

**DRAFT FINANCIAL SERVICES COMMISSION (AMENDMENT
No. 3) (JERSEY) LAW 199**

**Lodged au Greffe on 8th December 1998
by the Finance and Economics Committee**



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Report

The Financial Services Commission (Jersey) Law 1998 (“the Law”) requires the Chairman of the Jersey Financial Services Commission (“the Commission”) to be a member for the time being of the Finance and Economics Committee (“the Committee”).

Over the past few months this arrangement has been discussed not only with Mr. Andrew Edwards, the person appointed by the Home Secretary to conduct a review of financial regulation in the Crown dependencies, but also by the Committee and the Commission both formally and informally.

The Edwards’ Review has now been published and it contains the following paragraphs -

- “6.4.1 As already explained, the Island Parliaments approve the appointments of Board members of the FSCs and the IPA on the recommendations of the responsible Parliamentary Committee or Government Department. This accords with standard international practice.

- 6.4.2 The Islands depart from standard international practice in the larger countries in their choice of Chairmen for the regulatory authority Boards. In Jersey and Guernsey, the Chairman of the relevant Parliamentary Commission serves as Chairman of the FSC Board. In the Isle of Man, similarly, one of the Members of Parliament who comprise the Island’s Treasury team serves as Chairman of the FSC and another as Chairman of the IPA.

- 6.4.3 I have no reason to think that the appointment of senior politicians as heads of the regulatory authorities has led to significant problems in practice. The arrangement has the advantage that the politicians who Chair the regulatory authorities are well placed to brief the Island Parliaments whenever they need to pass new regulatory legislation or

approve new Board appointments. The Island Parliaments themselves may have felt happier about the initial decision to delegate such a crucial task to an independent Board in the knowledge that one of their own number would Chair the Board and be available to report back to them.

- 6.4.4 There are also, however, some clear advantages in confining Regulatory Boards to non-political professional people.
- 6.4.5 Not least among these is the widespread perception elsewhere, which has tended to strengthen in recent years, that regulatory boards *should* be constituted in this way. Any appearance that the decisions by the Regulatory Board of an international finance centre might be subject to political influence is likely to detract from the centre's reputation.
- 6.4.6 The substantive case is that the business of regulation is a professional task, requiring professional direction and impartial implementation. Regulators, like judges, need to be independent, impartial and professional, both in the reality and in the perception. It is difficult however, for politicians, even if they have the necessary professional backgrounds, to be visibly impartial in this way when their daily tasks include public arguments about political strategies and public responses to political pressures and critics.
- 6.4.7 It is also difficult for public figures to refuse to be drawn into discussion and controversy over particular regulatory decisions. For their own protection, therefore, it seems better that they should not serve on regulatory Boards.
- 6.4.8 If regulatory Boards do not include politicians, other ways must be found to maintain good links with the Legislature and Executive. Fully professional

Boards should continue, of course, to be accountable to the Island Parliaments and should be required to report to them at least one a year. On a continuing basis, good links can be forged by various means. These may include attendance of a senior civil servant as an observer at Board meetings, regular meetings between the Board Chairman and the senior politician concerned, and appearances as required by the regulatory Board Chairman before the relevant Government Departments or political committees.

- 6.4.9 For all the reasons discussed, and well though the present arrangements seem to have worked in practice, the Islands would in my opinion be well-advised to consider moving to independent professional regulatory Boards without political participation.”

This recommendation would in due course have been one of the items to have been considered by the Task Force recently established by the Policy and Resources Committee and the Finance and Economics Committee to review all the recommendations in the Edwards’ Report. However, in the light of the discussions mentioned earlier and, in particular, of practical experience of the workings of the Commission since 1 July 1998 which have demonstrated the desirability of the Commission being chaired by a person who does not have political responsibility, it has been decided to address this item earlier than the remainder.

There are of course advantages in the present arrangement - particularly in the sponsoring of financial services legislation through the States by the Committee and in the political link with the important financial services industry established through this arrangement in the Law. It was these advantages which gave rise to the States’ decisions to approve the structure in principle in 1995 and in detail in 1997.

Nevertheless it is now recognised by both the Commission and the Committee that the financial services regulatory and supervisory body should be completely independent and free of any political influence.

The Amendment Law seeks to achieve this end. If it is approved by the States, full consideration will be given to various means by which good links will be maintained between the Commission and the Committee and the Commission and the States.

Explanatory Note

The purpose of the draft Law is to amend the Financial Services Commission (Jersey) Law 1998 to remove the requirement that the Chairman of the Jersey Financial Services Commission shall be a member of the Finance and Economics Committee.

**FINANCIAL SERVICES COMMISSION
(AMENDMENT No. 3) (JERSEY) LAW 199**

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

(Registered on the day of 199)

STATES OF JERSEY

The day of 199

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

ARTICLE 1

In sub-paragraph (a) of paragraph (1) of Article 3 of the Financial Services Commission (Jersey) Law 1998,¹ as amended² (hereinafter referred to as “the principal Law”) the words “who shall be a member for the time being of the Committee” shall be deleted.

ARTICLE 2

In paragraph 6 of Part II of the First Schedule to the principal Law³ the words “except in the case of a Commissioner who is a member of the States.” shall be deleted.

¹ Volume 1998-199 , page 235.

² Volume 1998-199 , page 283.

³ Volume 1998-199 , page 253.

ARTICLE 3

This Law may be cited as the Financial Services Commission
(Amendment No. 3) (Jersey) Law 199 .