

**DRAFT COLLECTIVE INVESTMENT FUNDS (AMENDMENT)  
(JERSEY) LAW 199**

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**Lodged au Greffe on 19th May 1998  
by the Finance and Economics Committee**

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**STATES OF JERSEY**

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## Report

The Collective Investment Fund industry is an important part of the finance sector in Jersey. As at 31st December 1997, £35.9 billion was held in collective investment funds, for which one or more permits were held by functionaries of those funds under the Collective Investment Funds (Jersey) Law 1988 ("the principal Law").

Collective investment funds are investment vehicles where, effectively, investors pool their monies and invest using the expertise of certain functionaries such as a fund manager, custodian, investment adviser and so on.

Since 1988 collective investment funds and their functionaries have had to comply with the principal Law, which is the earliest regulatory Law presently being administered through the Financial Services Department. It prohibits a person from being a functionary of a collective investment fund unless he holds a permit issued under the Law. It also seeks to regulate such functionaries and the funds for which they act.

Since the enactment of the principal Law the regulatory environment in Jersey and internationally has changed. There is now a greater expectation from investors (onshore and offshore) to have their risk of loss from fraud and incompetence reduced. In addition, the international community today expects a greater degree of co-operation and exchange of information between regulators in the fight against crime. As a member of the International Organisation of Securities Commissions ("IOSCO"), Jersey's framework of regulation must ensure adequate investor protection and foster co-operation with other regulatory bodies. This amendment Law will bring the principal Law into line with similar regulatory legislation in the Island and ensure that the Collective Investment Fund industry in Jersey is subject to regulatory control and supervision in line with internationally recognised standards.

Later this year the Financial Services Commission (Jersey) Law 1998 will transfer from the Finance and Economics Committee to the Jersey Financial Services Commission all the functions it has under the principal Law and will alter that Law accordingly. The amendment Law has therefore been drafted on the basis that the Commission is the regulatory authority and not the Committee.

The principle proposed changes are -

1. **To enable the Commission to co-operate and exchange information with regulators in other jurisdictions.**

A new Article 19C will be inserted. At present, the principal Law is silent on when and the extent to which the Commission may co-operate with, provide information to, or receive information from a foreign regulator. This new Article will clarify the position.

In particular paragraph (1) of Article 19C will set out as the regulatory powers the Commission will be able to use following a request by a foreign regulator. For example, the Commission could impose a condition on a permit or it could undertake an investigation under Article 19 or obtain information under Article 8.

Paragraph (4) of Article 19C will set out the criteria to which the Commission must have regard in deciding whether to assist a foreign regulator. For example, whether corresponding assistance would be given in the territory concerned and whether it is in the public interest to give the assistance sought.

It should be noted that the Commission cannot exercise its powers under Article 19C in order to communicate information relating to participants in a collective investment fund without the participant's consent, unless it is information already in the public domain or such that the person to whom it relates cannot be identified from it.

2. **To enable the Commission to disclose information in certain circumstances.**

Article 18 will insert into the principal Law Articles 19D to 19J. The principal Law is silent as to when information can or cannot be disclosed by the Commission and others. These new Articles will make it an offence for a person who receives information under the Law to disclose it to others without the consent of both the person to whom it relates and the person

from whom it was received. The new Articles however will then go on to set out the circumstances in which this general duty of confidentiality can be overridden. For example, when the information is already in the public domain or the disclosure is for the purpose of criminal, civil or disciplinary proceedings.

3. **To enable an auditor to communicate with the Commission in good faith, information or an opinion relevant to the Commission's function without being in breach of any duty that he may owe to his client.**

Article 18 will insert into the principal Law Article 19K. Similar provisions exist in other regulatory statutes in Jersey.

4. **To enhance the investigatory and information gathering powers of the Commission.**

Articles 8, 15 and 18 would insert new Articles 19A and 19B and additional provisions into Articles 8 and 19 of the principal Law. The principal provisions include - (1) Express powers of entry into premises in certain circumstances by persons authorised by the Commission; (2) extension of the powers of investigation and information gathering to former permit holders or persons who have acted without a permit, or otherwise acted unlawfully; (3) making obstruction of an investigation an offence; and (4) empowering the Court to order a person convicted of an offence as a result of an investigation to pay all or some of the costs of the investigation.

Other amendments include an enabling power for the Committee to exempt, by Order, schemes or arrangements which are not to constitute a collective investment fund for the purposes of the principal Law (see Article 2(7) of the amending Law); amendments with regard to applications for permits and the procedure for the granting of permits (see Article 5, 6 and 7 of the amending Law); wider powers to issue directions to functionaries, directions are at present limited to requiring a functionary to cease issuing or redeeming units or to wind up a fund (see Article 10 of the amending Law); a new Article enabling the Commission to prepare Codes of Practice (see Article 11 of the

amending Law); an increase in criminal penalties (see Article 12 of the amending Law) and a requirement for the Commission to keep a register of permit holders (see Article 16 inserting Article 19L).

This draft amendment Law has been subject to consultation with the fund industry at various stages and has been generally well received. It has also been considered and approved by the Financial Services Commission Organising Committee.

### Explanatory Note

This draft Law amends the Collective Investment Funds (Jersey) Law 1988 ("the principal Law"). Among the amendments made are provisions -

- (a) relating to the grant, variation and revocation of permits;
- (b) conferring powers of entry on a person carrying out an investigation on behalf of the Jersey Financial Services Commission ("the Commission");
- (c) enabling the Commission to issue a code of practice under the principal Law;
- (d) making it an offence for a permit holder not to give the Commission information without which the Commission might be misled about a material matter;
- (e) for the exercise of the Commission's powers in order to assist an authority which supervises collective investment funds in another jurisdiction; and
- (f) regulating the disclosure of information relating to collective investment funds.

*Article 1* inserts definitions for the purposes of the amendments which follow.

*Article 2* clarifies the powers of the Commission and imposes a duty on it to supervise permit holders under the principal Law.

*Article 3* amends Article 2 of the principal Law (Collective investment funds). The first amendment is consequential upon the Insurance Business (Jersey) Law 1996. The second amendment enables the Finance and Economics Committee ("the Committee") to prescribe by Order, on the recommendation of the Commission, schemes and arrangements which are not to constitute collective investment funds for the purposes of the principal Law.

*Article 4* amends Article 4 of the principal Law (Requirement for functionary to hold permit) so as to prohibit a limited partnership established in the Island holding itself out as being a functionary of a collective investment fund outside the Island unless it has a permit under the Law. Such activity is already prohibited for companies incorporated in the Island and for limited liability partnerships registered in the Island. The penalty for the offence of operating as a functionary without a permit is increased from a fine and/or up to 2 years' imprisonment to a fine and/or up to 7 years' imprisonment. Power is also taken for the Committee to prescribe by Order, on the recommendation of the Commission, persons or classes of person to whom the requirement to have a permit for such activity will not apply.

*Article 5* amends Article 5 of the principal Law (Application for permit) so as to -

- (a) require the Commission to have regard to the need to protect the Island's reputation in financial and commercial matters when considering an application for a permit (the Commission is already required to have regard to the protection of the public and the best economic interests of the Island); and
- (b) require an applicant for a permit to notify the Commission of any alteration in his application or material change in the information given by him to the Commission which occurs after his application is made but before it is determined by the Commission.

*Article 6* amends Article 6 of the principal Law (Grant or refusal of permit, imposition of conditions and cancellation of permit) so as to -

- (a) enable the Commission to attach a condition to a permit to the effect that all or part of a code of practice issued under the Article added by *Article 11* may not be used in evidence in proceedings;
- (b) enable the Commission to cancel a permit in any case where the permit holder does not start to operate as a functionary within a year of the permit being granted and

in any case where the permit holder ceases to operate as a functionary;

- (c) enable the Commission to take into account any failure to follow a code of practice issued under the Article added by *Article 11* when deciding whether to grant or refuse to grant, vary or revoke a permit;
- (d) require the Commission to give written notice of a decision to refuse to grant a permit;
- (e) make a contravention of any condition attached to a permit an offence liable to a fine and/or up to 5 years' imprisonment, by virtue of Article 14(3) of the principal Law as amended by this draft Law, and allow a conviction for such an offence to be admissible in civil proceedings as evidence of breach of the condition; and
- (f) clarify the Committee's powers to prescribe by Order, on the recommendation of the Commission, fees payable by an existing permit holder.

*Article 7* amends Article 7 of the principal Law (Procedure and right of appeal on refusal or cancellation, etc., of permit) so as to reduce the minimum period of notice of a decision of the Commission to alter conditions attached to a permit or revoke a permit from 90 days to 1 month and to enable the Commission, when giving notice to a permit holder of its decision, to specify a period longer than 1 month at the end of which the alteration or revocation will take effect. The Commission is also given a discretion to extend the period specified, upon the request of the permit holder. The right for a permit holder to request a written statement of the Commission's reasons for a decision is extended to decisions by the Commission to attach a new condition to a permit and the time within which the Commission's statement must be given is reduced from 30 days to 14 days. The period within which an appeal against a decision of the Commission may be made is reduced from 90 days to 1 month.

*Article 8* amends Article 8 of the principal Law (Power to obtain information and require production of documents) so that -

- (a) the existing power of the Commission to require a permit holder to provide information is extended to apply to former permit holders as well;
- (b) the Commission may require a permit holder or former permit holder to furnish it with a report by an accountant or person with similar skills;
- (c) a person authorised by the Commission may ask for information about any matter he specifies and enter premises for the purpose of obtaining the information or the production of books or papers or exercising his powers in relation to them;
- (d) the existing power to require production of books and papers includes a power to retain books and papers so produced and the existing description of persons who may be required to explain them is expanded;
- (e) the existing provision limiting the exercise of powers under the Article to a case where an investigation is in hand is removed;
- (f) the powers to require production of books and papers are extended to apply to former permit holders and persons acting unlawfully or who have acted without a permit;
- (g) obstructing a person exercising the power of entry described in (c) is made an offence liable to a fine and/or up to 5 years' imprisonment by virtue of Article 14(3) of the principal Law as amended by this draft Law.

*Article 9* amends Article 9 of the principal Law (Misleading statements and practices) so as to remove the paragraphs specifying the jurisdictional scope of the offences contained in Article 9, which are concerned with the making of misleading statements and misleading practices. The penalty for an offence under Article 9 is increased from a fine and/or up to 7 years' imprisonment to a fine and/or up to 10 years' imprisonment.

*Article 10* substitutes Article 12 of the principal Law (Directions). The substituted Article specifies the grounds on which the Commission may give directions in respect of a collective investment fund or a class of fund and expands upon the kinds of requirement that may be imposed by way of a direction. Power is introduced for the Commission to vary, withdraw or issue further directions and to make public directions it has given. A right is introduced for a person to apply to the Commission for the withdrawal or variation of a direction and to appeal to the Inferior Number of the Royal Court against a direction or a refusal to withdraw or vary a direction. Failure to comply with a direction is made an offence liable to a fine and/or up to 2 years' imprisonment. Provision is included for a conviction under this Article to be admissible in civil proceedings as evidence of the facts constituting the offence.

*Article 11* inserts a new Article in the principal Law enabling the Commission, after consultation with interested persons, to prepare a code of practice in respect of any function of a functionary in relation to a collective investment fund, or any provision of the Law or subordinate legislation made under it. The code will be admissible in evidence in civil and criminal proceedings if it appears to the court to be relevant and, if relevant, shall be taken into account.

*Article 12* amends Article 14 of the principal Law (Offences and penalties) so as to -

- (a) extend the offence of removing, destroying, concealing or altering papers with intent to avoid detection of an offence to apply to a person who causes or permits such removal, destruction, concealment or alteration;
- (b) make it an offence for a permit holder, or a person required to hold a permit, to fail to provide the Commission with information relevant to the Commission's functions in relation to him and without which the Commission may be misled about a matter material to the exercise of its functions;
- (c) make it an offence for any person to contravene any provision of an Order made under the Law;

- (d) have the effect that where a person commits the offence of obstructing an authorised person exercising powers of entry under Article 8 of the principal Law or an inspector exercising powers of entry under Article 19 of the principal Law, continued obstruction will constitute a further offence subject to a daily penalty; and
- (e) increase the penalty for any offence under the Law for which no special penalty is provided and for a continuing failure to provide information etc. from an unlimited fine and/or up to 2 years' imprisonment to an unlimited fine and/or up to 5 years' imprisonment.

*Article 13* inserts a new Article in the principal Law enabling the Commission to issue a public statement about a person who appears to have contravened certain requirements of the Law or who has failed to comply with a code of practice issued under the Law or where it appears that it would be in the interests of participants or potential participants in a collective investment fund to do so. If the statement relates to a permit holder or former permit holder, that person must be given 7 days' notice of the statement before it is published.

*Article 14* amends Article 15 of the principal Law (Legal proceedings) with the effect that a principal person (for whom a definition is added by *Article 1*) who consents to or connives in the commission of an offence by a permit holder or former permit holder or by a person acting without a permit is guilty of that offence and liable accordingly. Similarly, provision is added whereby a partner or officer of a partnership or manager or other officer of an association who consents to or connives in the commission of an offence by the partnership or association is also guilty of that offence and liable accordingly. A director or other officer of a company may already be found so guilty and liable.

*Article 15* makes an amendment to Article 16 of the principal Law (Accessories and abettors) which is consequential upon the amendment made by *Article 14*.

*Article 16* amends Article 18 of the principal Law (Service of notices) so as to enable service by telex, facsimile or other electronic transmission.

*Article 17* amends Article 19 of the principal Law (Investigation by Commission) so as to -

- (a) extend the Commission's powers of investigation to former permit holders and to persons it has reasonable cause to believe have committed an offence of making a misleading statement or concealing facts;
- (b) provide that a person need not disclose any information protected by legal professional privilege;
- (c) give an inspector appointed by the Commission to carry out an investigation power to enter premises for the purpose of carrying out his duties under the Article;
- (d) make obstruction of an inspector exercising powers of entry an offence liable to a fine and/or up to 5 years' imprisonment by virtue of Article 14(3) of the principal Law as amended by this draft Law;
- (e) enable the court to order a person convicted of an offence as a result of an investigation to pay all or some of the costs of the investigation.

*Article 18* adds new provisions to the principal Law concerning the offence of obstructing an investigation, the issue of warrants by the Bailiff for the entry and search of premises, co-operation by the Commission with an authority which supervises collective investment funds in another jurisdiction ("relevant supervisory authority") and disclosure of information.

Article 19A (Obstruction of investigations) makes it an offence for a person to falsify, conceal, destroy or dispose of information or documents if he knows that they are needed or likely to be needed for an investigation. It is a defence for a person to prove that he had no intention of concealing facts disclosed by the information or documents from the person carrying out the investigation. The penalty for the offence is a fine and/or up to 5 years' imprisonment by virtue of Article 14(3) of the principal Law as amended by this draft Law.

Article 19B (Entry and search of premises) is added to the principal Law to allow an application to be made to the Bailiff for a warrant to enter and search premises where it is likely that, if prior notice of entry were given, papers etc. would be removed or destroyed or the entry obstructed, or where a previous entry on premises made after giving notice has met with obstruction or non-co-operation. The warrant will authorise a police officer, and any other person named in the warrant, to enter the premises. If necessary, the entry may be forced. Books and papers may be retained and copied and persons questioned. The warrant expires 1 month after it is issued. Books or papers retained can be kept for up to a year, or until any relevant proceedings have ended. If books or papers are kept, a person needing to use them for business purposes can ask for copies. Obstruction of a person exercising powers under a warrant is an offence liable to a fine and/or up to 5 years' imprisonment by virtue of Article 14(3) of the principal Law as amended by this draft Law.

Article 19C (Co-operation with relevant supervisory authority) is added to the principal Law to enable the Commission to exercise the powers specified in paragraph (1) at the request of or for the purpose of assisting a relevant supervisory authority in the exercise of its supervisory functions. The Commission can disclose information to a relevant supervisory authority but, if it relates to a participant in a collective investment fund, the information must already be in the public domain or such that the person it relates to cannot be identified from it, or the Commission must have the participant's consent to the disclosure. Paragraph (4) specifies the matters which the Commission must take into account in deciding whether or not to give such assistance. The Commission can refuse to assist if the relevant supervisory authority does not undertake to contribute towards the costs of such assistance.

Articles 19D to 19J are added to the principal Law to deal with disclosure.

Article 19D (Restriction on disclosure of information) makes it an offence for a person who receives information for the purposes of the Law to disclose it without the consent of the person it relates to and the person from whom it is received. By virtue of Article 14(3) of the principal Law as amended by this draft Law, the penalty for the offence is a fine and/or up to 5 years' imprisonment.

Article 19D does not apply to -

- (a) information already in the public domain (Article 19D(2)(a));
- (b) information from which it is not possible to identify the person to whom it relates (Article 19D(2)(b));
- (c) disclosure by the Commission to a relevant supervisory authority under Article 19C (Article 19D(3));
- (d) disclosure to assist the Commission in the discharge of its functions under the principal Law and other Laws under which it has a supervisory function (Article 19E(1));
- (e) disclosure by the Commission to the auditor of a permit holder, former permit holder or person who appears to have acted without a permit to assist the Commission in the discharge of its functions, or where it is in the interests of investors (Article 19E(2));
- (f) disclosure by the Commission to a professional person for the purpose of obtaining his advice (Article 19E(3));
- (g) disclosure by the Commission to the Viscount in connection with bankruptcy proceedings (Article 19F);
- (h) disclosure for the purpose of the investigation of a suspected offence or of criminal, civil or disciplinary proceedings (Article 19G(1));
- (i) disclosure by the Commission or a person acting on its behalf to the Attorney General or a police officer of information obtained under Article 8 or 19 of the principal Law or of related information, for the purposes of a prosecution (Article 19G(2));
- (j) disclosure by the Commission or a person acting on its behalf to an inspector appointed under Article 19 of the

principal Law or appointed to investigate insider dealing or companies (Article 19G(3));

- (k) disclosure by the Commission to any person or body responsible for a scheme for compensating investors provided that, if the information relates to a participant in a collective investment fund, that person consents to the disclosure (Article 19G(4)).

Article 19H (Attachment of conditions to disclosure) prohibits the disclosure of information in the circumstances described in paragraph (k) above or in the exercise of the Commission's power under Article 19C to pass on information to relevant supervisory authorities unless the Commission is satisfied that the recipient of the information will comply with such conditions as the Commission attaches to its disclosure.

Article 19J (Information supplied to Commission by relevant supervisory authority) extends the prohibition on disclosure of information in Article 19D to information supplied by a relevant supervisory authority to the Commission.

Article 19K (Communication by auditor and other persons with Commission) has the effect that an auditor or an accountant or other professional person appointed to prepare a report required by the Commission who communicates to the Commission information or an opinion relevant to the Commission's functions shall not be in breach of any duty that he owes. The Committee is empowered to make an Order, on the recommendation of the Commission, specifying circumstances in which such persons will be required to communicate information or any opinion to the Commission. Failure to comply with such an Order will be an offence subject to a fine and/or up to 6 months' imprisonment.

Article 19L (Register of holders of permits) requires the Commission to keep a register of permit holders and for the register to be available for inspection by members of the public.

Article 19 amends Article 20 of the principal Law (Applications to court) to enable a person to apply to court for the setting aside or variation of an order of the court waiving the requirement that 1 month's notice is given of variation or revocation of a permit.



*Article 20* inserts a new Article 22A (Fees) in the principal Law which makes it clear that fees payable under the Law are paid to the Commission. By virtue of Articles 13 and 14 of the Financial Services Commission (Jersey) Law 1998 they are accordingly funds and resources of the Commission.

*Article 21* is the short title and commencement provision.

**COLLECTIVE INVESTMENT FUNDS (AMENDMENT)  
(JERSEY) LAW 199**

**A LAW** to amend the Collective Investment Funds (Jersey) Law 1988, 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 the Collective Investment Funds (Jersey) Law 1988,<sup>1</sup> as amended (referred to in this Law as the "principal Law"), in Article 1, in paragraph (1) -

- (a) before the definition of "books and papers" there shall be inserted the following definition -

" '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;

<sup>1</sup> Volume 1988-1989, page 135.

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- (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;";
- (b) after the definition of "books and papers" there shall be inserted the following definition -
- " 'code of practice' means a code prepared and from time to time revised pursuant to paragraph (1) of Article 13A (Codes of practice);";
- (c) after the definition of "functionary" there shall be inserted the following definitions -
- " 'holding company' has the meaning given in Article 2 of the Companies (Jersey) Law 1991;
- 'partnership' includes a partnership constituted under the law of a country or territory outside the Bailiwick;";
- (d) after the definition of "prescribed" there shall be inserted the following definition -
- " 'principal person' means -

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- 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
      - (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 -

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- (i) a partner;
- (ii) where a partner is a company, any person who, in relation to that company, falls within sub-paragraphs (i), (ii) or (iii) of paragraph (b); and

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

- (e) after the definition of "register" there shall be inserted the following definition -

" 'relevant supervisory authority' means an authority discharging in a country or territory outside the Bailiwick supervisory functions corresponding to those of the Commission in the Bailiwick in respect of banking, insurance, investment business or other financial services, including collective investment funds;";

- (f) after the definition of "Schedule" there shall be inserted the following definition -

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

## ARTICLE 2

After Article 1 of the principal Law there shall be inserted the following Article -

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## "ARTICLE 1A

**Functions of the Commission**

The Commission shall have the powers conferred on it by this Law and the duty generally to supervise the persons granted permits by it in the exercise of those powers."

## ARTICLE 3

In Article 2 of the principal Law -

- (a) in paragraph (4) -

- (i) in sub-paragraph (a), for the words "the First Schedule to the Insurance Business (Jersey) Law 1983" there shall be substituted the words "Part I of the First Schedule to the Insurance Business (Jersey) Law 1996",

- (ii) in sub-paragraph (b), for the words "that Schedule" there shall be substituted the words "that Part";

- (b) after paragraph (6) there shall be added the following paragraph -

"(7) Schemes and arrangements may be prescribed, either by name or description, which are not to constitute collective investment funds for the purposes of this Law."

## ARTICLE 4

In Article 4 of the principal Law -

- (a) in paragraph (2), after the words "Limited Liability Partnerships (Jersey) Law 1997" there shall be inserted the words "or limited partnership established in

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accordance with the Limited Partnerships (Jersey) Law 1994”;

- (b) in paragraph (3), after the words “guilty of an offence” there shall be inserted the words “and liable to a fine or to imprisonment for a term not exceeding seven years or to both such fine and such imprisonment”;
- (c) in paragraph (4), for the words “Paragraph (1)” there shall be substituted the words “Paragraphs (1) and (2)”.

## ARTICLE 5

In Article 5 of the principal Law -

- (a) in paragraph (3), after the words “the public” there shall be inserted the words “, to the need to protect the reputation of the Bailiwick in financial and commercial matters”; and
- (b) after paragraph (3) there shall be added the following paragraph -

“(4) An applicant who, while his application is awaiting consideration by the Commission -

- (a) determines to bring about any alteration in it; or
- (b) becomes aware of any event which may affect in any material respect any information furnished by him to the Commission in connection with his application,

shall forthwith give written notice of that matter to the Commission.”.

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## ARTICLE 6

In Article 6 of the principal Law -

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

“(4A) Conditions attached, varied or prescribed under paragraph (1), (3) or (4) may indicate that a code of practice is to be wholly or partly disregarded for the purposes of paragraph (4) of Article 13A (Codes of practice);

- (b) in paragraph (5), after the word “paragraphs” there shall be inserted the word “(1),”;
- (c) in paragraph (6) -
  - (i) in sub-paragraph (a), for the words beginning “in or from within” to the end of the sub-paragraph there shall be substituted the words “for which the permit is granted within one year of the date of the grant”, and
  - (ii) in sub-paragraph (b), for the words “in or from within the Bailiwick” there shall be substituted the words “for which the permit is granted”;
- (d) after paragraph (6) there shall be inserted the following paragraph -

“(6A) In exercising its powers under this Article the Commission may have regard to any failure on the part of the applicant for a permit or the holder of a permit, as the case may be, to follow any principles or guidance contained in a code of practice.”;

- (e) in paragraph (7) -

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- (i) after the words "If the Commission" there shall be inserted the words "acting under paragraph (1) refuses to grant a permit or", and
  - (ii) for the words "the holder of the permit" there shall be substituted the words "the applicant or the holder of the permit, as the case may be";
- (f) after paragraph (7) there shall be inserted the following paragraphs -
- “(7A) Any person who contravenes or fails to comply with any condition attached to a permit under paragraph (1) or (3) or any condition applicable to a permit under paragraph (4) shall be guilty of an offence in respect of each such contravention.
- (7B) The record of the conviction of any person for an offence under paragraph (7A) shall be admissible in civil proceedings as evidence of the fact of the breach of a condition attached or applicable under this Article.”;
- (g) for paragraph (8) there shall be substituted the following paragraph -
- “(8) Fees may be prescribed which shall be payable by the holder of a permit -
- (a) at such intervals as may be prescribed; and
  - (b) upon the occurrence of such events as may be prescribed.”.

## ARTICLE 7

In Article 7 of the principal Law -

- (a) in paragraph (1) -

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- (i) for sub-paragraph (a) there shall be substituted the following sub-paragraph -
    - “(a) such period as is specified in the notice in writing of the variation, new condition or revocation, being a period of not less than one month beginning on the day the notice is given to the holder of the permit; or”,
  - (ii) in sub-paragraph (b), for the word “abandoned” there shall be substituted the word “withdrawn”,
  - (iii) for the words “(but if may take effect earlier at the request of the holder of the permit)” there shall be substituted the words “(but may, at the request of the holder of the permit, take effect earlier or, if the Commission so agrees, later).”;
- (b) in paragraph (2) -
- (i) after the words “or varies any such condition,” there shall be inserted the words “or attaches a new condition to a permit”,
  - (ii) for the word “thirty” there shall be substituted the word “fourteen”;
- (c) in paragraph (4), for the words “ninety days” there shall be substituted the words “one month”.

## ARTICLE 8

In Article 8 of the principal Law -

- (a) in paragraph (1), after the words “a holder of a permit” there shall be inserted the words “or a former holder of a permit”;

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

“(1A) The Commission may require a holder of a permit or a former holder of a permit to furnish the Commission at specified times or intervals with a report by an accountant or other person with relevant professional skills nominated or approved by the Commission on specified matters, in such form as may be specified.”;

- (c) in paragraph (2) for sub-paragraph (b) there shall be substituted the following sub-paragraph -

“(b) authorise any person on producing (if required to do so) evidence of his authority to require a holder of a permit to -

- (i) furnish him, at such time as he may specify, with information about any matter which he may specify being, if he so requires, information verified in a specified manner, and

- (ii) produce to him forthwith any books or papers which he may specify.”;

- (d) in paragraph (3) -

- (i) after the words “books or papers from” in the first place where they appear, there shall be inserted the words “or the furnishing of information by”,
- (ii) after the words “books or papers from” in the second place where they appear there shall be inserted the words “or the furnishing of that information by”,
- (iii) after the words “such books or papers” there shall be inserted the words “or information”;

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- (e) in paragraph (4), in sub-paragraph (a) -

- (i) in clause (i), after the word “to” there shall be inserted the words “retain or”, and

- (ii) for clause (ii) there shall be substituted the following clause -

“(ii) to require the person producing them, any person who appears to be in possession of relevant information or any person who is or has been a director, controller, auditor or employee of the holder of the permit, to provide an explanation of any of them;”;

- (f) for paragraph (5) there shall be substituted the following paragraph -

“(5) A person authorised by the Commission pursuant to sub-paragraph (b) of paragraph (2) may, having given prior written notice of his intention to do so and on producing, if required, evidence of his authority, enter, at a reasonable time, any premises occupied by a person required by him to produce specified books or papers or furnish specified information, or any other premises where the books or papers are kept by that other person, for the purpose of obtaining the books or papers or information or of exercising the powers conferred by paragraph (4), as the case may be.”;

- (g) in paragraph (6), after the words “this Article” there shall be inserted the words “or obstructs a person exercising powers under paragraph (5)”;

- (h) after paragraph (7) there shall be inserted the following paragraph -

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“(7A) 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) of this Article or paragraph (1), (2A) or (4) of Article 14 (Offences and penalties).”;

- (j) in paragraph (8), for the words “any person who appears to the Commission to be acting” there shall be substituted the words “a former holder of a permit, to any person who the Commission has reasonable cause to believe has committed an offence under the provisions of Article 9 (Misleading statements and practices) and to any person who appears to the Commission to be acting or to have acted”.

## ARTICLE 9

In Article 9 of the principal Law -

- (a) paragraphs (4) and (5) shall be deleted;
- (b) in paragraph (6), in sub-paragraphs (a) and (b), after the words “any agreement” there shall be inserted the words “or arrangement”; and
- (c) in paragraph (7), for the words “seven years” there shall be substituted the words “ten years”.

## ARTICLE 10

For Article 12 of the principal Law there shall be substituted the following Article -

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## “ARTICLE 12

**Directions**

(1) If it appears to the Commission, in relation to a collective investment fund, or any class of such fund, that -

- (a) any requirements in relation to the collective investment fund or the class thereof are no longer satisfied;
- (b) it is in the best interests of potential participants in the collective investment fund or of creditors of the collective investment fund;
- (c) it is desirable in order to protect the reputation and integrity of the Bailiwick in financial and commercial matters;
- (d) it is in the best economic interests of the Bailiwick; or
- (e) any prospectus or other form of promotion of a collective investment fund published or made available, or proposed to be published or made available by or on behalf of any functionary of a collective investment fund or any class thereof is misleading or undesirable,

the Commission 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 -

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- (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 in relation to any functionary of a collective investment fund or any class thereof be removed or removed and replaced by another person acceptable to the Commission;
- (c) require a functionary of a collective investment fund or any class thereof to cease the issue or redemption, or both the issue and redemption of units on a date specified in the direction, either until such further date as is specified in that or another direction or indefinitely;
- (d) require a functionary of a collective investment fund or any class thereof to wind up the affairs of the collective investment fund, 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 documents, records, assets and property belonging to or in the possession or control of the functionary;
- (e) prohibit the publication or making available of a particular prospectus or any other form of promotion of a collective investment fund or any class thereof; or
- (f) require that any particular prospectus or other form of promotion of a collective investment fund or any class thereof 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.

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(4) Where the Commission 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 Commission to have it withdrawn or varied and the Commission 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 Commission was unreasonable having regard to all the circumstances of the case.

(7) Other than with respect to a direction to wind up the affairs of a collective investment fund, 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 fine or to imprisonment for a term not exceeding two years or to both such fine and such imprisonment.



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(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 11

After Article 13 of the principal Law, there shall be inserted the following Article -

## “ARTICLE 13A

**Codes of practice**

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

- (a) prepare a code for the purpose of establishing sound principles and providing practical guidance in respect of any function of a functionary in relation to a collective investment fund and any provision of this Law or any Regulations or Order made under it; and
- (b) revise any such code by revoking, varying, amending or adding to the provisions of the code.

(2) The Commission shall ensure that a code of practice is printed and available to the public in the Bailiwick, and such a code may be made available by being put on sale at such price as the Commission considers reasonable.

(3) Subject to paragraphs (4) and (5), a failure on the part of any person to follow any principles or guidance contained in a code of practice shall not itself render that person liable to proceedings of any kind or invalidate any transaction.

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(4) Subject to paragraph (4A) of Article 6 (Grant or refusal of permit, imposition of conditions and cancellation of permit), in any proceedings under this Law or otherwise, a code of practice 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 Commission to be an accurate copy of a code of practice or any part of such a code shall be admissible 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 of practice or part of such a code, certified in accordance with paragraph (5), it shall be unnecessary for the purposes of paragraph (5) to prove the official position or handwriting of the person signing on behalf of the Commission.

(7) In paragraph (1), references to the Commission preparing a code include references to the Commission adopting, with or without modifications, a code prepared by any other person, whether within or outside the Bailiwick.”.

## ARTICLE 12

In Article 14 of the principal Law -

- (a) for paragraph (2) there shall be substituted the following paragraphs -

“(2) Any person who, with intent to avoid detection of the commission of an offence under this Law, removes out of the jurisdiction, destroys, conceals or fraudulently alters any books or papers, or causes or permits the

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removal, destruction, concealment or fraudulent alteration of any books or papers, shall be guilty of an offence.

(2A) A holder of a permit shall be guilty of an offence if he fails to provide the Commission with any information in his possession knowing or having reasonable cause to believe that -

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

(2B) The reference in paragraph (2A) to a holder of a permit includes a reference to any person who appears to the Commission to be acting or to have acted in contravention of the provisions of paragraph (1) or (2) of Article 4 (Requirement for functionary to hold permit).

(2C) Any person who contravenes any provision of an Order made under this Law, other than an Order made under paragraph (4) of Article 19K (Communication by auditor and other persons with Commission) shall be guilty of an offence.”;

- (b) in paragraph (3), for the words “two years” there shall be substituted the words “five years”;
- (c) in paragraph (4) -
  - (i) after the words “Article 8 (Power to obtain information etc.)” there shall be inserted the words “or continues to obstruct a person exercising powers

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under paragraph (5) of that Article or paragraph (4B) of Article 19”;

- (ii) after the words “that failure” there shall be inserted the words “or obstruction”;
- (iii) after the words “the failure” there shall be inserted the words “or obstruction”;
- (iv) for the words “two years” there shall be substituted the words “five years”.

## ARTICLE 13

After Article 14 of the principal Law there shall be inserted the following Article -

## “ARTICLE 14A

**Public statements**

- (1) The Commission may issue a public statement concerning a person if that person -
  - (a) appears to the Commission to have contravened or failed to comply with -
    - (i) paragraph (1) or (2) of Article 4 (Requirement for functionary to hold permit),
    - (ii) any condition attached or applicable to a permit under Article 6 (Grant or refusal of permit, imposition of conditions and cancellation of permit),
    - (iii) any provision of Article 9 (Misleading statements and practices) or Article 14 (Offences and penalties),

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(iv) any direction given under Article 12 (Directions), or

(v) any Regulations or Order made under this Law;

or

(b) has failed to comply with a code of practice.

(2) The Commission may issue a public statement concerning a person who is or the Commission believes to be holding himself out as a functionary of a collective investment fund, whether in the Bailiwick or elsewhere, if it appears to the Commission to be desirable to do so in the interests of participants or potential participants in the collective investment fund.

(3) Where a public statement issued under this Article concerns a holder of a permit or a former holder of a permit, the Commission 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 14

In Article 15 of the principal Law, for paragraph (1) there shall be substituted the following paragraphs -

“(1) Where an offence under this Law committed by a holder of a permit or former holder of a permit or by a person acting in contravention of the provisions of paragraph (1) or (2) of Article 4 (Requirement for functionary to hold permit) 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 offender, that principal person shall be guilty of the offence and liable in the same manner as the offender to the penalty provided for that offence.

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(1A) 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, that person 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.”

## ARTICLE 15

At the beginning of Article 16 of the principal Law there shall be inserted the words “Without prejudice to paragraphs (1) and (1A) of Article 15.”

## ARTICLE 16

In Article 18 of the principal Law, in paragraph (2), after subparagraph (c) there shall be added the word “or” and the following subparagraph -

“(d) by sending it to him at that address by telex, facsimile or other similar means which produce a document containing the text of the communication.”

## ARTICLE 17

In Article 19 of the principal Law -

(a) in paragraph (2), for the words beginning “being an individual”, and ending “being a company”, there shall be substituted the words “a principal person in relation to, or officer, employee, banker, auditor or legal adviser of such a holder of a permit, any person nominated or approved to make a report in respect of such a holder of a permit and

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any other person who appears to be in possession of relevant information”;

(b) in paragraph (3) -

(i) for the words “paragraphs (1) and (2)” there shall be substituted the words “paragraphs (1), (2) and (4B)”,

(ii) for the words “any person who appears to the Commission to be acting” there shall be substituted the words “a former holder of a permit, to any person who the Commission has reasonable cause to believe has committed an offence under the provisions of Article 9 (Misleading statements and practices) and to any person who appears to the Commission to be acting or to have acted”;

(c) at the beginning of paragraph (4) there shall be inserted the words “Subject to paragraph (4A),”;

(d) after paragraph (4) there shall be inserted the following paragraphs -

“(4A) A person liable to be examined under oath under paragraph (2) is not required to disclose any information which he is entitled to refuse to disclose on grounds of legal professional privilege except that a lawyer may be required to disclose the name and address of his client.

(4B) An inspector appointed under this Article may, at a reasonable time, having given prior written notice of his intention to do so, and on producing if required evidence of his authority, enter any premises occupied by the holder of a permit or any other person referred to in paragraph (2) or any other premises where information is kept by such a person, for the purpose of carrying out his duties under this Article.

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(4C) Any person who obstructs a person exercising powers under paragraph (4B) shall be guilty of an offence.”;

(e) after paragraph (6) there shall be inserted the following paragraphs -

“(6A) A person convicted on a prosecution instituted as a result of 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.

(6B) For the purposes of paragraph (6A), the expenses of the investigation shall include such sums as the Commission may determine in respect of the cost of staff and overheads.

(6C) 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 (4C) of this Article or paragraph (1), (2A) or (4) of Article 14 (Offences and penalties).

(6D) Nothing in paragraph (6C) shall be construed as preventing the use of a statement in any enquiry under paragraph (6).”.

## ARTICLE 18

After Article 19 of the principal Law there shall be inserted the following Articles -

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## "ARTICLE 19A

**Obstruction of investigations**

(1) It shall be an offence for a person who knows or suspects -

- (a) that information, books or papers are or are likely to be required under Article 8 (Power to obtain information etc.); or
- (b) that an investigation is being or is likely to be carried out under Article 19 (Investigation by Commission),

to falsify, conceal, destroy or otherwise dispose of, or cause or permit the falsification, concealment, destruction or disposal of information, books or papers which he knows or suspects would be required under Article 8 or relevant to an investigation under Article 19.

(2) It shall be a defence for a person to prove that he had no intention of concealing facts disclosed by the information, books or papers from a person requiring or likely to require such information, books or papers under Article 8 or carrying out or likely to be carrying an investigation under Article 19.

## ARTICLE 19B

**Entry and search of premises**

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

- (a) if a notice were given under paragraph (5) of Article 8 or paragraph (4B) of Article 19 it would not be complied with;

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- (b) if any person were required to produce books or papers under paragraph (1), (2) or (3) of Article 8, those books or papers would be likely to be removed, tampered with or destroyed;
- (c) a specified person has failed in any respect to comply with a notice or requirement referred to in sub-paragraph (a) or (b);
- (d) a specified person has not provided complete information, books or papers in response to a notice or requirement referred to in sub-paragraph (a) or (b);
- (e) a person authorised by the Commission has been or may be obstructed in exercising a power under paragraph (5) of Article 8; or
- (f) an inspector appointed under Article 19 has been or may be obstructed in exercising a power under paragraph (4B) of that Article,

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;
- (b) to search the premises and obtain information or take possession of any books or papers appearing to be books or papers of a type referred to in any of the provisions mentioned in paragraph (1) or information relating to matters referred to therein or which otherwise appear to be relevant to the investigation of any offence under this Law, or to

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take, in relation to any such books or papers, any other steps which may appear to be necessary to preserve them or to prevent interference with them;

- (c) to take copies of or extracts from such books or papers and to require the person who had possession of them or any person who appears to be in possession of relevant information to provide an explanation of them;
- (d) to require any person named in the warrant to answer questions relevant for determining any matter in connection with this Law; and
- (e) if the books or papers 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.

(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 books or papers taken under paragraph (2) may be retained -

- (a) for a period of one year; or
- (b) if, within that period, proceedings to which the books or papers are relevant are commenced against any person, until the conclusion of those proceedings.

(5) A person who requires for the purposes of his business any books or papers taken under paragraph (2) may request the person in whose custody they are retained to furnish copies of them and the person in whose custody they are retained shall furnish such copies as soon as possible.

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(6) Any person who obstructs the exercise of any power conferred by a warrant under this Article or fails to comply with a requirement imposed on him by virtue of subparagraph (c), (d) or (e) of paragraph (2) shall be guilty of an offence.

(7) Where any person from whose premises books or papers are taken under paragraph (2) claims a lien on any such books or papers, the possession of such books or papers 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, books or papers 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) of this Article or paragraph (1), (2A) or (4) of Article 14 (Offences and penalties).

## ARTICLE 19C

**Co-operation with relevant supervisory authority**

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

- (a) the power to impose conditions on the grant of a permit under paragraph (1) of Article 6 or to vary such conditions or attach a new condition under paragraph (3) of that Article;

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- (b) the power to refuse to grant a permit under paragraph (1) of Article 6 or to cancel a permit under paragraph (6) of that Article;
- (c) the powers under Article 8;
- (d) the powers of investigation under Article 19;
- (e) the power to apply for a warrant under Article 19B (Entry and search of premises);
- (f) the powers of intervention under paragraphs (3) to (8) of Article 20 (Applications to court);
- (g) subject to paragraph (2) and Article 19H, the power to communicate to the relevant supervisory authority information which is in the possession of the Commission, whether or not as a result of the exercise of any of the above powers.

(2) The Commission shall not communicate information relating to participants in a collective investment fund to a relevant supervisory authority under sub-paragraph (g) of paragraph (1) unless -

- (a) the information is of a kind described in paragraph (2) of Article 19D; or
- (b) the participant to whom the information relates consents to its disclosure.

(3) The Commission 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.

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(4) In deciding whether to exercise its powers by virtue of this Article, the Commission shall take into account, in particular -

- (a) whether corresponding assistance would be given in that country or territory to the Commission;
- (b) whether the case concerns the possible breach of a law, or other requirement, which has no close parallel in the Bailiwick or involves the assertion of a jurisdiction not recognized by the Bailiwick;
- (c) the seriousness of the case and its importance in the Bailiwick and whether the assistance could be obtained by other means; and
- (d) whether it is otherwise appropriate in the public interest to give the assistance sought.

(5) The Commission may decline to exercise powers under this Article unless the relevant supervisory authority undertakes to make such contribution towards the costs of their exercise as the Commission considers appropriate.

## ARTICLE 19D

**Restriction on disclosure of information**

(1) Except as provided in paragraphs (2) and (3) and in Articles 19E to 19G -

- (a) no person who under or for the purposes of this Law receives information relating to the business or other affairs of any person; and
- (b) no person who obtains any such information directly or indirectly from a person who has received it as aforesaid,

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shall disclose the information without the consent of the person to whom it relates and (if different) the person from whom it was received as aforesaid.

- (2) This Article does not apply to information which -
- (a) at the time of the disclosure, is or has already been made available to the public from other sources; or
  - (b) is 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.

(3) This Article does not apply to information which is communicated to a relevant supervisory authority under subparagraph (g) of paragraph (1) of Article 19C.

(4) Any person who discloses information in contravention of this Article shall be guilty of an offence.

## ARTICLE 19E

**Disclosure facilitating discharge of functions by Commission**

(1) Article 19D does not preclude the disclosure of information in any case in which disclosure is for the purpose of enabling or assisting the Commission to discharge its functions under this Law or any other enactment under which it exercises a supervisory function.

(2) Without prejudice to the generality of paragraph (1), Article 19D does not preclude the disclosure of information by the Commission to the auditor of a holder of a permit, a former holder of a permit or of a person who appears to the Commission to be acting or to have acted in contravention of the provisions of paragraph (1) or (2) of Article 4 (Requirement for functionary to hold permit), if it appears to the Commission

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that disclosing the information would enable or assist the Commission to discharge the functions mentioned in paragraph (1) or would otherwise be in the interests of participants or potential participants in collective investment funds.

(3) If, in order to enable or assist the Commission properly to discharge any of its functions under this Law, the Commission considers it necessary to seek advice from any qualified person on any matter requiring the exercise of professional skill, Article 19D does not preclude the disclosure by the Commission to that person of such information as appears to the Commission to be necessary to ensure that he is properly informed with respect to the matters on which his advice is sought.

## ARTICLE 19F

**Disclosure facilitating discharge of functions by Viscount**

Article 19D does not preclude the disclosure by the Commission of information to the Viscount in connection with matters which are in the process of being dealt with pursuant to the Bankruptcy (Désastre) (Jersey) Law 1990.

## ARTICLE 19G

**Other permitted disclosures**

(1) Article 19D does not preclude the disclosure of information -

- (a) with a view to the investigation of a suspected offence or the institution of, or otherwise for the purposes of, any criminal proceedings, whether under this Law or not;
- (b) in connection with any other proceedings arising out of this Law;



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- (c) 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 -
- (i) an auditor of an applicant for a permit, a holder of a permit or a former holder of a permit, or a person who was the auditor of a holder of a permit or a former holder of a permit at any time during the period the permit was held, or
  - (ii) a person appointed to make a report under paragraph (1A) of Article 8 (Power to obtain information etc.), or
  - (iii) an inspector appointed under Article 19.

(2) Article 19D does not preclude the disclosure by the Commission or any person acting on its behalf to the Attorney General or a police officer of information obtained by virtue of Article 8 or 19 or of information in the possession of the Commission or person about any matter in relation to which the powers conferred by those Articles are exercisable, but any information so disclosed may only be disclosed by a police officer for the purposes of a prosecution either in the Bailiwick or, with the prior consent of the Attorney General, elsewhere.

(3) Article 19D does not preclude the disclosure by the Commission or any person acting on its behalf to an inspector appointed under Article 19, 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 the Commission exercises a supervisory function.

(4) Subject to Article 19H, Article 19D does not preclude the disclosure by the Commission of information to any person or body responsible for a scheme for compensating investors (whether in the Bailiwick or elsewhere) if it appears

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to the Commission that disclosing the information would enable or assist the recipient of the information or the Commission to discharge its functions but any such disclosure by the Commission may only be made if -

- (a) the recipient of the information has given to the Commission a written undertaking that the information will not be further disclosed without the prior consent of the Commission; and
- (b) where the information relates to a participant in a collective investment fund, that person consents to its disclosure.

ARTICLE 19H

**Attachment of conditions to disclosure**

No information shall be disclosed under subparagraph (g) of paragraph (1) of Article 19C or paragraph (4) of Article 19G unless the Commission 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 Commission or person acting on its behalf may, in their discretion, subject such disclosure.

ARTICLE 19J

**Information supplied to Commission by relevant supervisory authority**

Article 19D applies also to information supplied to the Commission for the purposes of its functions under this Law by a relevant supervisory authority but no such information shall be disclosed except as provided in that Article or for the purpose of enabling or assisting the Commission to discharge those functions or with a view to the institution of, or otherwise for the purposes of, criminal proceedings, whether under this Law or otherwise.

## ARTICLE 19K

**Communication by auditor and other persons with Commission**

(1) No duty to which an auditor or a person appointed to make a report under paragraph (1A) of Article 8 (Power to obtain information etc.) may be subject shall be regarded as contravened by reason of his communicating in good faith to the Commission, 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 Commission under this Law.

(2) In relation to an auditor, this Article applies to a matter of which he becomes aware in his capacity as such and which relates to the business or affairs of a holder of a permit, former holder of a permit or collective investment fund, as the case may be, or any holding company or subsidiary in relation to it.

(3) In relation to a person appointed to make a report under paragraph (1A) of Article 8, this Article applies 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 holder of a permit or former holder of a permit in relation to whom his report is made.

(4) The Committee may by Order, on the recommendation of the Commission given after the Commission has consulted with such persons as appear to it to represent the interests of the persons referred to in paragraph (1) and holders of permits, specify circumstances in which the persons referred to in paragraph (1) shall be required to communicate any information or opinion to the Commission on a matter to which this Article applies, and which is relevant to any function of the Commission under this Law.

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

(6) In this Article, 'auditor' means an auditor of a holder of a permit, a former holder of a permit or a collective investment fund and includes a person who was the auditor of a holder of a permit or former holder of a permit at any time during the period the permit was held.

## ARTICLE 19L

**Register of holders of permits**

(1) The Commission shall keep a register of persons to whom permits have been granted.

(2) The register referred to in paragraph (1) shall be in such form and contain such particulars as the Commission may from time to time determine.

(3) The register referred to in paragraph (1) shall be kept in such place as the Commission may determine, and any person shall be permitted to inspect the register during ordinary office hours, and to take copies of any entry in it."

## ARTICLE 19

In Article 20 of the principal Law, after paragraph (2) there shall be inserted the following paragraphs -

"(2A) Where an order is made under paragraph (1), the variation, new condition or revocation to which it relates shall take immediate effect but any person aggrieved by such order may apply to the court, either in term time or 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.

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(2B) On an application under paragraph (2A), the court may make such order as it thinks fit.”.

ARTICLE 20

After Article 22 of the principal Law there shall be inserted the following Article -

“ARTICLE 22A

**Fees**

Fees prescribed under this Law shall be payable to the Commission.”.

ARTICLE 21

(1) This Law may be cited as the Collective Investment Funds (Amendment) (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 and for different purposes.