

STATES OF JERSEY



DRAFT JERSEY MUTUAL INSURANCE SOCIETY, INCORPORATED (ALTERATION OF RULES) (No. 7) (JERSEY) LAW 201-

**Lodged au Greffe on 11th March 2014
by the Chief Minister**

STATES GREFFE



Jersey

**DRAFT JERSEY MUTUAL INSURANCE SOCIETY,
INCORPORATED (ALTERATION OF RULES)
(No. 7) (JERSEY) LAW 201-**

European Convention on Human Rights

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

In the view of the Chief Minister, the provisions of the Draft Jersey Mutual Insurance Society, Incorporated (Alteration of Rules) (No. 7) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator I.J. Gorst**

Chief Minister

Dated: 10th March 2014

REPORT

Background

The Jersey Mutual Insurance Society (the “**Society**”) was incorporated by Act of the States on 13th February 1908. At this time, legal effect was given to the Fundamental Rules of the Society (“**the Rules**”) which continue to be embodied in statute. From time to time the Rules require amendment, and this has occurred 6 times since 1908 – on the last occasion in 2010. This has previously occurred by the States adopting an amending Law further to a Petition brought to the States Assembly. A Petition to amend the Rules was debated and adopted by the States Assembly under P.108/2013 on 8th October 2013.

The Draft Jersey Mutual Insurance Society, Incorporated (Alteration of Rules) (No. 7) (Jersey) Law 201- (the “**draft Law**”) replaces the Rules of the Society by replacing the Schedule to the Jersey Mutual Insurance Society, Incorporated (Alteration of Rules) (Jersey) Law 1976. The draft Law also introduces an ability to amend the Schedule in the future by Regulations, with the view that if a future change to the Fundamental Rules is required it will not have to be undertaken by primary Law amendment.

The changes made by the draft Law include capping recourse to members to £5 per member in line with common practice in the UK, increasing the use of bye-laws to avoid the States needing to approve administrative changes, removing references to the Judicial Greffier that are no longer required, and reducing investment capital restrictions, as the rules of the regulatory Laws will determine such matters.

A number of the changes made by the draft Law are as a result of the commencement of the regulation of the Society by the Jersey Financial Services Commission (the “**JFSC**”) which was a recommendation following the IMF Report about Jersey in 2009. That regulation commenced when the Society became a permit-holder under the Insurance Business (Jersey) Law 1996 on 25th February 2013. Further detail on the proposed amendments by the draft Law is detailed below.

Amendment to call on the members

Under the current Rules, in the unlikely event that the Society becomes liable for claims which are not covered under re-insurance policies and which cannot be paid from the capital of the Society, the Society can have recourse to its members to make up the insufficiency. The amendments by the draft Law limit the maximum liability of members in this regard to £5. This amendment is intended to promote fairness to the members and to reflect UK market practice.

Increased reference to the Bye-Laws

The Rules currently refer to the Society’s Bye-Laws adopted by the members in a general meeting (the “**Bye-Laws**”), which are, for instance, referred to in the context of the composition and duties of the Supervisory Committee. The draft Law has incorporated a number of further references to the Bye-Laws: for instance in Rule 2 of the Revised Rules, which states that provisions in respect of the Board of Administration will be set out in the Bye-Laws. The advantage of increasing the use of the Bye-Laws is that changes can be made to the Bye-Laws; for example to amend administrative procedures, by approval of the members, without the need for legislation adopted by the States of Jersey. In the modern day, this is clearly desirable for both the Society and the States of Jersey.

Amendments intended to decrease requirement for further revisions in the future

The draft Law amends a number of the existing Rules, with the intention of decreasing the likelihood of this process having to be repeated in the near future. Key amendments in this regard make the Rules subject to the Society's legal and regulatory obligations. This amendment is intended to ensure that the Society is not placed in the difficult situation where its legal or regulatory obligations are inconsistent with the provisions of the Rules. Amendments of this nature also include inserting flexibility in how: (i) minutes are kept (Rule 6); (ii) financial transactions are carried out and recorded (Rules 7 and 20); and (iii) notices are given and received (Rules 22, 23, and 29). These amendments are intended to allow for developments in the future (for instance if cheques cease to be a valid manner of making payments, and are replaced by another form of transfer not currently in use).

Removal of references to the Judicial Greffier

The Rules currently provide that certain filings will be made with the Judicial Greffier (for instance in Rule 22). It has been agreed, in consultation with the Judicial Greffier and the JFSC, that these filings will no longer be required now that the JFSC has commenced its regulation of the Society.

Investment of Capital made by the Society

In the current Rules, Rule 27 stipulates the type of investments that the Society can make with its capital. These restrictions have been deleted in the Revised Rules as it is the expectation of the Society that in the future, investments will have to be made in accordance with the rules and regulations put in place by the JFSC.

In reviewing the Society's application to become a permit-holder under the Law, the JFSC gave careful consideration to the Society's investment strategy. As a result, certain conditions were attached to the Society's permit in addition to the provisions regarding investments and solvency contained within the Law, Orders and Codes of Practice. The JFSC considers that since the Society became regulated by the JFSC, the obligations of the Society regarding investments are considerably more comprehensive than those contained within the previous Rules.

Other amendments for consistency of terminology and to promote flexibility

A number of other amendments have been made to the Rules, which are designed to make the use of terminology in the Rules more consistent, and to promote flexibility.

Consultation

Consultation has occurred with the Society, their legal advisers and the JFSC. All parties are content for the draft Law to proceed for debate by the States Assembly.

Financial and manpower implications

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

Human Rights

The Law Officers' Department has indicated that the draft Law does not give rise to any human rights issues.

Explanatory Note

The object of this Law is to make changes to the Fundamental Rules of the Jersey Mutual Insurance Society, Incorporated as follows –

- (a) to limit to £5 the maximum liability of members of the Society for claims which are not covered by reinsurance policies which cannot be paid from the capital of the Society (*Rule 16*);
- (b) to provide for Bye-laws to amend administrative procedures, for example, those in respect of the Board of Administration (*Rule 3*);
- (c) to remove references to the Judicial Greffier with regard to the filing of the statement of accounts and the notification of any change of address by the Board of Administration (*Rule 22*);
- (d) to remove the restrictions on the types of investments that the Society can make with its capital (*Rule 27*); and
- (e) to make the use of terminology in the Rules more consistent and to promote flexibility.

In order to give the reader a consolidated version of the Fundamental Rules that incorporates those changes, this Law replaces the Fundamental Rules that were substituted in 1976 and subsequently amended.

Article 1 provides for the Fundamental Rules of the Jersey Mutual Insurance Society, Incorporated (incorporated by Act of the States of Jersey passed on 13th February 1908, and sanctioned by Order of 9th April 1908), being the Fundamental Rules set out in the Schedule to the Jersey Mutual Insurance Society, Incorporated (Alteration of Rules) (Jersey) Law 1976, to be substituted by the Fundamental Rules set out in the *Schedule*. *Article 1* also gives the States the power to amend the Schedule by Regulations.

Article 2 sets out the title of the Law and provides for the Law to come into force on the seventh day after it is registered in the Royal Court.



Jersey

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Arrangement

Article

1	Substitution of Fundamental Rules	9
2	Citation and commencement	9

SCHEDULE **10**

FUNDAMENTAL RULES	10
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Jersey

**DRAFT JERSEY MUTUAL INSURANCE SOCIETY,
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(No. 7) (JERSEY) LAW 201-**

A LAW to amend the Jersey Mutual Insurance Society, Incorporated (Alteration of Rules) (Jersey) Law 1976 and to vary the Fundamental Rules of the Jersey Mutual Insurance Society, Incorporated.

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

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

1 Substitution of Fundamental Rules

- (1) For the Fundamental Rules of the Jersey Mutual Insurance Society, Incorporated (incorporated by Act of the States of Jersey passed on 13th February 1908, and sanctioned by Order of 9th April 1908), being the Fundamental Rules set out in the Schedule to the Jersey Mutual Insurance Society, Incorporated (Alteration of Rules) (Jersey) Law 1976¹, there shall be substituted the Fundamental Rules set out in the Schedule to this Law.
- (2) The States may by Regulations amend the Schedule.

2 Citation and commencement

- (1) This Law may be cited as the Jersey Mutual Insurance Society, Incorporated (Alteration of Rules) (No. 7) (Jersey) Law 201-.
- (2) This Law shall come into force on the seventh day after it is registered in the Royal Court.

SCHEDULE

(Article 1(1))

FUNDAMENTAL RULES

1. The Society is incorporated in the Island of Jersey under the name and title of the “Jersey Mutual Insurance Society” with the object of permitting members mutually to insure themselves and their houses, buildings, stock in trade, house furniture, rentals, farm implements, cattle, agricultural products and other effects, against the risks attaching to the ownership or occupation of property, as the Society may from time to time in General Meeting decide to accept.

The Society may reinsure any individual risk or any part of any individual risk with other insurers and shall be bound to effect such reinsurances against any individual risk in Class I (non-hazardous) which exceeds the Society’s threshold in respect of Class I (non-hazardous) risks and against any individual risk in Class II (hazardous) which exceeds the Society’s threshold in respect of Class II (hazardous) risks. The thresholds referred to in this paragraph shall be as determined from time to time by the Board of Administration.

Such reinsurance shall be effected with insurance companies or underwriters from time to time approved by the Board of Administration, on such terms and conditions as the Board of Administration may from time to time determine.

The Society may accept and be paid commissions and agency fees on such insurance business as the Society being itself unable to conduct may introduce to other insurers.

The Society may carry on such other activities as are or may be considered to be ancillary to the primary business of the Society or the promotion thereof as the Board of Administration may determine from time to time.

The Society may carry on any social or benevolent activity, including the making of donations, the raising of funds, the giving of sponsorship or any other activity carried on for a charitable or benevolent purpose.

The Society shall comply with all legal and regulatory requirements to which it is subject from time to time arising as a result of the conduct of its activities. In the event of any conflict between this clause and any other provision of these Rules, this clause will prevail.

The Board of Administration may from time to time adopt such policies and procedures as it shall see fit to comply with all such legal and regulatory requirements.

2. A Board of Administration shall be formed, composed of a number of Directors determined in accordance with the Society’s Bye-Laws, all of whom shall be selected from among the members of the Society at a General Meeting of the said members. The Board of Administration shall name annually 3 of their number as President, Vice-President and Junior Vice-President for the current year (who will be known as the

Supervisory Committee, the powers and duties of which will be laid down in the Society's Bye-Laws); they shall have full power to direct, conduct and manage the affairs of the Society in conformity with these Rules and the Bye-Laws made and to be made from time to time for the government of the Society. Each Director shall remain in office for a term determined in accordance with the Society's Bye-Laws. Should a Director of the Board of Administration die, resign, become incapacitated, be removed from office in accordance with the procedure set out in the Society's Bye-Laws or otherwise cease to be a member of the Society, during his term of office, the Board of Administration may appoint a substitute who shall remain in office until the 25th day of December next following. At the next Annual General Meeting, a Director shall be named to fill the vacancy thus caused until the end of his predecessor's unexpired term. The rules and procedures relating to Directors retiring by rotation shall be set out in the Society's Bye-Laws, which shall also state any period for which retiring Directors are not eligible for re-election.

3. All Bye-Laws for giving effect to these Rules shall be adopted either at the Annual General Meeting of the Society or at a Special General Meeting convened under Rule 23.
4. Five of the Directors duly assembled shall form a quorum and the Board of Administration shall assemble as often as may be necessary for conducting the business of the Society.

In the event that a quorum fails to exist on or during the appointed time set, those present shall adjourn the meeting to a new date and time within the following 7 days.

5. The Board of Administration shall appoint a General Manager and such other officers as it may deem necessary for the proper management of the Society's affairs at such remuneration as the Board shall think proper. The Board of Administration shall also have power to dismiss any officer for incapacity, negligence, disobedience, misconduct or such other reason as they may determine, and to replace him. The Board of Administration shall have the right to set up a pension scheme or pension schemes for the purpose of providing for pensions for such employees of the Society as may be selected from time to time.

The Directors of the Board of Administration shall receive an annual remuneration for their services, the amount of which shall be determined and voted upon at the Annual General Meeting of the Society.

6. The General Manager, or his duly authorised substitute, shall be present at all the meetings of the Board of Administration and at the General Meetings; he shall correctly record the names of the Directors present as well as the minutes of the deliberations (either in a book provided for the purpose or by such other means as is agreed by the Board of Administration from time to time), and such minutes shall be signed by the Director who presides over the subsequent meeting. The General Manager shall keep the accounts and have the custody of the documents of the Society under the direction of the Board of Administration; he, or a duly authorised officer, shall receive all monies due to the Society and

shall sign the necessary receipts, shall keep records of all monies paid and received and shall carry on the necessary correspondence.

7. Accounts may be opened at the discretion of the Supervisory Committee with any one or more banks in Jersey in the name of the Society, and the Society shall pay into the said bank or banks to the credit of the Society all monies received to enable the Society to carry out all financial transactions relating to the day to day operations of the Society's business.

All monies withdrawn or transferred from any account in the name of the Society shall only be withdrawn or transferred in accordance with the procedures set out in the Society's Bye-Laws.

8. The Board of Administration shall determine the nature of the information to be obtained from any person desirous of becoming a member of the Society and shall cause a proposal form to be prepared indicating the information so required.

Any person desiring to become a member of the Society must complete and sign the proposal form in the manner required by its terms.

Should the proposal be accepted, the Board of Administration shall determine the class in which the property is to be insured and the contribution to be paid, and the person desiring to become a member of the Society shall forthwith become a provisional member of the Society and shall be bound by these Rules and the Bye-Laws for giving effect thereto. The Board of Administration shall be entitled to reject any proposal for membership. Should any proposal for membership be rejected by the Board of Administration as aforesaid, the provisional member shall cease to be a member of the Society at the expiration of 10 days from the date of the notice of such rejection, but shall be liable to pay to the Society a proportion of the contribution for the time on risk. A member shall (subject however to Rule 11) continue as such until he receives a notice from the Board of Administration refusing to continue the insurance for the ensuing year.

Every member of the Society shall every year pay his contribution to the Society on or before the day and month when he first became a provisional member. Any member who shall in any year fail to pay his contribution on the day and month aforesaid shall, unless otherwise determined by the Board of Administration, cease to be a member of the Society at the expiration of 30 days from the date upon which such contribution became payable.

9. In the event of the whole or any part of the insured property being covered by other insurers the member shall give written notice of this fact to the Society and in the event of loss or damage covered by insurance with the Society this latter shall be liable only for a contribution to such loss or damage in the proportion which the amount in which the property is insured with the Society bears to the total amount in which the property is insured with the Society and the other insurers; it being understood that the Society shall be liable (within the limits hereinbefore declared) jointly with the other insurers for the whole of such loss or damage.

10. In the event of any valid claim being made in respect of any one or more of the risks accepted by the Society the amount of the loss shall be taken from the funds or capital of the Society and, in the event of these being insufficient, the amount shall be raised by a call on all the members of the Society in the manner prescribed by, and subject to the limits set out in, Rule 16. The Board of Administration shall have power to rebuild, repair or restore the destroyed or damaged property to its original state should it deem such a step to be in the interests of the Society.
11. The Board of Administration shall have the right at any time to refuse to continue to insure the property of any member but shall not do so unless it has given to the member not less than 10 days' notice in writing of its intention so to do and every such notice shall contain an intimation that, if within 10 days after the receipt of the notice the member informs the Board of Administration in writing that he desires so to do, the Board of Administration will, before refusing to continue the insurance, give him an opportunity of being heard, in person or by a representative. Should the Society exercise the right given to it by the present Rule, the Society shall refund to the member whose property the Society shall have refused to continue to insure a fair and just proportion of any contribution paid in advance by such member.
12. If a member intends to make a claim in respect of any risk accepted by the Society, such member shall be bound to give written or verbal notice to the Society of such destruction or damage. If such member does not give such notice within 7 days of the date on which the member becomes aware of the event, the member may (at the discretion of the Board of Administration) lose all right to make a claim in respect of such destruction or damage.
13. Should any dispute arise between a member and the Society in respect of any loss or damage, such dispute may be submitted to the decision of 2 Arbitrators, one to be named by the Society and the other by the member with whom the Society is in dispute. The Arbitrators thus appointed, before entering upon the Arbitration, shall select an Umpire, and the dispute will be determined in accordance with the Society's complaints procedure from time to time in force.

The decision of the Arbitrators or of the Umpire shall be without prejudice to the jurisdiction of the Royal Court.
14. No call (as provided by Rule 10) shall be made on the members of the Society until 3 weeks have elapsed from the date of the accident.

Any member refusing or neglecting to pay a call in the course of 10 days after having been required to do so in writing, shall pay a fine of £5. If the fines and calls are not paid in the course of one month the General Manager shall be authorised to take such action as he considers necessary to recover the unpaid amount.
15. The lowest contribution on any policy shall be such amount as may be determined from time to time by the Board of Administration.
16. The accumulated funds of the Society shall form its capital and after provision has been made for expenses of the Society the surplus of the annual contribution shall be added to the capital.

If at any time the capital of the Society becomes insufficient to meet the claims resulting from accidents for which the Society is liable the members shall make up the insufficiency as may be required, subject to the maximum contribution required from each member in such circumstances being limited to no more than £5.

17. The amount of every loss after having been settled by the Board of Administration shall be paid in the course of 3 months.
18. Should a false declaration be made by a member in respect of any property which results in a Class II (hazardous) risk being classified as Class I (non-hazardous) risk by the Society, the member may, at the discretion of the Board of Administration, lose all right to claim such amount of the insurance arising out of the risks associated with such property.

The member shall immediately inform the General Manager should any hazardous trade be carried on or any hazardous materials be stored in or on any property insured by the Society after the date of the insurance, under a similar penalty of potentially losing all right to claim the amount of the insurance arising out of the risks associated with such property.

19. Should any member knowingly or voluntarily do any act or assist or participate in any way in any act whereby his property is damaged or destroyed by any risk accepted by the Society, his contract of insurance may, at the discretion of the Board of Administration, be forfeited and annulled or any payment due to him reduced by such amount as the Board of Administration shall determine; if after payment to him by the Society of any sum whatsoever it is proved that the member in question has committed any such act, he shall be liable to repay to the Society the full amount so paid to him or such lesser amount as may be determined by the Board of Administration, in either case with interest at Bank of England minimum lending rate from time to time plus 2 per cent per annum, the whole without prejudice to any criminal proceedings instituted or to be instituted.
20. The General Manager shall capture and record on a timely basis and in an orderly fashion every financial transaction relating to monies received or paid by the Society.
21. Should property insured by the Society be sold or otherwise transferred, the seller or transferor shall forthwith inform the Society of such sale or transfer so as to enable the Society to cancel the policy covering such property. In such circumstances the Society may, at the discretion of the Board of Administration, refund to that member a fair and just proportion of any contribution paid in advance by such member. Should any such seller or transferor fail to inform the Society of such sale, no claim under any policy or policies covering such property or its contents shall be entertained by the Society unless the Society shall have agreed to insure such property or its contents for the new owner.
22. A general meeting of members of the Society shall be called by the President of the Board of Administration during the first week of the month of December in each year at such place in Jersey as the Board of Administration shall appoint. Notice of the said meeting shall be published in accordance with the Society's Bye-Laws.

The Board of Administration shall present to the members a statement of accounts closed on the thirtieth day of September of the current financial year the accuracy of which shall be duly certified by the auditor appointed as hereinafter provided and which, moreover, shall be accompanied by a report of the Board of Administration on the working of the Society during the last preceding 12 months.

The members present shall elect such number of Directors as they see fit (subject to the number of Directors remaining within any limits set out in the Society's Bye Laws), whether such appointments are to replace those due to retire, to elect additional Directors, or to fill those vacancies on the Board of Administration which have occurred since the last Annual General Meeting by reason of death, incapacity, resignation or otherwise, and they shall appoint an Auditor who shall be a Chartered Accountant or a firm of Chartered Accountants in practice. No Director or other officer of the Society shall, during his period of office, be eligible for appointment as Auditor.

All alterations of and additions to these Rules which are recommended by the Board of Administration may, if duly set out in the convening notice, be debated and decided upon at the Annual General Meeting with a view to their submission to the States.

A copy of the statement of accounts and balance sheet and of the report of the Board of Administration (all of which documents shall bear the Seal of the Society) shall be filed by the General Manager with any governmental or regulatory bodies with whom the Society is required, by the laws and regulations to which the Society is from time to time subject, to file such documents.

The Society's Seal shall not be affixed to any account whatsoever except it be in the presence of at least 2 Directors of the Board of Administration or of one such Director and the General Manager, who shall sign every such document to witness their presence.

The Society shall have a Public Office in the town of St. Helier, and any change of address shall be notified to any governmental or regulatory bodies with whom the Society is required, by the laws and regulations to which the Society is from time to time subject, to notify such changes.

23. A Special General Meeting may be convened at any time by the Board of Administration or at the request, in writing, of at least 12 members of the Society, indicating the purpose of the meeting. Notice of every such meeting shall be published in accordance with the Society's Bye-Laws.

Each member shall have a right to one vote at all General Meetings, whether Special or Annual.

Any member present shall have power to make any proposition entailing an alteration to these Rules or the Bye-Laws for giving effect thereto, either at the Annual General Meeting, or at a Special General Meeting, provided that notice in writing of such proposition has been sent to the General Manager not less than 21 days before the date of the Meeting and that, in case of an alteration being proposed to these Rules, such proposition shall be referred to the Board of Administration which shall report thereon.

All proposed alterations, whether to these Rules or to the Bye-Laws for giving effect thereto, shall appear on the convening notice.

In the event of any conflict between the Bye-Laws and these Rules, these Rules shall prevail.

24. The Board of Administration shall have power, and is hereby authorised, to purchase in perpetuity for and in the name of the Society (subject to the approval of a Special General Meeting) such real property as it may consider most convenient for the purpose of providing permanent offices for carrying on the business of the Society.
25. If the aggregate values insured fall below one million pounds sterling the Society shall be dissolved and the Directors shall immediately convene a Special General Meeting of the members of the Society to name a Liquidator; such dissolution to take effect one month after the date of the meeting.

Should this Special General Meeting not be convened in the course of 8 days, or should the meeting, when convened, fail to name a Liquidator, it shall be lawful for any member or creditor to apply to the Royal Court to name a Liquidator.

26. If the Society is dissolved at any time, the members of the Society at the time of the dissolution shall alone have the right to participate in the assets of the Society in proportion to the amounts for which they are then insured, and they shall be responsible for the debts of the Society in the same proportions, subject to the maximum contribution required from each member in such circumstances being limited to no more than £5. Any amounts due from the members under this Rule 26 shall be raised by a call on all the members of the Society.
27. Save in the case of liquidation or dissolution, the accumulated funds of the Society shall only be used to meet claims arising from the risks accepted by the Society, for the expenses necessary for the efficient management, promotion, and other activities of the Society, and the functioning of its affairs in an efficient manner, and for the payment of salaries and pensions to the employees or former employees of the Society.

The capital of the Society may be invested in any assets and in any manner provided that investments are not made in contravention of the Society's legal and regulatory obligations from time to time.

28. The President, the Vice-President the Junior Vice-President and the General Manager, or any 2 of them, shall represent the Society for the purpose of passing all hereditary contracts and in all matters connected with the real property of the Society.

The General Manager shall represent the Society in all matters other than those connected with the real property of the Society.

29. Any notice to be given –
- (i) to a member by the Society; or
 - (ii) to the Society by a member,

shall be delivered in accordance with the requirements laid down from
time to time by the Board of Administration.

¹

L.18/1976