

STATES OF JERSEY



DRAFT FINANCIAL REGULATION (MISCELLANEOUS PROVISIONS) (AMENDMENT OF LAWS) (JERSEY) REGULATIONS 201-

**Lodged au Greffe on 19th November 2018
by the Chief Minister**

STATES GREFFE



Jersey

DRAFT FINANCIAL REGULATION (MISCELLANEOUS PROVISIONS) (AMENDMENT OF LAWS) (JERSEY) REGULATIONS 201-

REPORT

Each of the regulatory Laws that the Jersey Financial Services Commission (“**JFSC**”) uses to regulate financial service businesses provide that information received by the JFSC under, or for the purposes of, the relevant Law is “restricted information” (i.e. confidential), and cannot be onward disclosed unless permitted by an ‘information gateway’ set out in the Law (for example, see Articles 37 and 38 of the [Financial Services \(Jersey\) Law 1998](#)).

Currently, each regulatory Law has information gateways that allow the JFSC to disclose restricted information, in appropriate circumstances, to overseas regulators equivalent to the JFSC (which the regulatory Laws refer to as “relevant supervisory bodies”), professional bodies (such as those that regulate the accountancy and legal professions), and other relevant bodies such as financial services ombudsmen, law enforcement agencies, etc.

The provisions of the Draft Financial Regulation (Miscellaneous Provisions) (Amendment of Laws) (Jersey) Regulations 201- (the “draft Regulations”) will resolve issues that inappropriately prevent, or limit the circumstances in which, the JFSC may disclose restricted information to Lloyd’s of London (the insurance market), professional bodies, and pension supervisors.

Lloyd’s of London

The JFSC may, from time to time, hold restricted information that would be relevant to the supervisory functions carried out by Lloyd’s of London.

Lloyd’s of London is regulated in the UK by the Financial Conduct Authority and the Prudential Regulation Authority under the Financial Services and Markets Act 2000 (“**FSMA**”).

However, Lloyd’s of London is unusual in that, despite being regulated under the FSMA, its Council (the governing body) is responsible, pursuant to the Lloyd’s Acts 1871–1982, for supervising the business of insurance underwritten at Lloyd’s of London.

Because of this unusual arrangement, it is uncertain that Lloyd’s meets the statutory definition of a “relevant supervisory authority” (see the introduction above). Accordingly, there is some doubt that the JFSC can pass restricted information to Lloyd’s of London, despite the fact that the JFSC may hold relevant information.

To resolve this uncertainty, the draft Regulations will amend the regulatory Laws to specifically provide an information gateway to allow the JFSC to disclose restricted information to Lloyd's of London for the purpose of enabling or assisting it to exercise any of its supervisory functions.

Professional bodies

The regulatory Laws each contain an information gateway that allows the JFSC to pass restricted information to a professional body (such as those that regulate the accountancy and legal professions), but only where it would assist the body to discharge its functions in relation to a person who has failed, or is alleged to have failed, to meet the professional body's standards of conduct.

This narrow wording of the information gateway prevents the JFSC disclosing restricted information to a professional body in other circumstances where it would enable or assist the body to carry out its supervisory functions – for example, where the body is vetting a person for potential membership and needs to determine whether the person is “fit and proper”.

To resolve this, the draft Regulations will amend the regulatory Laws to –

- remove the current restriction on disclosing restricted information only where it would assist the professional body to discharge its functions in relation to a person who has failed, or is alleged to have failed, to meet the professional body's standards of conduct; and
- simply provide for the information gateway to allow restricted information to be disclosed to a professional body to enable or assist the body to exercise any of its supervisory functions.

Pension supervisors

Whilst the JFSC does not regulate pension schemes or those who provide services to them (unless also providing FSJL services), it periodically receives requests for restricted information from pension supervisors; for example to confirm, or otherwise, that a person is “fit and proper” to act in some capacity connected with a pension scheme.

Currently, none of the regulatory Laws provide the JFSC with an information gateway to disclose restricted information to a pension supervisor, despite the fact that the JFSC may hold relevant information.

To resolve this, the draft Regulations will amend the regulatory Laws to provide an information gateway to allow the JFSC to disclose restricted information to a pension supervisor for the purpose of enabling or assisting it to exercise any of its supervisory functions.

The amended regulatory Laws will define a pension supervisor as: “any entity (whether in Jersey or elsewhere) responsible in whole or in part for the supervision of pension funds, plans, schemes or arrangements”. This definition mirrors the criteria to be met by a body seeking to become a member of the International Organisation of Pension Supervisors, the international standard-setter for pension supervision.

Financial and manpower implications

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

Explanatory Note

These Regulations amend the Collective Investment Funds (Jersey) Law 1988, the Banking Business (Jersey) Law 1991, the Financial Services (Jersey) Law 1998, the Insurance Business (Jersey) Law 1996 and the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 (the “Laws”) to permit the disclosure of certain information to third parties, which would otherwise be prohibited under each of those Laws.

All of the Laws contain provisions that have the effect of –

- (a) prohibiting a person, who under or for the purposes of the particular Law has received information relating to the business or other affairs of any person, from disclosing the information without the consent of the person to whom it relates;
- (b) prohibiting a person who obtains any such information directly or indirectly from a person who has received it under or for the purposes of the particular Law from disclosing it without the permission of the person to whom it relates or the person from whom it was received;
- (c) permitting disclosure of certain information so received or obtained, provided that the person to whom it is disclosed complies with or will comply with any conditions to which the disclosure may be subjected.

Regulations 1 to 5 of these Regulations amend the Laws to provide that disclosure may be made –

- (a) by the Jersey Financial Services Commission (“Commission”) to a pension supervisor for the purpose of enabling or assisting a pension supervisor to exercise any of its supervisory functions if the Commission is satisfied that the pension supervisor to whom the disclosure is made complies with, or will comply with, any conditions that the person disclosing the information may, in its discretion, subject such disclosure;
- (b) to any person or body (whether in Jersey or elsewhere) responsible for setting standards of conduct for any profession and having powers to discipline persons who fail to meet those standards for the purpose of enabling or assisting that person or body to exercise any of its supervisory functions; and
- (c) by the Commission to the Society of Lloyd’s (being organs constituted by or under the Lloyd’s Act 1982 of the United Kingdom) for the purpose of enabling or assisting that Society to exercise any of its supervisory function if the Commission is satisfied that the Society of Lloyd’s complies with, or will comply with, any conditions that the Commission may, in its discretion, subject such disclosure.

Regulation 6 gives the title of these Regulations and provides for them to come into force 7 days after they are made.



Jersey

**DRAFT FINANCIAL REGULATION
(MISCELLANEOUS PROVISIONS) (AMENDMENT
OF LAWS) (JERSEY) REGULATIONS 201-**

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Jersey

DRAFT FINANCIAL REGULATION (MISCELLANEOUS PROVISIONS) (AMENDMENT OF LAWS) (JERSEY) REGULATIONS 201-

Made

[date to be inserted]

Coming into force

[date to be inserted]

THE STATES, in pursuance of Articles 1(2) and 30A of the Collective Investment Funds (Jersey) Law 1988¹, Articles 5, 45A and 51 of the Banking Business (Jersey) Law 1991², Articles 4, 38(3) and 42 of the Financial Services (Jersey) Law 1998³, Articles 2, 32A and 41 of the Insurance Business (Jersey) Law 1996⁴, Articles 1(2), 36(9) and 44 of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008⁵, have made the following Regulations –

1 Collective Investment Funds (Jersey) Law 1988 amended

In the Collective Investment Funds (Jersey) Law 1988⁶ –

- (a) in Article 1(1), after the definition “partnership” there shall be inserted the following definition –

“ ‘pension supervisor’ means any entity (whether in Jersey or elsewhere) responsible in whole or in part for the supervision of pension funds, plans, schemes or arrangements;”;

- (b) after Article 28(3) there shall be added the following paragraphs –

“(4) Article 26 does not preclude the disclosure of information by the Commission to a pension supervisor for the purpose of enabling or assisting a pension supervisor to exercise any of its supervisory functions.

(5) Disclosure under paragraph (4) may only be made if the Commission is satisfied that the pension supervisor to whom the disclosure is made complies with, or will comply with, any conditions that the person disclosing the information may, in its discretion, subject such disclosure.”;

- (c) in Article 29 –

(i) in paragraph (6) for the words after clause (iii) there shall be substituted the following words –

“to any person or body (whether in Jersey or elsewhere) responsible for setting standards of conduct for any profession and having powers to discipline persons who fail to meet those standards for the purpose of enabling or assisting that person or body to exercise any of its supervisory functions.”,

- (ii) after paragraph (7) there shall be inserted the following paragraphs –

“(7A) Subject to paragraph (7B), Article 26 does not preclude the disclosure of information by the Commission to the Society of Lloyd’s (being organs constituted by or under the Lloyd’s Act 1982 of the United Kingdom) for the purpose of enabling or assisting that Society to exercise any of its supervisory functions.

(7B) Disclosure under paragraph (7A) may only be made if the Commission is satisfied that the Society of Lloyd’s complies with, or will comply with, any conditions that the Commission may, in its discretion, subject such disclosure.”.

2 Banking Business (Jersey) Law 1991 amended

In the Banking Business (Jersey) Law 1991⁷ –

- (a) in Article 1, after the definition “money laundering reporting officer” there shall be inserted the following definition –

“‘pension supervisor’ means any entity (whether in Jersey or elsewhere) responsible in whole or in part for the supervision of pension funds, plans, schemes or arrangements;”;

- (b) after Article 43(1) there shall be inserted the following paragraph –

“(1A) Article 42 does not preclude the disclosure of information by the Commission to the Society of Lloyd’s (being organs constituted by or under the Lloyd’s Act 1982 of the United Kingdom) for the purpose of enabling or assisting that Society to exercise any of its supervisory functions.”;

- (c) after Article 44(2), there shall be inserted the following paragraph –

“(2A) Article 42 does not preclude the disclosure of information by the Commission to a pension supervisor for the purpose of enabling or assisting a pension supervisor to exercise any of its supervisory functions.”;

- (d) in Article 45(6), for the words after clause (iii) there shall be substituted the following words –

“to any person or body (whether in Jersey or elsewhere) responsible for setting standards of conduct for any profession and having powers to discipline persons who fail to meet those standards for the purpose of enabling or assisting that person or body to exercise any of its supervisory functions.”;

- (e) in Article 45(7), for the words “Articles 43(1)(a) or (3), 44(1)(b), (c) or (d) or (2) or 47(1)(f)” there shall be substituted the words

“Article 43(1)(a), (1A) or (3), 44(1)(b), (c) or (d) or (2), 44(2A) or 47(1)(f)”.

3 Financial Services (Jersey) Law 1998 amended

In the Financial Services (Jersey) Law 1998⁸ –

- (a) in Article 1(1), after the definition “partnership” there shall be inserted the following definition –

“ ‘pension supervisor’ means any entity (whether in Jersey or elsewhere) responsible in whole or in part for the supervision of pension funds, plans, schemes or arrangements;”;

- (b) in Article 38 –

- (i) in paragraph (1)(l) for the words after clause (ii)(C) there shall be substituted the following words –

“to any person or body (whether in Jersey or elsewhere) responsible for setting standards of conduct for any profession and having powers to discipline persons who fail to meet those standards for the purpose of enabling or assisting that person or body to exercise any of its supervisory functions;”;

- (ii) after paragraph (1)(m) there shall be inserted the following paragraphs –

“(n) by the Commission to a pension supervisor for the purpose of enabling or assisting a pension supervisor to exercise any of its supervisory functions;

(o) by the Commission to the Society of Lloyd’s (being organs constituted by or under the Lloyd’s Act 1982 of the United Kingdom) for the purpose of enabling or assisting that Society to exercise any of its supervisory functions.”;

- (iii) in paragraph (2), for the words “(k), (l) or (m)” there shall be substituted the words “(k), (l), (m), (n) or (o)”.

4 Insurance Business (Jersey) Law 1996 amended

In the Insurance Business (Jersey) Law 1996⁹ –

- (a) in Article 1(1), after the definition “money laundering reporting officer” there shall be inserted the following definition –

“ ‘pension supervisor’ means any entity (whether in Jersey or elsewhere) responsible in whole or in part for the supervision of pension funds, plans, schemes or arrangements;”;

- (b) after Article 31(3), there shall be inserted the following paragraph –

“(3A) Article 29 does not preclude the disclosure of information by the Commission to a pension supervisor for the purpose of enabling or assisting a pension supervisor to exercise any of its supervisory functions.”;

- (c) in Article 32 –

- (i) after paragraph (4) there shall be inserted the following paragraph –

“(4A) Subject to paragraph (5), Article 29 does not preclude the disclosure of information by the Commission to the Society of Lloyd’s (being organs constituted by or under the Lloyd’s Act 1982 of the United Kingdom) for the purpose of enabling or assisting that Society to exercise any of its supervisory functions.”,

- (ii) in paragraph (5), for the words “paragraph (6) or (7) or Article 30(1)(a), 31(1)(b), (c) or (d) or (2) or (3),” there shall be substituted the words “paragraph (4A), (6) or (7) or Articles 30(1)(a), 31(1)(b), (c) or (d), 31(2), 31(3), 31(3A)”,

- (iii) in paragraph (7) for the words after clause (iii) there shall be substituted the following words –

“to any person or body (whether in Jersey or elsewhere) responsible for setting standards of conduct for any profession and having powers to discipline persons who fail to meet those standards for the purpose of enabling or assisting that person or body to exercise any of its supervisory functions.”.

5 Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 amended

In the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008¹⁰ –

- (a) in Article 1(1), after the definition “overseas supervisory function” there shall be inserted the following definition –

“‘pension supervisor’ means any entity (whether in Jersey or elsewhere) responsible in whole or in part for the supervision of pension funds, plans, schemes or arrangements;”;

- (b) in Article 36(1)(f), after clause (ii)(C) there shall be substituted the following words –

“to any person or body (whether in Jersey or elsewhere) responsible for setting standards of conduct for any profession and having powers to discipline persons who fail to meet those standards for the purpose of enabling or assisting that person or body to exercise any of its supervisory functions;”;

- (c) after Article 36(2A), there shall be inserted the following paragraphs –

“(2B) Article 35 does not preclude the disclosure of information by the Commission to the Society of Lloyd’s (being organs constituted by or under the Lloyd’s Act 1982 of the United Kingdom) for the purpose of enabling or assisting that Society to exercise any of its supervisory functions;

(2C) Article 35 does not preclude the disclosure of information by the Commission to a pension supervisor for the purpose of enabling or assisting a pension supervisor to exercise any of its supervisory functions.”;

- (d) in Article 36(5), for the words “or (j)” there shall be substituted the words “(j), (2B) or (2C)”.

6 Citation and commencement

These Regulations may be cited as the Financial Regulation (Miscellaneous Provisions) (Amendment of Laws) (Jersey) Regulations 201- and shall come into force 7 days after they are made.

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- 1* chapter 13.100
 - 2* chapter 13.075
 - 3* chapter 13.225
 - 4* chapter 13.425
 - 5* chapter 08.785
 - 6* chapter 13.100
 - 7* chapter 13.075
 - 8* chapter 13.225
 - 9* chapter 13.425
 - 10* chapter 08.785