

**DRAFT BANKING BUSINESS (AMENDMENT No. 2)
(JERSEY) LAW 199**

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



STATES OF JERSEY

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Report

The proposed amendment to the Banking Business (Jersey) Law 1991 is in order to bring the 1991 Law into line with the proposed new Investment Business Law which is due to be debated by the States shortly. The opportunity has also been taken to make a few minor amendments to the Law in advance of a major review which is planned to take place over the next two years. The amendment has also been worded in such a way as to reflect the fact that the Jersey Financial Services Commission will have taken over the responsibilities of the Finance and Economics Committee for this Law by the time the amendment has been enacted.

Article 2 of the amendment will enable the Finance and Economics Committee in future to prescribe registration fees by Order, on the recommendation of the Commission. This follows a recent decision of the Committee to introduce a more flexible system of charging for registration fees which will more accurately reflect the cost of the supervision involved.

Article 3 dispenses with the statutory requirement to produce a list of registered persons by Order on an annual basis which is a time consuming exercise for the Law Draftsman each year and can now be easily provided through the Financial Services Department's computer system.

Article 4 makes an amendment to Article 23 of the principal Law in order to enable the Commission to have power in future to require its consent in writing to any person who becomes a director/controller/manager of a registered deposit-taker. At the present time the Committee (later to be the Commission) only has power to be advised of such changes by written notice and does not have to give its consent to such changes. This will strengthen the Commission's powers in the vetting of such appointments to ensure that the individuals are fit and proper.

Articles 5, 6 and 7 are included as a result of the "Saunders" judgment following the ruling of the European Court of Human Rights relating to the right against self-incrimination, where it was ruled that the statement made by a person may not be used by the prosecution in

evidence against them in any criminal proceedings. A similar amendment is being made to all other legislation as appropriate.

Article 8 is a tidying up exercise with regard to the retention of documents and the format of information; it brings the Banking Business Law into line with the new Investment Business Law.

Article 9 recognises the transfer of responsibility for the registration of Business Names from the Judicial Greffier to the Registrar of Business Names within the new Jersey Financial Services Commission.

Article 10 introduces the new Article 45A relating to co-operation with the authorities of countries or territories outside Jersey who discharge functions similar to those of the Commission. This is all part of the improved powers of international co-operation in supervision of banking business. A new Article 45B is also being introduced under Article 10 in connection with public statements. This again is intended to bring the banking legislation into line with the Investment Business Law and similar arrangements in other jurisdictions. Again, it strengthens the Commission's powers by allowing public statements to be made regarding a deposit-taker registered under the Banking Law, where this is considered to be in the interests of depositors or potential depositors.

Finally, Article 11 is another tidying up exercise with regard to the form of notices to take account of new mechanisms for electronic communications.

The amendments proposed by the Committee have been discussed with the relevant organisations in the Island including the Jersey Bankers Association, the Jersey Law Society and the Jersey Society of Chartered and Certified Accountants. They have also been considered and approved by the Jersey Financial Services Commission Organising Committee.

Explanatory Note

The purpose of this draft Law is to amend the Banking Business (Jersey) Law 1991 (“the principal Law”) to -

- (a) empower the Finance and Economics Committee, on the recommendation of the Jersey Financial Service Commission, to prescribe registration fees (*Article 2*);
- (b) dispense with the statutory requirement for publication of the name and address of all registered persons under the principal Law (*Article 3*);
- (c) require the consent in writing of the Commission to any person becoming a director, controller or manager of a registered person (*Article 4*);
- (d) reverse the effect of the existing paragraphs (14), (10) and (5) of Articles 25, 27 and 28 respectively and provide that a statement made by a person in compliance with a requirement of those Articles may *not* be used by the prosecution in evidence against him in any criminal proceedings except proceedings in respect of offences created by those Articles or Article 21 (Articles 5, 6 and 7). These amendments follow a recent ruling by the European Court of Human Rights relating to the right against self-incrimination;
- (e) provide -
 - (i) that documents which have been possessed pursuant to a warrant may be retained for twelve months (the present period is three months);
 - (ii) for the supply of copies of such documents to persons requiring them for their business as soon as possible after they request them; and
 - (iii) for the power to require computerised information (*Article 8*);

- (f) reflect that the registration of business name is no longer a function of the Judicial Greffier (*Article 9*);
- (g) empower the Commission to co-operate with authorities in countries or territories outside the Island who discharge there similar functions to those of the Commission under the principal Law (*Article 10*);
- (h) to provide that where a person has contravened certain specified provisions of the Law, the Commission may issue a public statement concerning that person. The Commission may also issue a public statement concerning a person believed by the Commission to be carrying on deposit-taking business if it would be in the interests of depositors or potential depositors to do so (*Article 10*); and
- (i) allow for the service of notices, direction or documents required or authorised by or under the principal Law to be served by electronic transmission (*Article 11*).

The opportunity is taken to amend a minor typographical error by *Article 1*.

Article 12 contains the short title.

BANKING BUSINESS (AMENDMENT No. 2) (JERSEY) LAW 199

A LAW to amend further the Banking Business (Jersey) Law 1991, sanctioned by Order of Her Majesty in Council of the

(Registered on the day of 199)

STATES OF JERSEY

The day of 199

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

ARTICLE 1

In sub-paragraph (b) of paragraph (4) of Article 4 of the Banking Business (Jersey) Law 1991¹ (hereinafter referred to as “the principal Law”) for the words “the following two-sub-paragraphs” there shall be substituted the words “sub-paragraph (c)”.

ARTICLE 2

In Article 8 of the principal Law² -

- (a) in paragraph (1), for the words “sum of seven thousand five hundred pounds” there shall be substituted the words “fee prescribed by the Committee, on the recommendation of the Commission, ”;

¹ Volume 1990-1991, page 491.

² Volume 1990-1991, page 495, and Volume 1994-1995, page 375.

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- (b) paragraph (2) shall be deleted.

ARTICLE 3

For Article 11 of the principal Law there shall be substituted the following Article -

“ARTICLE 11

Certificates of registration

Whenever the Commission registers a person it shall issue to that person, free of charge, a registration certificate.”.

ARTICLE 4

In Article 23 of the principal Law -

- (a) immediately before paragraph (1) there shall be inserted the following paragraph -

“(A1) No person shall become a director, controller or manager of a registered person unless he has notified the Commission in writing of his intention to become such a director, controller or manager and the Commission has notified him in writing that there is no objection to his becoming such a director, controller or manager but, where the intended director, controller or manager is to be a full time employee of the registered person, the notification to the Commission may be made by the registered person. ”; and

- (b) in paragraph (4) the word “registered” shall be deleted.

ARTICLE 5

For paragraph (14) of Article 25 of the principal Law there shall be substituted the following paragraph -

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“(14) 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 (13) or Article 21.”.

ARTICLE 6

For paragraph (10) of Article 27 of the principal Law there shall be substituted the following paragraph -

“(10) 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 (9) or Article 21.”.

ARTICLE 7

For paragraph (5) of Article 28 of the principal Law there shall be substituted the following paragraph -

“(5) 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 (4) or Article 21.”.

ARTICLE 8

In Article 29 of the principal Law -

- (a) in sub-paragraph (a) of paragraph (4) for the words “three months” there shall be substituted the words “one year”;
- (b) after paragraph (4) there shall be inserted the following paragraph -

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“(4A) A person who requires any documents of which possession is taken under paragraph (2) for the purpose of his business and who requests such documents shall be supplied with copies as soon as practicable.”; and

- (c) after paragraph (5) there shall be added the following paragraph -

“(6) The power to obtain information conferred by sub-paragraph (b) of paragraph (2) includes a power to require any information which is contained in a computer and is accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible.”.

ARTICLE 9

In Article 40, for the words “Judicial Greffier”, wherever they occur, there shall be substituted the word “registrar”.

ARTICLE 10

After Article 45 of the principal Law there shall be inserted the following two Articles -

“ARTICLE 45A

Co-operation with relevant supervisory authority

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

- (a) the power to impose or vary conditions pursuant to paragraph (1) of Article 10;
- (b) the power to refuse or revoke a registration under paragraph (1) of Article 9;

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- (c) the powers relating to information and documents under Article 25;
- (d) the powers of investigation under Articles 27 and 28;
- (e) the powers of entry under Article 29;
- (f) 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, other than information relating to the persons who have transacted banking and other categories of deposit-taking business with a registered or formerly registered person unless the persons concerned have consented to such disclosure.

(2) 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.

(3) No information shall be disclosed under subparagraph (c) or (f) of paragraph (1) unless the Commission is satisfied that the relevant supervisory authority complies with or will comply with any conditions to which the Commission may, in its discretion, subject such disclosure.

(4) In deciding whether to exercise its powers by virtue of this Article, the Commission may 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

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parallel in the Island or involves the assertion of a jurisdiction not recognised by the Island;

- (c) the seriousness of the case and its importance in the Island and whether the assistance could be obtained by other means;
- (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 its exercise as the Commission considers appropriate.

ARTICLE 45B

Public statements

(1) The Commission may issue a public statement concerning a person if that person appears to the Commission to have committed a contravention of the type referred to in -

- (a) paragraph (1) of Article 7;
- (b) Article 10;
- (c) Article 19;
- (d) Article 20;
- (e) Article 21;
- (f) Article 22; or
- (g) any Order made under this Law.

(2) The Commission may issue a public statement concerning a person who it believes to be carrying on deposit-

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taking business, whether in the Island or elsewhere, if it appears to the Commission to be desirable to do so in the interests of depositors or potential depositors.

(3) Where a public statement, issued under this Article, concerns a registered person 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 11

In Article 46 of the principal Law -

- (a) in paragraph (2) -
 - (i) the words “telex or” shall be deleted;
 - (ii) after the word “facsimile” there shall be inserted the words “or electronic”; and
 - (iii) there shall be inserted at the end the words “in legible form or is capable of doing so”; and
- (b) in sub-paragraph (d) of paragraph (3) -
 - (i) the word “telex” shall be deleted;
 - (ii) after the word “facsimile” there shall be inserted the words “or electronic transmission”; and
 - (iii) there shall be inserted at the end the words “in legible form or is capable of doing so”.

ARTICLE 12

This Law may be cited as the Banking Business (Amendment No. 2) (Jersey) Law 199 .