation with such bodies as appear to the Committee to represent the interests of persons described in sub-paragraph (a) or (b) of paragraph (1) and registered persons, make Orders specifying circumstances in which matters to which this Article applies are to be communicated to the Committee, and it shall be the duty of those persons to whom the Orders apply to communicate a matter to the Committee in the circumstances specified in the Orders.

(5) A person to whom an Order made under paragraph (4) applies who fails to comply with that Order is guilty of an offence and liable to imprisonment for a term not exceeding six months or a fine, or both.

(6) Orders under this Article may make different provision for different cases.

(7) Paragraphs (1) to (6) shall apply to a person who was an auditor of a registered person or formerly registered person at any time during the period of his registration, as they apply to a person who is currently an auditor of a registered person.

*Powers, controls, misleading statements, etc.*

#### ARTICLE 17

##### **Codes of Practice**

(1) The Committee may, after consultation with such persons or bodies as appear to be representative of the interests concerned -

- (a) prepare and issue Codes of Practice for the purpose of establishing sound principles for the conduct of investment business;

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- (b) revise any such Code of Practice by revoking, varying, amending or adding to its provisions; and
- (c) indicate in any such Code of Practice if and to what extent it is or is not to apply to any class of investment business or particular investment business.

(2) The Committee shall cause any Code of Practice issued under this Article to be printed and distributed, and may make such arrangements as it thinks fit for such distribution, including causing copies of the Code of Practice to be put on sale to the public at such price as the Committee considers to be reasonable.

(3) Failure to follow a Code of Practice issued under this Article shall not of itself render any person liable to proceedings of any kind, or invalidate any transaction.

(4) Subject to paragraph (6) of Article 9, in any proceedings under this Law or otherwise, any Code of Practice issued under this Article shall be admissible in evidence if it appears to the court conducting the proceedings to be relevant to any question arising in the proceedings, and shall be taken into account in determining any such question.

(5) A copy, certified in writing on behalf of the Committee to be an accurate copy -

- (a) of a Code; or
- (b) of any part of such a Code,

shall be admissible in evidence in all 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) Where a document purports on its face to be a copy of a Code or part of a Code, certified in accordance with paragraph (5), it shall be unnecessary for the purposes of paragraph (5) to prove the

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official position or handwriting of the person signing on behalf of the Committee.

## ARTICLE 18

**Client assets**

(1) Where a registered person has control of or is otherwise responsible for client assets which he is required to safeguard, he shall arrange proper protection for them by way of segregation and identification of the assets or otherwise in accordance with the responsibilities he has accepted.

(2) Without prejudice to the generality of paragraph (1), the Committee may prescribe the manner in which any classes of client assets are to be protected.

(3) Orders made under paragraph (2) may provide that certain client assets are held by a registered person on trust.

(4) A person who fails to comply with an Order made under paragraph (2) is guilty of an offence and liable to imprisonment for a term not exceeding six months or a fine, or both.

## ARTICLE 19

**Contracts made by or through unregistered persons**

(1) This Article applies to any contract entered into by a person (referred to in this Article as "the provider") in the course of carrying on investment business which is in contravention of paragraph (1) of Article 6.

(2) Subject to paragraph (4), a contract to which this Article applies shall be unenforceable by the provider against other parties to it; and such other parties shall be entitled to recover any money or other property paid or transferred by them under the contract, together with compensation for any loss sustained by them as a result of having parted with it.



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- (3) The compensation recoverable under paragraph (2) shall be such as the parties may agree or as the Court may, on the application of either party, determine.
- (4) The Court may make an order allowing a contract to which this Article applies to be enforced or money or property paid or transferred under it to be retained if it is satisfied that it is just and equitable to do so, having particular regard to whether the provider was, reasonably, unaware of the contravention.

(5) Subject to any order made by the Court under paragraph (4), where a party elects not to perform a contract which is unenforceable against him by virtue of paragraph (2), and by virtue of that paragraph recovers the money paid or other property transferred by him under the contract together with any compensation due under paragraph (2), he shall repay any money and return any other property previously received by him under the contract.

(6) Where any property transferred under a contract to which this Article applies has passed to a third party the references to that property in paragraphs (2), (4) and (5) shall be construed as references to its value at the time of its transfer under the contract.

(7) A contravention of a type referred to in paragraph (1) shall not make a contract illegal or invalid otherwise than as is provided in this Article.

## ARTICLE 20

**Power to issue directions**

(1) If it appears to the Committee in relation to investment business that -

- (a) any requirements in relation to the registration of a registered person are no longer satisfied;

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(b) it is in the best interests of persons who may transact investment business with the registered person or of the creditors of a registered person;

(c) it is desirable in order to protect the reputation and integrity of the Island in financial and commercial matters;

(d) it is in the best economic interests of the Island; or

(e) any investment advertisement issued or proposed to be issued by or on behalf of any person is misleading or undesirable,

the Committee may, whenever it deems it necessary, give, by notice in writing, such directions as it may deem appropriate in the circumstances; and any person to whom the notice is given shall obey, comply with and otherwise give effect to any such direction within the time and in the manner stated in the direction.

(2) Without prejudice to the generality of paragraph (1), a direction under this Article may -

(a) require anything to be done or be omitted 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 any principal person or person having functions in relation to the registered person be removed or removed and replaced by another person acceptable to the Committee;

(c) 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:

- (d) prohibit the issue, re-issue or continuance of a particular investment advertisement or of investment advertisements of any description; or
  - (e) require that any particular investment advertisement or investment advertisement of any description be modified in a specified manner.
- (3) The power to give directions under this Article shall include the power to vary or withdraw any direction, as well as the power to issue further directions.

(4) Where the Committee is satisfied that the circumstances so warrant, it may at any time make public any directions it has given under any of the provisions of this Article.

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

(6) Any person aggrieved by a direction given to him under paragraph (1), or a refusal to withdraw or vary a direction pursuant to paragraph (5), may appeal to the Court, either in term or in vacation, within one month from the date on which the direction was given or refusal was made on the ground that the decision of the Committee was unreasonable having regard to all the circumstances of the case.

(7) Other than with respect to a direction to wind up a person's affairs, an appeal made under paragraph (6) shall not suspend the operation of any direction in connection with which the appeal is made.

(8) On an appeal under paragraph (6) the Court may make such order as it thinks fit with respect to the whole or any part of the direction concerned.

(9) Any person who contravenes or fails to comply with any of the provisions of a direction given under this Article shall be guilty of an offence and liable to a term of imprisonment for a term not exceeding two years or a fine, or both.

(10) The record of the conviction of any person for an offence under paragraph (9) shall be admissible in any civil proceedings as evidence of the facts constituting the offence.

## ARTICLE 21

### **Injunctions and remedial orders**

(1) Where, on the application of the Committee, the Court is satisfied that it is likely that a person will contravene (or continue or repeat a contravention of) -

- (a) paragraph (1) of Article 6;
- (b) any condition prescribed or attached under Article 9 or imposed under paragraph (2) of Article 40;
- (c) any provision of Articles 25, 27 or 28;
- (d) any direction given under Article 20; or
- (e) any Regulation or Order made under this Law,

the Court may if it thinks fit issue an injunction restraining that person from committing (or, as the case may be, continuing or repeating) the contravention.

(2) Where, on the application of the Committee, the Court is satisfied that any person has committed a contravention of a type referred to in any of sub-paragraphs (a) to (e) of paragraph (1), and that

there are steps which could be taken to remedy the contravention, the Court may make an order requiring that person, or any other person who appears to the Court to have been knowingly concerned, to take such steps as the Court may direct to remedy the contravention.

#### ARTICLE 22

##### **Public statements**

(1) The Committee may issue a public statement concerning a person if that person appears to the Committee to have committed a contravention of the type referred to in sub-paragraphs (a) to (e) of paragraph (1) of Article 21 or has failed to comply with a Code of Practice under Article 17.

(2) The Committee may issue a public statement concerning a person who it believes to be carrying on investment business, whether in the Island or elsewhere, if it appears to the Committee to be desirable to do so in the interests of investors or potential investors.

(3) Where a public statement, issued under this Article, concerns a registered person, a formerly registered person or a principal person in relation thereto the Committee shall, at least seven days prior to the publication of the statement, give written notice to the person concerned of the proposed statement and of the reasons for which it intends to act.

#### ARTICLE 23

##### **Powers of intervention**

(1) Where, on the application of the Committee, the Court is satisfied in relation to a registered person that -

- (a) he is not, in terms of sub-paragraph (a) of paragraph (3) of Article 8, a fit and proper person to carry on investment business which he is purporting to carry on, or is not fit to carry it on to the extent which he is purporting to do; or

- (b) he has committed or is likely to commit a contravention of a type referred to in any of sub-paragraphs (a) to (e) of paragraph (1) of Article 21; and

- (c) it is desirable for the protection of persons transacting investment business with him,

the Court may, as it thinks just, make an order making his business subject to such supervision, restraint or conditions, from such time, and for such periods, as the Court may specify, and may also make such ancillary orders as the Court thinks desirable.

(2) If, on an application made under paragraph (1), the Court is satisfied that a person has entered into any transaction in contravention of any of the provisions of Article 6 or 27, the Court may order that person and any other person who appears to the Court to have been knowingly concerned in the contravention to take such steps as the Court may direct for restoring the parties to the position in which they were before the transaction was entered into.

(3) Without prejudice to the generality of paragraph (1) or to paragraph (2), an order issued under either of those paragraphs may include a requirement that all assets, or all assets of a specified description which, at any time while the requirement is in force -

- (a) belong to the registered person concerned; or
- (b) belong to persons transacting investment business with him and are held by or to his order,

shall be transferred to and held by a person whose appointment is approved by the Court (in this Article referred to as an "appointed person").

(4) Where a requirement of a type referred to in paragraph (3) is imposed under this Article, it shall be the duty of the registered person concerned to transfer the assets to the appointed person and to give him all such other assistance as may be required to enable him to discharge his functions in accordance with the requirement.

(5) Assets held by an appointed person in accordance with a requirement of a type referred to in paragraph (3) shall not be released or dealt with except in accordance with directions given by the Court or in such circumstances as may be specified by it.

(6) An order including a requirement of a type referred to in paragraph (3) may relate to assets outside the Island.

(7) The provisions of this Article shall be without prejudice to any right of any aggrieved person to bring proceedings directly in respect of any right such person may otherwise have independently of the Committee.

#### ARTICLE 24

##### **Compensation schemes**

The States may by Regulations establish in relation to any investment business, or to classes of such business, schemes for compensation in cases where registered persons or formerly registered persons are unable, or are likely to be unable, to satisfy claims in respect of any description of civil liability incurred by them in connection with such business, and the provisions of such schemes may be different for different classes of person or for different classes of such business.

#### ARTICLE 25

##### **False information and failure to supply information**

(1) Any person who knowingly or recklessly provides the Committee or any other person entitled to information under this Law with information which is false or misleading in a material particular shall be guilty of an offence if the information is provided -

- (a) in purported compliance with a requirement imposed under this Law or any Regulation or Order made thereunder;

(b) otherwise than as mentioned in sub-paragraph (a) but in circumstances in which the person providing the information intends, or could reasonably be expected to know, that the information would be used by the Committee for the purpose of exercising its functions under this Law.

(2) Any person who knowingly or recklessly provides the Committee or any other person with information which is false or misleading in a material particular shall be guilty of an offence if the information is provided in connection with an application for registration under this Law.

(3) A registered person or formerly registered person shall be guilty of an offence if he fails to provide the Committee with any information in his possession, knowing or having reasonable cause to believe that or being reckless as to whether -

- (a) the information is relevant to the exercise by the Committee of its functions under this Law in relation to the registered person or formerly registered person; and
- (b) the withholding of the information is likely to result in the Committee being misled as to any matter which is relevant to and of material significance for the exercise of those functions in relation to the registered person or formerly registered person.

(4) Any person who knowingly or recklessly provides any person appointed under Article 30 with information which is false or misleading in a material particular shall be guilty of an offence.

(5) A person guilty of an offence under paragraph (1), (2) or (4) shall be liable to imprisonment for a term not exceeding five years or a fine, or both.

(6) A person guilty of an offence under paragraph (3) shall be liable to imprisonment for a term not exceeding two years or a fine, or both.

## ARTICLE 26

**Regulations regarding rescission of agreements and withdrawal of offers**

The States may by Regulations make provision for enabling a person who has entered, or offered to enter, into an agreement relating to investment business with a registered person to rescind the agreement or withdraw the offer within such period and in such manner as may be provided for in the Regulations, and, in particular, but without prejudice to the generality of the foregoing, may make provision -

- (a) for requiring the service of notice with respect to the rights exercisable under the Regulations;
- (b) for the restitution of property and the making or recovery of payments where those rights are exercised;
- (c) for such other matters as are incidental to or connected with any of the above.

## ARTICLE 27

**Misleading statements and practices**

- (1) Any person who -
  - (a) makes a statement, promise or forecast which he knows to be misleading, false or deceptive, or dishonestly conceals any material facts; or
  - (b) recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive,

is guilty of an offence if he makes the statement, promise or forecast or conceals the facts for the purpose of inducing, or is reckless as to whether it may induce, another person (whether or not the person to

whom the statement, promise or forecast is made or from whom the facts are concealed) -

- (i) to enter or offer to enter into, or refrain from entering or offering to enter into, an agreement or arrangement the making of which or performing of which constitutes investment business or would do so but for the Second Schedule; or
- (ii) to exercise, or refrain from exercising, any rights conferred by an investment.
- (2) Any person who does any act or engages in any course of conduct which creates a false or misleading impression as to the market in or the price or value of any investment is guilty of an offence if he does so for the purpose of creating that impression and of thereby inducing another person to acquire, dispose of, subscribe for or underwrite that investment or to refrain from doing so or to exercise, or refrain from exercising, any rights conferred by those investments.
- (3) In proceedings brought against any person for an offence under paragraph (2) it shall be a defence for him to prove that he reasonably believed that his act or conduct would not create an impression that was false or misleading as to the matters mentioned in that paragraph.
- (4) A person guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding ten years or a fine, or both.

## ARTICLE 28

**Control of advertising**

- (1) The Committee may make Orders relating to the issue, form and content of investment advertisements.

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- (2) Orders made under this Article may make different provision for different cases and, without prejudice to the generality of paragraph (1), may in particular -
- (a) prohibit the issue of investment advertisements of any description (whether by reference to the matters set out in paragraph (b), to the persons by whom they are issued or otherwise);
  - (b) make provision regarding the presentation, content, accuracy, effect and implications of investment advertisements, and ancillary matters, and may include provision regarding matters which must be, as well as matters which may not be, included in investment advertisements;
  - (c) provide for exemptions from any prohibition or requirement imposed by the Orders, including exemptions by reference to a person's membership of a class whose membership is determined otherwise than by the Committee.
- (3) Any registered person who issues or causes to be issued in the Island or elsewhere and, subject to paragraph (4), any other person who issues or causes to be issued in the Island, an investment advertisement -
- (a) the issue of which is prohibited by an Order made under this Article;
  - (b) which does not comply fully with, or contravenes in any material respect, any requirement imposed by such an Order; or
  - (c) in circumstances which do not comply in any respect with any requirement imposed by such an Order,

shall be guilty of an offence and liable to imprisonment for a term not exceeding two years or a fine, or both.

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- (4) A person whose business it is to publish or arrange for publication of advertisements shall not be guilty of an offence under this Article if he proves that he received the investment advertisement in question for publication in the ordinary course of his business, that the matters contained in the investment advertisement were not, wholly or in part, devised or selected by him or by any person under his direction or control and that he did not know and had no reason for believing that publication of the investment advertisement would constitute an offence.
- (5) For the purposes of this Article -
    - (a) an investment advertisement issued or caused to be issued by any person by way of display or exhibition in a public place shall be treated as issued or caused to be issued by him on every day on which he causes or permits it to be displayed or exhibited;
    - (b) where an investment advertisement invites the transaction of investment business with a person specified in the advertisement, its issue shall be presumed, unless the contrary is proved, to have been caused by that person.
  - (6) For the purposes of this Article an investment advertisement issued outside the Island shall be treated as issued in the Island if it is directed to persons in the Island or is made available to them otherwise than in a newspaper, journal, magazine or other publication published and circulating principally outside the Island or in a sound or television broadcast transmitted principally for reception outside the Island.

## ARTICLE 29

**General power to require provision of information and documents**

(1) The Committee may by notice in writing served on a registered person, formerly registered person, or a person who is or was a principal person in relation to him, or any associate of such a principal person, require the person on whom the notice is served -

- (a) to provide to it 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 Committee or any duly authorized officer or agent of the Committee reasonably requires him to answer;

being information, documents or questions relating to -

- (i) the investment 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 in relation to him, and of any associate of such a principal person; or
- (iii) the compliance by 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 Committee reasonably requires or requires him to answer for the performance of its functions under this Law.

(2) Where the Committee has reasonable grounds for suspecting that a person is guilty of contravening paragraph (1) of Article 6 (prohibition of unregistered investment business) or Article 27 (misleading statements and practices), the Committee or any duly authorised officer or agent of the Committee may, by notice in writing served on that person or on any other person appearing to be in possession of the information or documents described in this paragraph, require him to do any of the following -

- (a) to provide to it forthwith or at such time and place as may be specified, information or documents specified in the notice being information or documents which the Committee reasonably requires for the purpose of investigating the suspected contravention;
- (b) to attend at such place and time as may be specified in the notice and answer questions which the Committee or any duly authorised officer or agent of the Committee reasonably requires him to answer for the purpose of investigating the suspected contravention.

(3) Any officer or agent of the Committee may, on producing if required evidence of his authority, enter, at a reasonable time, any premises occupied by a person on whom a notice has been served under paragraphs (1) or (2) or any other premises where information or documents are kept by such person for the purpose of obtaining there the information or documents required by that notice, putting the questions referred to in sub-paragraph (b) of paragraph (1) or sub-paragraph (b) of paragraph (2) or of exercising the powers conferred by paragraph (6), as the case may be.

(4) A notice under paragraph (1) may require the person concerned to provide to the Committee a report, by an accountant or other person with relevant professional skill nominated or approved by the Committee, on, or on any aspect of, any of the matters mentioned in paragraph (1); and the notice may require such a report to be in such form as it may specify.

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- (5) Where any person who is required to provide documents under paragraph (2) claims a lien on any such document, the provision shall be without prejudice to the lien.
- (6) The power under this Article to require documents to be provided includes power -
- (a) if the documents are provided, to retain or take copies of them or extracts from them and to require the person providing them, or any person who appears to be in possession of relevant information, is or has been an officer, shareholder controller or auditor or employee of the registered person or formerly registered person in question, as appropriate, to provide an explanation of them; and
- (b) if the documents are not provided, to require the person to whom the requirement was directed to state, to the best of his knowledge and belief, where they are.
- (7) Any documents retained under sub-paragraph (a) of paragraph (6) may be retained -
- (a) for a period of one year; or
- (b) if within that period proceedings to which the documents are relevant are commenced against any person, until the conclusion of those proceedings.
- (8) A person who requires any documents retained under sub-paragraph (a) of paragraph (6) for the purpose of his business and who requests such documents shall be supplied with copies as soon as practicable.
- (9) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this Article or obstructs a person exercising powers conferred by paragraph (3) shall be guilty of an offence and liable to imprisonment for a term not exceeding six months or a fine, or both.

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(10) Nothing in this Article shall require the disclosure or production by a person to the Committee or to a person authorised by it of information or documents which he would in an action in the Court be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in the Court except, if he is a lawyer, the name and address of his client.

(11) A statement made by a person in compliance with a requirement imposed by virtue of this Article may not be used by the prosecution in evidence against him in any criminal proceedings except proceedings under paragraph (9) or Article 25.

## ARTICLE 30

**Investigations on behalf of the Committee**

- (1) If it appears to the Committee desirable to do so in the interests of a person with or in relation to whom a registered person has transacted or could transact investment business the Committee may appoint one or more competent persons to investigate and report to the Committee on -
- (a) the nature, conduct or state of such registered person's investment business or any particular aspect of it;
- (b) his integrity, competence, financial standing or organisation;
- (c) the integrity, competence and financial standing, so far as relevant in the opinion of the Committee, of persons who are principal persons in relation to him, and of associates of such principal persons; or
- (d) the compliance by 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.



(2) The Committee shall give written notice of any such appointment to the registered person concerned.

(3) It shall be the duty of every person who is or was at any material time a registered person under investigation under paragraph (1), a principal person in relation to, or officer, employee, banker, auditor or, subject to paragraph (8), legal adviser of such a registered person, and of any person appointed to make a report in respect of the registered person under paragraph (4) of Article 29 and of any other person who appears to be in possession of relevant information -

- (a) to provide to the persons appointed under paragraph (1), within such time and at such place as they may require, all documents relating to the registered person or formerly registered person which are in his custody or power;
- (b) to attend before them at such time and place as they may require and to answer questions which they reasonably require him to answer for the purposes of the investigation; and
- (c) otherwise to give them all assistance in connection with the investigation which he is reasonably able to give.

and the persons appointed under paragraph (1) may retain or take copies of or extracts from any documents provided to them under sub-paragraph (a).

(4) This Article shall apply in respect of a formerly registered person as it applies to a registered person and to any person who appears to the Committee to be acting or to have acted in contravention of the provisions of paragraph (1) of Article 6 (prohibition of unregistered investment business) or Article 27 (misleading statements and practices) and references in this Article to a "registered person" shall be construed accordingly.

(5) For the purpose of exercising his power under this Article a person appointed under paragraph (1) may enter any premises

occupied by a registered person or formerly registered person or a person who is or was a principal person in relation to him or any associate of such a principal person being investigated by him under this Article or any other premises where information is kept by such a person; but he shall not do so without prior notice in writing unless he has reasonable cause to believe that if such notice were given any documents whose provision might be required under this Article would be removed, tampered with or destroyed.

(6) A person exercising powers by virtue of an appointment under this Article shall, if so required, produce evidence of his authority.

- (7) Any person who -
  - (a) without reasonable excuse fails to provide any document which it is his duty to provide under paragraph (3);
  - (b) without reasonable excuse fails to assist or attend before a person appointed under paragraph (1) when required to do so;
  - (c) without reasonable excuse fails to answer any question which is put to him by a person so appointed with respect to a person under investigation; or
  - (d) obstructs a person in the exercise of the powers conferred by paragraph (5),

shall be guilty of an offence and liable to imprisonment for a term not exceeding six months or a fine, or both.

(8) Nothing in this Article shall require the disclosure or production by a person of information or documents which he would in any action in the Court be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in the Court except, if he is a lawyer, the name and address of his client.

(9) Where any person by whom documents are required to be provided under paragraph (3) claims a lien on any such document, the provision shall be without prejudice to the lien.

(10) A person who is convicted on a prosecution instituted following an investigation under this Article may in the same proceedings be ordered to pay the expenses of the investigation to such extent as may be specified by the Court.

(11) For the purposes of paragraph (10) the expenses of the investigation shall include such sums as the Committee may determine in respect of the cost of staff and overheads.

(12) A statement made by a person in compliance with a requirement imposed by virtue of this Article may not be used by the prosecution in evidence against him in any criminal proceedings except proceedings under paragraph (7) or Article 25.

#### ARTICLE 31

##### **Entry and search of premises**

(1) If the Bailiff is satisfied by information on oath that there is reasonable cause to suspect that -

(a) there has been a contravention of a type referred to in paragraph (2) of Article 29 and that either -

(i) a specified person has failed in any respect to comply with a notice served on him under that paragraph;

(ii) there are reasonable grounds for suspecting the completeness of any information or documents provided by him in response to such a notice; or

(iii) if such a notice were served on a specified person on whom it might be served under that paragraph, it would not be complied with; or documents to which

such a notice might relate would be likely to be removed, tampered with or destroyed; or

(b) (i) if a notice were served under paragraph (8) of Article 12 or paragraph (1) of Article 29, it would not be complied with;

(ii) documents to which a notice might relate would be likely to be removed, tampered with or destroyed;

(iii) a specified person has failed in any respect to comply with a notice served on him under paragraph (8) of Article 12 or paragraph (1) of Article 29;

(iv) a specified person has not provided complete information or documents in response to a notice served on him under those paragraphs;

(v) that a notice served under paragraph (1) or (2) of Article 11, paragraph (2) of Article 14 or paragraph (1) of Article 20 has not been complied with in any respect; or

(vi) any officer or agent of the Committee or person appointed under paragraph (1) of Article 30 has been or may be obstructed in exercising a power of entry under paragraph (3) of Article 29, or paragraph (5) of Article 30, as the case may be.

he may grant a warrant under this paragraph.

(2) A warrant under paragraph (1) may authorise any police officer, together with any other person named in the warrant -

(a) to enter any premises specified in the warrant, using such force as is reasonably necessary for the purpose;

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- (b) to search the premises and obtain information or take possession of any documents appearing to be information or documents of a type referred to in any of the Articles referred to in paragraph (1) or information in relation to matters referred to therein or which otherwise appear to be relevant to the investigation of an offence under this Law, or to take, in relation to any such information or documents, any other steps which may appear to be necessary to preserve them or prevent interference with them;
  - (c) to take copies of or extracts from such documents and to require the person who had possession of them, or any person who appears to be in possession of relevant information, is or has been an officer, shareholder, controller or auditor or employee of the registered person, or formerly registered person, or other person concerned, as the case may be, to provide an explanation of them;
  - (d) to require any person named in the warrant to answer questions relevant for determining any matter arising in connection with this Law; and
  - (e) if the information or documents are not provided, to require any person appearing to be in possession of relevant information, to state, to the best of his knowledge and belief, where they are and how they may be retrieved.
- (3) A warrant under paragraph (1) shall continue in force until the end of the period of one month beginning with the date on which it was issued.
- (4) Any documents of which possession is taken under paragraph (2) may be retained -
- (a) for a period of one year; or

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- (b) if within that period proceedings to which the documents are relevant are commenced against any person, until the conclusion of those proceedings.
- (5) A person who requires any documents of which possession is taken under paragraph (2) for the purpose of his business and who requests such documents shall be supplied with copies as soon as practicable.
- (6) Any person who obstructs the exercise of any power conferred by a warrant issued under this Article or fails to comply with a requirement imposed on him by virtue of sub-paragraphs (c) to (e) of paragraph (2) shall be guilty of an offence and liable to imprisonment for a term not exceeding two years or a fine, or both.
- (7) Where any person from whose premises documents are taken under paragraph (2) claims a lien on any such documents, the possession of such documents by the officer or person concerned and by anyone to whom he passes them shall be without prejudice to the lien.
- (8) Nothing in this Article shall require the disclosure or production by a person of information or documents which he would in an action in the Court be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in the Court except, if he is a lawyer, the name and address of his client.
- (9) A statement made by a person in compliance with a requirement imposed by virtue of this Article may not be used by the prosecution in evidence against him in any criminal proceedings except proceedings under paragraph (6) or Article 25.

## ARTICLE 32

**Obstruction of investigations**

- (1) A person who knows or suspects that an investigation is being or is likely to be carried out under Article 30 or that information

or documents are being or are likely to be required under Articles 12 or 29 shall be guilty of an offence if he falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction of or disposal of, information or documents which he knows or suspects are or would be relevant to such an investigation or are or would be required unless he proves that he had no intention of concealing facts disclosed by the information or documents from persons carrying out such an investigation or requiring such information or documents.

(2) A person guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding two years or a fine, or both.

### ARTICLE 33

#### **Co-operation with relevant supervisory authority**

(1) The Committee may exercise the following powers at the request of or for the purposes of assisting a relevant supervisory authority -

- (a) the power to impose, revoke or vary conditions pursuant to paragraph (2) of Article 9;
- (b) the power to refuse or revoke a registration under paragraph (1) of Article 10;
- (c) the powers of intervention under Article 23;
- (d) the powers relating to information and documents under Article 29;
- (e) the powers of investigation under Article 30;
- (f) the powers of entry under Article 31;
- (g) the power to communicate to the relevant supervisory authority information which is in the possession of the

Committee, whether or not as a result of the exercise of any of the above powers, other than information relating to the identity of persons who have transacted investment business with a registered or formerly registered person unless the persons concerned have consented to such disclosure.

(2) The Committee shall not exercise powers by virtue of this Article unless it is satisfied that the assistance is requested by the relevant supervisory authority only for the purposes of the exercise of one or more of its supervisory functions.

(3) In deciding whether to exercise its powers by virtue of this Article, the Committee may take into account, in particular -

- (a) whether corresponding assistance would be given in that country or territory to the Committee;
  - (b) whether the case concerns the possible breach of a law, or other requirement, which has no close parallel in the Island or involves the assertion of a jurisdiction not recognised by the Island;
  - (c) the seriousness of the case and its importance in the Island and whether the assistance could be obtained by other means;
  - (d) whether it is otherwise appropriate in the public interest to give the assistance sought.
- (4) The Committee may decline to exercise powers under this Article unless the relevant supervisory authority undertakes to make such contribution towards the costs of its exercise as the Committee considers appropriate.
- (5) No information shall be disclosed to a relevant supervisory authority or to any other person under this Article unless the Committee is satisfied that any conditions imposed under paragraph (2) of Article 35 will be complied with.

*Investment Business (Jersey) Law 199**Restrictions on disclosure of information*

## ARTICLE 34

**Restricted information**

- (1) Subject to paragraph (2) and to Article 35, a person who receives information relating to the business or other affairs of any person -
- (a) under or for the purposes of this Law; or
  - (b) directly or indirectly from a person who has so received it,
- shall be guilty of an offence and liable to imprisonment for a term not exceeding two years or a fine, or both, if he discloses the information without the consent of the person to whom it relates and (where sub-paragraph (b) applies) the person from whom it was received.

(2) This Article does not apply to information which at the time of the disclosure is or has already been made available to the public from other sources, or to information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.

## ARTICLE 35

**Permitted disclosures**

- information -
- (1) Article 34 does not preclude the disclosure of
    - (a) by the Committee or any person acting on its behalf, to the Viscount;
    - (b) for the purpose of enabling or assisting the Committee or any person acting on its behalf to discharge their

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functions under this Law, or any other enactment under which they exercise a supervisory function;

- (c) by the Committee or any person acting on its behalf to a relevant supervisory authority pursuant to Article 33;
- (d) to a person showing whether or not any person is registered under this Law;
- (e) with a view to the investigation of a suspected offence, or institution of, or for the purposes of, any criminal proceedings, whether under this Law or not;
- (f) in connection with any other proceedings arising out of this Law;
- (g) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise of his professional duties by an auditor of a registered person or formerly registered person or an accountant or other person nominated or approved for the purposes of paragraph (5) of Article 7 or of paragraph (4) of Article 29 or appointed under Article 30;
- (h) by the Committee or any person acting on its behalf to the Attorney General or to a police officer being information obtained under any of Articles 29 to 31 or being information in the possession of the Committee as to any matter in relation to which the powers conferred by those Articles are exercisable, but any information so disclosed may only be disclosed by the Attorney General or a police officer for the purposes of an investigation into a suspected offence or a prosecution in the Island or, at the discretion of the Attorney General, elsewhere;
- (i) subject to sub-paragraph (g) of paragraph (1) of Article 33, to any person or body responsible for a scheme for compensating investors (whether in the Island or elsewhere) if it appears to the Committee that disclosing

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the information would enable or assist the recipient of the information or the Committee to discharge its functions but any such disclosure by the Committee may only be made if the recipient of the information has given to the Committee a written undertaking that the information will not be further disclosed without the prior consent of the Committee;

- (j) without prejudice to the generality of sub-paragraph (b), by the Committee -
  - (i) to the auditor of a registered person or formerly registered person if it appears to the Committee that disclosing the information would enable or assist the Committee to discharge the functions mentioned in sub-paragraph (b) or would otherwise be in the interests of persons who have transacted or may transact investment business with a registered person;
  - (ii) if, in order to enable or assist the Committee properly to discharge any of its functions under this Law, the Committee considers it necessary to seek advice from any qualified person on any matter requiring the exercise of professional skill and the disclosure appears to the Committee to be necessary to ensure that the qualified person concerned is properly informed with respect to the matters on which his advice is sought;
- (k) by the Committee or any person acting on its behalf to an inspector appointed under Article 30, under Article 15 of the Company Securities (Insider Dealing) (Jersey) Law 1988, under Article 128 of the Companies (Jersey) Law 1991 or under any other enactment under which they exercise a supervisory function.
- (2) No information shall be disclosed under sub-paragraph (c) or (i) of paragraph (1), or sub-paragraph (g) of paragraph (1) of

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Article 33 unless the Committee or any person acting on its behalf is satisfied that the authority, person or body concerned complies with or will comply with any conditions to which the Committee or person acting on its behalf may, in their discretion, subject such disclosure.

## ARTICLE 36

**Information supplied to Committee by relevant overseas authority**

Articles 34 and 35 apply also to information supplied to the Committee for the purposes of its functions under this Law by a relevant supervisory authority in a country or territory outside the Island.

*PART IV*

## SUPPLEMENTARY

## ARTICLE 37

**Service of notices**

- (1) No notice required by this Law to be given to the Committee shall be regarded as so given until it is received.
- (2) Subject to paragraph (1), any notice, other document required or authorized by or under this Law to be given to the Committee may be given by facsimile, electronic transmission or by any similar means which produce 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 Committee may be given or served on the person in question -
  - (a) by delivering it to him;
  - (b) by leaving it at his proper address;

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- (c) by sending it by post to him at that address; or
- (d) by sending it to him at that address by facsimile, electronic transmission or other similar means which produce 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 the Island, be served by being delivered to its registered office;
  - (b) in the case of a partnership, company incorporated outside the Island 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 him or delivered to his registered or administrative office.
  - (5) For the purposes of this Article and of Article 12 of the Interpretation (Jersey) Law 1954<sup>5</sup> in its application to this Article, the proper address of any person to or on whom a document is to be given or served by post shall be his last known address, except that -
    - (a) in the case of a company or its secretary, clerk or other similar officer or person referred to in sub-paragraph (a) of paragraph (4), it shall be the address of the registered or principal office of the company in the Island; 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 the Island.

<sup>5</sup> Tome VIII, page 381.

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- (6) If the person to or on whom any document referred to in paragraph (3) is to be given or served has notified the Committee of an address within the Island other than his proper address within the meaning of paragraph (5), as the one at which he or someone on his behalf will accept documents of the same description as that document, that address shall also be treated for the purposes of this Article and Article 12 of the Interpretation (Jersey) Law 1954 as his proper address.

## ARTICLE 38

**Legal proceedings**

- (1) In any proceedings, a certificate purporting to be signed on behalf of the Committee and certifying any of the following -
    - (a) that a particular person is or is not an applicant or registered person or was or was not an applicant or registered person at a particular time;
    - (b) the date on which a particular applicant or registered person or formerly registered person made application or became a registered person or ceased to be a registered person, as the case may be;
    - (c) the scope of a particular person's application or registration;
    - (d) that conditions set out in the certificate were, at the relevant time, prescribed under Article 9 in relation to registered persons, or attached under Article 9 or imposed under paragraph (2) of Article 40 to a particular person's registration;
- shall be admissible in evidence in all legal proceedings as evidence of any fact stated in it of which direct oral evidence would be admissible.
- (2) A certificate purporting to be signed in accordance with paragraph (1) shall be deemed to have been duly signed unless the contrary is shown.

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(3) Where an offence under this Law committed by a registered person or formerly registered person is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of a person who is or was a principal person in relation to that registered person or formerly registered person he shall be guilty of the offence and liable in the same manner as the registered person or formerly registered person to the penalty provided for that offence.

(4) Where an offence under this Law committed by a partnership, company or unincorporated association is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of a person who is a partner, director, manager, secretary or other similar officer of that partnership, company or association or any person purporting to act in any such capacity, he shall be guilty of the offence and liable in the same manner as the partnership, company or association to the penalty provided for that offence.

(5) Without prejudice to paragraphs (3) and (4), any person who knowingly and willfully aids, abets, counsels, causes, procures or commands the commission of an offence under this Law shall be liable to be dealt with, tried and punished as a principal offender.

(6) No proceedings for an offence under this Law shall be instituted except by or with the consent of the Attorney General.

(7) Notwithstanding any enactment or rule of law to the contrary, proceedings for an offence under this Law may be commenced within the period of three years from the date on which evidence, sufficient in the opinion of the Attorney General to justify the proceedings, comes to the knowledge of the Committee or, where the person against whom the proceedings may be taken was outside the Island at that date, within the period of three years from the date on which he first lands in the Island thereafter, whichever of the said periods last expires.

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(8) For the purposes of paragraph (7), a certificate under the hand of the President of the Committee as to the date on which such evidence came to the knowledge of the Committee shall be conclusive evidence of that fact.

## ARTICLE 39

**Orders**

(1) The Committee may make Orders for the purposes of carrying this Law into effect and in particular, without prejudice to the generality of the foregoing power, for prescribing any matter which is to be prescribed by any provision of this Law.

(2) An Order made under this Law may -

(a) make different provisions in relation to different cases or circumstances;

(b) contain such incidental, consequential and transitional provisions as the Committee may consider to be necessary or expedient.

(3) The Subordinate Legislation (Jersey) Law 1960,<sup>6</sup> shall apply to Orders made under this Law.

## ARTICLE 40

**Transitional provisions**

(1) Subject to paragraphs (2) to (6), a person who makes an application in compliance with this Law under paragraph (1) of Article 7 before such day as is appointed by the Committee by Order for the purposes of this paragraph may, during the period between the date of his application and its being granted or refused by the Committee under Article 8, carry on investment business in the same manner as he was doing at the date of his application provided that such business is in accordance with the terms of his application.

<sup>6</sup> Tome VIII, page 849.



(2) The Committee may prescribe, or impose by notice in writing, conditions which shall apply to applicants during the period specified in paragraph (1) in addition to or in substitution for conditions prescribed under paragraph (1) of Article 9 and may make different provision for different applicants or for different classes of applicants or for different classes of investment businesses and may, in such circumstances as the Committee thinks fit, exclude applicants from carrying on investment business.

(3) Paragraphs (3) to (5) of Article 9 shall apply in respect of conditions imposed under paragraph (2) as they apply in respect of conditions attached (to a registration) under paragraph (2) of Article 9.

(4) The provisions of this Law shall apply (with the necessary modifications) to an applicant to whom paragraph (1) for the time being applies, as they apply to a registered person.

(5) Without prejudice to the generality of paragraph (4), the following modifications shall apply in relation to applicants to whom paragraph (1) for the time being applies -

(a) for any reference to the period during which a person is registered there shall be substituted a reference to the period between the date of the application and the date of its being granted or refused by the Committee;

(b) for any reference to the terms of a registration there shall be substituted a reference to the terms of the application.

(6) Paragraph (1) shall not apply to a person who, immediately before the day referred to in that paragraph, was carrying on the business to which the application relates in contravention of the Regulation of Undertakings and Development (Jersey) Law 1973<sup>7</sup> or the Borrowing (Control) (Jersey) Law 1947.<sup>8</sup>

## ARTICLE 41

**Consequential amendments**

The enactments specified in the first column of the Third Schedule shall be amended to the extent and in the manner set out in the second column thereof.

## ARTICLE 42

**Short title and commencement**

(1) This Law may be cited as the Investment Business (Jersey) Law 199.

(2) This Law shall come into force on such day or days as the States may by Act appoint and different days may be appointed for the coming into force of different provisions or for different purposes of the same provision.

<sup>7</sup> Volume 1973-1974, page 111, Volume 1975-1978, page 1, Volume 1984-1985, page 201, Volume 1986-1987, page 241, Volume 1988-1989, page 167, Volume 1992-1993, page 89, and Volume 1994-1995, page 129.

<sup>8</sup> Tome VII, page 386, Volume 1986-1987, page 57, and Volume 1996-1997, page 287.

*Investment Business (Jersey) Law 199***FIRST SCHEDULE****(Article 2)****INVESTMENTS****Shares, etc.**

1. Shares and stock in the share capital of a company.

Note: For the purposes of this paragraph "company" includes any body corporate and any unincorporated body constituted under the law of any country or territory but does not include a company which is a collective investment fund within the meaning of the Collective Investment Funds (Jersey) Law 1988.<sup>7</sup>

**Debentures**

2. Debentures, including debenture stock, loan stock, bonds, certificates of deposit and other instruments of the same kind creating or acknowledging indebtedness.

Notes: (1) This paragraph shall not apply to -

- (a) any instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services;
- (b) a cheque or other bill of exchange, a banker's draft or a letter of credit;
- (c) a banknote, a statement showing a balance in a current, deposit or savings account or (by reason of any financial obligation contained in it) a lease or other disposition of property, a hypothec, security

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interest, mortgage or other charge, or an insurance policy; or

- (d) any instrument creating or acknowledging indebtedness in respect of money received by the Director of Savings as deposits or otherwise in connection with the business of the National Savings Bank or in respect of money raised under the National Loans Act 1968 (1968 c.13) under the auspices of the Director of Savings or in respect of money treated as having been so raised by virtue of section 11(3) of the National Debt Act 1972 (1972 c.65).

- (2) For the purposes of this paragraph references to an instrument include references to any record whether or not in the form of a document.

**Instruments entitling to shares or securities**

3. Warrants or other instruments entitling the holder to subscribe for investments falling within paragraph 1 or 2.

Notes: (1) It is immaterial whether the investments are for the time being in existence or identifiable.

- (2) An investment falling within this paragraph shall not be regarded as falling within paragraphs 6, 7 or 8.

**Certificates representing securities**

4. Certificates or other instruments which confer -

- (a) property rights in respect of any investment falling within paragraph 1, 2 or 3;
- (b) any right to acquire, dispose of, underwrite or convert an investment, being a right to which the holder would be

<sup>7</sup> Volume 1988-1989, page 133.

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entitled if he held any such investment to which the certificate or instrument relates; or

- (c) a contractual right (other than an option) to acquire any such investment otherwise than by subscription.

Note: This paragraph does not apply to any instrument which confers rights in respect of two or more investments issued by different persons.

**Units in a collective investment fund**

5. Units in a collective investment fund within the meaning of the Collective Investment Funds (Jersey) Law 1988 or in a fund which would be a collective investment fund but for the fact that it does not acquire capital by means of an offer to the public of units for subscription, sale or exchange, as described in that Law.

**Options**

- 6. Options to acquire or dispose of -
  - (a) an investment falling within any other paragraph of this Schedule;
  - (b) currency of the Island or of any other country or territory;
  - (c) gold, palladium, platinum or silver; or
  - (d) an option to acquire or dispose of an investment falling within this paragraph by virtue of sub-paragraph (a), (b) or (c).

**Futures**

7. Rights under a contract for the sale of a commodity, or property of any other description which is entered into for investment, not commercial purposes, and under which delivery is to be made at a future date and at a price agreed upon when the contract is made.

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Notes: (1) A contract shall be regarded as made for investment purposes if it is made or traded on an investment exchange, or made otherwise but expressed to be as traded on such an exchange or on the same terms as those on which an equivalent contract would be made on such an exchange.

- (2) A contract not falling within Note (1) shall be regarded as made for commercial purposes if under the terms of the contract delivery is to be made within seven days.

**Contracts for differences, etc.**

8. Rights under a contract for differences, or under any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the value or price of property of any description or in an index or other factor designated for that purpose in the contract.

Notes: (1) This paragraph shall not apply to a contract where the parties intend that the profit is to be obtained or the loss avoided by taking delivery of any property to which the contract relates.

- (2) This paragraph shall not apply to rights under any contract under which money is received by the Director of Savings as deposits or otherwise in connection with the business of the National Savings Bank or in respect of money raised under the National Loans Act 1968 (1968 c.13) under the auspices of the Director of Savings or under which money raised is treated as having been so raised by virtue of section 11(3) of the National Debt Act 1972 (1972 c.65).

**Long-term insurance contracts**

9. Rights under a contract the effecting and carrying out of which constitutes long-term business within the meaning of the

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Insurance Business (Jersey) Law 1996 or would do so but for the fact that for the purposes of class VI or VII set out in the First Schedule to that Law it is effected and carried out by a person carrying on a banking business or by a person who does not carry on long-term business of class I, II, III, IV or V or general business of any class.

Notes: (1) Where the provisions of a contract of insurance are such that the effecting and carrying out of the contract -

- (a) constitutes both long-term business within the meaning of the Insurance Business (Jersey) Law 1996<sup>8</sup> and general business within the meaning of that Law; or
- (b) by virtue of sub-paragraph 3(2) of Part IV of the First Schedule to that Law constitutes long-term business notwithstanding the inclusion of subsidiary general business provisions,

references in this paragraph to rights and benefits under the contract are references only to such rights and benefits as are attributable to the provisions of the contract relating to long-term business.

- (2) This paragraph does not apply to rights under a re-insurance contract.

- (3) Rights falling within this paragraph shall not be regarded as falling within paragraph 8.

**Rights and interests in investments**

10. Rights to and interests in anything which is an investment falling within any other paragraph of this Schedule.

Note: This paragraph shall not apply to interests under the trusts of an occupational pension scheme.

<sup>8</sup> Volume 1996-1997, page 81.

*Investment Business (Jersey) Law 199***SECOND SCHEDULE**

(Article 3)

**EXEMPTIONS****PART I: GENERAL****Newspapers, broadcasting and information services**

1. The giving of investment advice in any newspaper, journal, magazine, television broadcast, teletext service, sound broadcast or electronic information service, or in any other periodical publication, broadcast or electronic information service if -

- (a) the principal purpose of the periodical publication, broadcast or service, taken as a whole and including any advertisements contained in it, is not to induce persons to buy, sell, subscribe for or underwrite a particular investment; or
- (b) the publisher, broadcaster, service provider or producer of the periodical publication, broadcast or service does not derive any direct benefit from any investment business resulting from the investment advice given therein.

**Executors and administrators, tuteurs and guardians**

2. The carrying out by executors or administrators of estates of deceased persons, or by tuteurs and guardians, curateurs, administrateurs, general and special attorneys and fideicommissaires in their capacity as such, of any of the activities described in Article 2.

**Functionaries of collective investment funds**

3. The carrying on of the activities of a functionary of a collective investment fund within the meaning of the Schedule to the Collective Investment Funds (Jersey) Law 1988 under his permit granted under that Law.

<sup>8</sup> Volume 1996-1997, page 81.

*PART II: INVESTMENT BUSINESS***Dealing as principal**

4. Dealing in investments as principal, unless -
- (a) the person concerned holds himself out as willing to enter into transactions of that kind at prices determined by him generally, rather than being determined in respect of each particular transaction;
  - (b) he holds himself out as engaging in the business of buying investments of the type to which the transaction concerned relates with a view to selling them; or
  - (c) he regularly solicits members of the public for the purpose of inducing them to deal in investments as principals or as agents and the transaction concerned is or is to be entered into as a result of his having solicited members of the public in that manner.

Notes: (1) For the purposes of this paragraph -

- (a) "joint enterprise" shall have the meaning given to it for the purposes of paragraph 8;
- (b) "members of the public" in relation to the person soliciting them ("the relevant person") means any other persons except -
  - (i) companies with which the relevant person is connected;
  - (ii) persons who are, or propose to become, participants with the relevant person in a joint enterprise;

- (c) a company is connected with another company if any of the requirements in Note (2) to paragraph 9 are met in relation to them.

- (2) For the purposes of this paragraph an investment is of the same type as another if they both fall within the same paragraph of the First Schedule.

**Dealing as agent by professionals and non-investment businesses**

5. Dealing in investments as agent if -
- (a) the dealing consists of making arrangements with a view to another person buying, selling, subscribing for or underwriting investments;
  - (b) the arrangements are made in the course of carrying on any business or profession which does not otherwise constitute investment business;
  - (c) the agent does not receive any commission or other remuneration, directly or indirectly, from his principal which is calculated by reference to the value of the transaction concerned or to any premiums or other sums payable with respect to those investments; and
  - (d) the agent does not hold himself out generally as providing a service of dealing in investments.

Note: For the purposes of this paragraph "making arrangements" includes -

- (i) the communication of instructions to effect a transaction to a person dealing in investments;
- (ii) the communication of offers and acceptances in relation to transactions to a person dealing in investments;

- (iii) the execution and delivery of documentation concerning the title to investments.

**Giving advice in the course of a non-investment business**

6.-(1) Giving investment advice other than in the course of carrying on any business which otherwise constitutes investment business, unless the advice consists of, includes or amounts to -

- (a) a recommendation to a person to buy, sell, subscribe for or underwrite a particular investment or to exercise or refrain from exercising rights conferred by it;
- (b) advice on the suitability of the investment concerned for the person to whom or in relation to whom the advice is given; or
- (c) advice on the characteristics or performance of the investment concerned.

(2) Advice given in the course of carrying on the profession of a lawyer by an advocate or practising solicitor or of an accountant by a practising accountant in connection with an investment identified specifically by the client and in relation to which the client approached him for legal or accountancy advice, as the case may be.

Note: For the purposes of this paragraph -

“practising accountant” means a person qualified under Article 113 of the Companies (Jersey) Law 1991<sup>9</sup> for appointment as auditor of a company under Article 109 of that Law;

“practising solicitor” means -

- (i) a solicitor of the Court, or

<sup>9</sup> Volume 1990 1991, page 982, and R & O 8941.

- (ii) a person who is qualified to act as a solicitor under any of section 1 of the Solicitors Act 1974 of the United Kingdom, Article 4 of the Solicitors (Northern Ireland) Order 1976 or section 4 of the Solicitors (Scotland) Act 1980 and who is, for the time being, practising as such from or within the Island.

**Instruments creating or acknowledging indebtedness**

7. Accepting (whether as principal or as agent) or becoming party to (otherwise than as a debtor or surety) an instrument creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation or assurance which he or his principal has made, granted, or provided.

**Connected companies and joint enterprises**

8.-(1) Dealing in investments by a person as principal with another person if -

- (a) they are connected companies;
- (b) they participate together in a joint enterprise and the dealing is undertaken for the purposes of, or in connection with, that enterprise; or
- (c) one of them is a director, other officer or employee of a company acting in his capacity as trustee and the other is that company or a connected company in relation to that company.

(2) Dealing in investments by a person as agent for another person if -

- (a) they are connected companies;

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- (b) they participate together in a joint enterprise and the dealing is undertaken for the purposes of, or in connection with, that enterprise; or
- (c) the other person is acting in his capacity as a trustee and is a director, other officer or employee of the company which is the agent or of a company which is a connected company in relation to the agent,
- unless -
- (i) the agent holds himself out (other than to such companies, participants or persons); or
- (ii) solicits,
- in a manner contemplated by paragraph 4(b) or 4(c).

(3) Discretionary investment management by one person for another and investment advice given by one person to another if -

- (a) they are connected companies;
- (b) they participate together in a joint enterprise and the activity is undertaken for the purposes of, or in connection with, that enterprise; or
- (c) the other person is acting in his capacity as a trustee and is a director, other officer or employee of the company which is carrying out such management or giving such advice or of a company which is a connected company in relation to it,

unless the first mentioned person otherwise carries on the business of discretionary investment management or of giving investment advice or holds himself out as carrying on either of those businesses.

Notes: (1) For the purposes of this paragraph, "joint enterprise" means an enterprise into which the persons participating

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enter for commercial purposes related to a business other than investment business carried on by such persons; and where a person participating is a company, each company with which it is connected shall also be regarded as a person participating in the enterprise.

- (2) For the purposes of this paragraph a company is connected with another company if any of the requirements in Note (2) to paragraph 9 are met in relation to them.

**Employees' share schemes**

9.-(1) Dealing by a company, a company with which it is connected or a relevant trustee for the purpose of enabling or facilitating transactions in shares in or debentures of the first-mentioned company for the benefit of any of the persons mentioned in sub-paragraph (2) or the holding of such shares or debentures by or for the benefit of any such persons.

- (2) The persons referred to in sub-paragraph (1) are -

- (a) the bona fide employees or former employees of the company first mentioned in sub-paragraph (1) above or of another company with which it is connected; or
- (b) the wives, husbands, widows, widowers, or children or step-children under the age of twenty years of such employees or former employees.

Notes: (1) For the purposes of this paragraph -  
 "joint enterprise" shall have the meaning given to it for the purposes of paragraph 8;

"a relevant trustee" means a person holding shares in or debentures of the company first mentioned in sub-paragraph (1) above as trustee in pursuance of arrangements made for the purpose mentioned in sub-

paragraph (1) by, or by a company connected with, that company.

“shares” and “debentures” include any investment falling within paragraph 1 or 2 of the First Schedule and also include any investment falling within paragraph 3 or 4 of the First Schedule so far as relating to those paragraphs or any investment falling within paragraph 10 of the First Schedule so far as relating to paragraph 1, 2, 3 or 4 of the First Schedule;

“trustee” includes a duly appointed delegate of the trustee who is participating in a joint enterprise with him.

- (2) For the purposes of this paragraph a company is connected with another company if -
- (a) they are in the same group;
  - (b) one is entitled, either alone or with any other company in the same group, to exercise or control the exercise of a majority of the voting rights, (other than as nominee shareholder) which are attributable to the share capital and are exercisable in all circumstances at any general meeting of the other company or of its holding company; or
  - (c) the first-mentioned company holds, or a company in the same group as the first-mentioned company holds, an interest in the equity share capital of the other company carrying rights to vote in all circumstances at general meetings for the purpose of securing a contribution to the activities of the first-mentioned company or the company in the same group as that company respectively by the exercise of control or influence arising from that interest.

### **Issuing of shares, debentures, etc.**

10.-(1) The issuing by a company of its own shares or of share warrants in respect of any shares, or by any person of his own debentures or debenture warrants.

(2) The issuing of its own units by a company, unit trust or limited partnership which would be a collective investment fund within the meaning of the Collective Investment Funds (Jersey) Law 1988 but for the fact that it does not acquire capital by means of an offer to the public of units for subscription, sale or exchange, as described in that Law.

Note: For the purposes of this paragraph, “shares” and “debentures” include any investments falling within paragraph 1 or 2 of the First Schedule and “share warrants” and “debenture warrants” means any investment which falls within paragraph 3 of the First Schedule and, in the case of debenture warrants relates to debentures issued by the person concerned.

### **Sale of company**

11. Dealing in the shares of a company and giving advice in relation to such dealing, where -

- (a) the shares comprise shares carrying at least seventy-five per cent of the voting rights attributable to share capital which are exercisable in all circumstances at any general meeting of the company; or
- (b) the shares, together with any already held by the person acquiring them, carry not less than that percentage of those voting rights; and
- (c) the dealing is between parties each of whom is a single person or a group of connected persons.

Note: For the purposes of this paragraph -



“close relative” means a person’s spouse, his children and step-children, his parents and step-parents, his brothers and sisters and his step-brothers and step-sisters;

“connected persons”, in relation to the seller of the shares, means persons each of whom is, or is a close relative of, a director or manager of the company and, in relation to the buyer or underwriter of or the subscriber for the shares, means persons each of whom is, or is a close relative of, a person who is to be a director or manager of the company.

#### **Dealing as bare trustee**

12. Dealing in investments which are or are to be held by the person concerned as bare trustee, for another person, on that person’s instructions if -

- (a) the dealing takes place in the course of carrying on any business or profession which does not otherwise constitute investment business;
- (b) the person concerned does not receive any commission or other remuneration, directly or indirectly, from the beneficiary which is calculated by reference to the value of the transaction concerned or to any premiums or other sums payable with respect to those investments; and
- (c) the person concerned does not hold himself out generally as providing a service of dealing in investments.

#### **Investment advice given by trustees**

13. Investment advice given by a person as trustee to -

- (a) a co-trustee for the purposes of the trust; or
- (b) a beneficiary under the trust concerning his interest in the trust fund,

unless -

- (i) that person otherwise carries on the business of giving investment advice or of discretionary investment management or holds himself out as carrying on either of those businesses; or
- (ii) he was appointed as a trustee as a result of his soliciting for business for the purposes of inducing any person to enter into investment business transactions with him.

Note: For the purposes of this paragraph -

“joint enterprise” shall have the meaning given to it for the purposes of paragraph 8;

“trustee” includes a duly appointed delegate of the trustee who is participating in a joint enterprise with him.

#### **Discretionary investment management by company directors**

14. Deciding as a director of a company on the purchase, sale, subscription for or underwriting of investments by that company or another company in the same group as that company, unless -

- (a) the director concerned carries on the business of giving investment advice or otherwise carries on the business of discretionary investment management or holds himself out as carrying on either of those businesses;
- (b) he was appointed as a director as a result of his soliciting for business for the purposes of inducing any person to enter into investment business transactions with him; or
- (c) he receives, directly or indirectly, any commissions or other remuneration for discharging his duties as a director calculated by reference to the value of the transaction

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concerned or to any premiums or other sums payable with respect to those investments.

Note: For the purposes of this paragraph "director" includes a duly appointed alternate.

**Investment advice between directors**

15. Investment advice given by a person as director to a co-director for the purposes of the company unless -

(a) that person otherwise carries on the business of giving investment advice or of discretionary investment management or holds himself out as carrying on either of those businesses; or

(b) he was appointed as a director as a result of his soliciting for business for the purposes of inducing any person to enter into investment business transactions with him.

Note: For the purposes of this paragraph "director" includes a duly appointed alternate.

**Investment advice given by protectors**

16. Investment advice given by a person as protector of a trust to a trustee of that trust, unless -

(a) that person otherwise carries on the business of giving investment advice or of discretionary investment management or holds himself out as carrying on either of those businesses;

(b) he was appointed as a protector as a result of his soliciting for business for the purposes of inducing any person to enter into investment business transactions with him; or

(c) he receives, directly or indirectly, any commissions or other remuneration for discharging his duties as a

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protector calculated by reference to the value of the transaction concerned or to any premiums or other sums payable with respect to those investments.

Note: For the purposes of this paragraph -

"protector" means a person named in or appointed under the terms of a trust as the person whose consent is required before the trustee may exercise a power or a discretion;

"terms of a trust" shall have the meaning given to it by Article 1 of the Trusts (Jersey) Law 1984.<sup>12</sup>

<sup>12</sup> Volume 1984-1985, page 27, Volume 1988-1989, page 371, Volume 1990-1991, page 407, and Volume 1996-1997, page 149.

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*THIRD SCHEDULE*

(Article 41)

**Consequential amendments of other enactments**

*Enactment*

*Amendment*

Bankruptcy (Désastre) (Jersey)  
Law 1990  
Article 3<sup>10</sup>

in clause (ii) of sub-paragraph (c)  
of paragraph (1) there shall be  
inserted at the end the words “or  
the Investment Business (Jersey)  
Law 199”.

Companies (Jersey) Law 1991  
Article 155<sup>11</sup>

in clause (ii) of sub-paragraph (b)  
of paragraph (2) there shall be  
inserted the words “or the  
Investment Business (Jersey) Law  
199”.

<sup>10</sup> Volume 1990-1991, page 49, and Volume 1994-1995, page 399.

<sup>11</sup> Volume 1990-1991, page 1825, and Volume 1994-1995, page 351.