

**Lodged au Greffe on 7th November 2000
by the Finance and Economics Committee**



STATES OF JERSEY

STATES GREFFE

180

2000

P.197

Price code: B

REPORT

Introduction

This Appointed Day Act will bring into effect the Financial Services (Extension) (Jersey) Law 2000 (“The Law”). This will bring trust companies and company service providers into financial regulation.

The Law is, in legal form, an amending Law. It amends the Investment Business (Jersey) Law 1998 (“the primary Law”) so as to include, within its scope, “trust company business” (the term used in the Law to encompass trust companies and company service providers). The Law introduces the generic term “financial service business”, which refers to both investment business and trust company business. Once the Financial Services (Extension) (Jersey) Law 2000 is in effect, the primary Law will no longer be known as the Investment Business (Jersey) Law 1998, but will be renamed the Financial Services (Jersey) Law 1998.

This single Law, encompassing investment business and trust company business, will mean that there are common provisions covering the powers of the Financial Services Commission (“The Commission”). These powers include the authorisation of businesses, monitoring of compliance with regulation, investigation of breaches of the regulations and co-operation with other regulators. At the same time, the Law provides for secondary legislation and Codes of Practice to be tailored to the needs of the different areas of business.

The Financial Services (Extension) (Jersey) Law 2000 was passed by the States on 16th May 2000, received Royal Assent on 12th July and was registered in the Royal Court on 28th July.

The Appointed Day Act

The purpose of this Appointed Day Act is to bring the Law into force and this will be accomplished in two stages. The enactment of the Law achieves this by -

- (a) appointing 27th November 2000 as the day the Law comes into force (with the exception of Article 3), thus enabling the Finance and Economics Committee to make the Orders and the Commission to make the Codes of Practice that set out the detailed regulatory requirements; and
- (b) appointing 2nd February 2001 as the date on which Article 3 of the Law comes into force. Article 3 makes it a criminal offence to carry on trust company business without being a registered person.

Applications will be invited as from 27th November 2000. Any business which submits a proper application by 2nd February 2001 will be permitted to carry on its business until the Commission has determined its application. Thereafter, any business which submits an application will be required to wait for the Commission to determine its application before it can conduct trust company business.

This is the same approach as that which was adopted for the introduction of the Investment Business (Jersey) Law 1998.

Trust company business

Article 2 of the Law defines trust company business. It introduces a two-tier test. The first test is that someone must be carrying on a business that involves the provision of company administration services or trustee or fiduciary services. The second tier is that the business must be engaged in one of the activities listed in Article 2(4) of the Law.

Those services are -

- (a) acting as a company or partnership formation agent;
- (b) acting as or fulfilling the function of or arranging for another person to act as or fulfil the function of director or alternate director of a company;
- (c) acting as or fulfilling the function of or arranging for another person to act as or fulfil the function of a partner of a partnership;
- (d) acting as or arranging for another person to act as secretary, alternate, assistant or deputy secretary of a company;
- (e) providing a registered office or business address for a company or partnership;

- (f) providing an accommodation, correspondence or administrative address for a company, a partnership or for any other person;
- (g) acting as or fulfilling or arranging for another person to act as or fulfil the function of trustee of an express trust;
- (h) acting as or fulfilling or arranging for another person to act as shareholder or unit-holder as a nominee for another person.

The purpose of the Law

The reason for seeking to regulate this area of business is firstly to establish, and then to maintain, high standards in the provision of trust company business services. This will enhance Jersey's reputation as a premier international finance centre. It is because this area of business is so important to the future of the Jersey financial services industry that the Island has decided to take a lead and bring it within the regulatory fold.

Customers, both in Jersey and elsewhere, will be able to have confidence that standards of competence, integrity and solvency are being monitored. The people of Jersey can have greater confidence that those persons carrying on trust company business in or from within the Island have procedures in place which reduce their vulnerability to international money-launderers. It is also important to note that those members of the local industry who already impose high standards upon themselves can be confident that their competitors will be required to meet the same standards.

The Island has received high praise from a range of international evaluators for its standards of regulation. Each of those who have commended the Island have done so in the knowledge that regulation of trust company business is imminent.

Subordinate legislation and Codes of Practice

The detailed regulatory requirements will be set out in Orders and in Codes of Practice. Orders will be made by the Finance and Economics Committee. Codes of Practice are made by the Commission.

The Finance and Economics Committee will be invited to make Orders relating to the following matters -

- Registration and fees.
- Accounts Audits and Reports.
- Trust company business assets (provisions designed to ensure that customers assets are properly segregated and protected).
- The Appointment of a Manager (a provision introduced to allow the Commission to ask the Court to appoint a Manager to run a trust company business in certain well defined circumstances).
- Exemptions (where the definition of trust company business has included some activity that need not be registered or monitored).

The Codes of Practice will set out basic principles of best practice.

Each of the Orders and the Codes of Practice have been the subject of extensive consultation with the industry. This consultation has involved a high level, representative industry steering group and a period of wider public consultation.

Transitional provisions

The Law introduces transitional provisions for persons carrying on trust company business so that they have time to meet the requirements of the Orders and Codes of Practice.

Explanatory Note

The purpose of this Act is to appoint 27th November 2000 as the day for the commencement of the majority of the Financial Services (Extension) (Jersey) Law 2000, which was adopted by the States on 16th May 2000 (P.55 of 2000).

The remaining provision, Article 3, which has the effect of making it an offence to carry on trust company business without being registered under the Law, shall come into force on 2nd February 2001.

Financial Services (Extension) (Jersey) Law 2000

FINANCIAL SERVICES (EXTENSION) (JERSEY) LAW 2000
(APPOINTED DAY) ACT 2000

(Promulgated on the _____ day of _____ 2000)

STATES OF JERSEY

The _____ day of _____ 2000

THE STATES, in pursuance of Article 19(2) of the Financial Services (Extension) (Jersey) Law 2000,^[1] have made the following Act -

1.-(1) Subject to paragraph (2), the Financial Services (Extension) (Jersey) Law 2000 shall come into force on the twenty-seventh day of November 2000.

(2) Article 3 of the Financial Services (Extension) (Jersey) Law 2000^[2] shall come into force on the second day of February 2001.

2. This Act may be cited as the Financial Services (Extension) (Jersey) Law 2000 (Appointed Day) Act 2000.

^[1] Recueil des Lois, Volume 2000, page 739.

^[2] Recueil des Lois, Volume 2000, page 725.