

# STATES OF JERSEY



## **DRAFT FINANCIAL REGULATION (MISCELLANEOUS PROVISIONS No. 2) (JERSEY) LAW 201-**

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**Lodged au Greffe on 7th April 2014  
by the Chief Minister**

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**STATES GREFFE**





Jersey

**DRAFT FINANCIAL REGULATION  
(MISCELLANEOUS PROVISIONS No. 2) (JERSEY)  
LAW 201-**

**European Convention on Human Rights**

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

In the view of the Chief Minister, the provisions of the Draft Financial Regulation (Miscellaneous Provisions No. 2) (Jersey) Law 201- are compatible with the Convention Rights.

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

*Chief Minister*

Dated: 28th March 2014

## REPORT

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### Background and purpose

The Proposition (the “**Draft Law**”) contains a range of proposed amendments to the following Laws –

- (a) the Collective Investment Funds (Jersey) Law 1988 (the “CIF(JL)”);
- (b) the Banking Business (Jersey) Law 1991 (the “BB(JL)”);
- (c) the Insurance Business (Jersey) Law 1996 (the “IB(JL)”);
- (d) the Financial Services (Jersey) Law 1998 (the “FS(JL)”);

(together, the “**Regulatory Laws**”),

and

- (e) the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 (the “SBL”).

The Draft Law also proposes amendments to the Community Provisions (Wire Transfers) (Jersey) Regulations 2007 (the “**2007 Regulations**”) and the Bankruptcy (Désastre) (Jersey) Law 1990 (the “**Bankruptcy Law**”).

Together, the changes set out in the Draft Law constitute routine maintenance of the legislation that is the basis of regulation by the Financial Services Commission (the “**Commission**”) of the financial services industry in Jersey and of legislation that provides the Commission with powers to supervise financial services firms, and various other businesses, for compliance with their obligations under legislation designed to counter money laundering and the financing of terrorism.

Some of the changes identified affect only one particular item of legislation. However, a continuing objective is to enhance the level of consistency across the Regulatory Laws and the SBL, to reduce the risk of misunderstanding and mistake, both by the many businesses subject to such Laws, and by the Commission in the administration of those Laws. To that end, where the need for change has arisen in one piece of legislation, the opportunity has been taken to amend as appropriate the corresponding provisions in the other regulatory Laws.

Many of the changes proposed are of a minor nature, to correct errors, omissions and unnecessary duplication; to clarify existing provisions; to make consequential amendments to cross-references between Articles; or to reflect current drafting policy.

The more significant amendments that the Draft Law make to the Regulatory Laws and the SBL, are: (i) to the powers of the Commission to require the provision of information, documents and the answers to questions; (ii) to the powers of the Royal Court to make orders for restitution; (iii) to enhance the ability of the Commission to co-operate with overseas regulators in the exercise of their statutory functions, where appropriate; and (iv) to introduce a provision that gives the Commission some discretion in the application of solvency margin requirements on certain categories of insurance business.

The more significant changes that are proposed for the SBL alone, are to make the provisions of that law consistent with the equivalent provisions in the Regulatory

Laws, reflecting changes that had been made to those laws after the SBL came into force.

## **Summary of the more significant changes to the Regulatory Laws and the SBL**

### ***Powers of the Commission to require information and documents***

Under each of the Regulatory Laws and the SBL, the Commission (which includes an officer or agent of the Commission), is granted powers to require, by notice, certain persons to provide information or documents, or to attend at a specified time and place to answer questions.

Under these powers, the Commission may also enter the premises occupied by a person on whom a notice has been served or where the information or documents are kept, for the purpose of obtaining what the notice asked for. However, this should not be confused with other provisions in the Laws for the Bailiff to grant a warrant for the police (accompanied by Commission staff if so authorized by the warrant) to enter, by force if necessary, and search premises, and to seize documents.

The relevant Articles in each of the Laws have been drafted afresh so that they are now worded, as nearly as possible, identically. In some cases (e.g. in the BB(J)L), this has resulted in combining the provisions of 2 or more Articles into one. Whilst this may give the impression that the scope of the provisions has changed substantially, most of the powers and other provisions are very largely the same as at present, and there are only 3 significant changes.

Firstly, a common definition has been adopted across all Laws for the nature of information and documents that may be requested. At present, the CIF(J)L imposes no restrictions at all, whilst the FS(J)L and the SBL impose limits that have had the effect of preventing the Commission from providing assistance to an overseas regulator in circumstances in which it received assistance from that regulator: the present limits could also unreasonably constrain the Commission in other ways. The definition proposed is that which is currently in the BB(J)L and the IB(J)L, being, “what may be reasonably required of the person for the purposes of the performance of the Commission’s functions” under the Law.

Secondly, the range of persons on whom a notice may be served has been extended in all the Laws to include: employees and former employees of a business that is regulated under one of the laws (a “registered person”); an employee or former employee of a business that was formerly a registered person; a person who is or was under a contract for services with a registered person; and anyone who is or was an employee of a person under a contract for services. In some of the Laws, notably the CIF(J)L, other additions (namely, principal persons<sup>1</sup>, key persons<sup>2</sup> and associates) have been made to achieve consistency across all the Laws.

The need to include past and present employees arose from particular cases in which the Commission was unable to fulfil its function of protecting the public and/or the industry. Being prevented from making necessary enquiries, the Commission was unable to consider what, if any, action it might be appropriate to take to guard against

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<sup>1</sup> A ‘principal person’ is a person engaged in a senior role within a financial services business, for example, directors and significant shareholders.

<sup>2</sup> A ‘key person’ is a person employed to act as the compliance officer, the money laundering compliance officer or the money laundering reporting officer of a financial services business.

the employment elsewhere in the finance industry of someone who had been dismissed by a registered person.

Thirdly, the Commission will be able to require the person on whom notice is served to also provide verification of the information or documents requested. This is a provision that is already found in some places in some of the Laws and it is proposed to allow the option more widely. On those occasions when it is necessary to authenticate the information or document provided, it can often be quicker and more efficient for that to be done by the person who provided the information or document, than for the Commission to do it independently.

It is also proposed to make this option available in the separate Article of each Law where the Commission has the duty to evaluate whether an individual who is to control a financial service business is fit and proper to do so.

In addition to the above, in some of the Laws, changes have been made to the penalty for failing to comply with, or otherwise obstructing the exercise by the Commission of the powers to obtain information or documents, etc. As a result of these changes, the maximum penalty for this offence in the CIF(J)L, the BB(J)L and the IB(J)L will be the same (6 months in prison, an unlimited fine, or both prison and a fine), as it already is in the FS(J)L and the SBL. At the same time, the rather narrow defence in the CIF(J)L has been brought into line with that in the other Laws (i.e. a defence of “reasonable excuse”), and protection for those under an obligation of legal professional privilege has been added to those laws from which it is missing. The Attorney General has reviewed the penalties and authorized the changes to them.

#### ***Powers of the Royal Court to make Restitution Orders***

On the application of the Commission, the Royal Court is empowered by each of the Regulatory Laws and the SBL to make orders for, amongst other things, restitution to any investor of losses incurred as a result of a financial transaction entered into on the basis of false or misleading information.

The provisions currently allow an order to be made where the regulated business is both the transacting counter-party and the provider of the false and misleading information. There are also limits on who the Royal Court may order to take the steps necessary to make restitution.

The proposed change will allow an order to be made in circumstances where the counter-party to the transaction is somebody other than the provider of the false and misleading information. Furthermore, any order made by the Royal Court may require that restitution be made by anyone knowingly concerned with the cause of the loss.

The amendments have been drafted as a direct result of observations included in a written judgment by the Royal Court concerning an application brought by the Commission. In that case, the Royal Court noted that a restitution order can currently only be made against a regulated business where it was that business that both made the misleading statement and who then entered into the transaction with the person who relied on the statement (i.e. the investor). The proposed amendment will address this lacuna by extending the power of the Royal Court to make a restitution order where an investor(s) has lost money as a result of relying on misleading statements made by a person (such as an investment advisor) who is different to the person with whom the investor actually makes the investment (normally the product provider).

## **Co-operation with other regulators**

The Regulatory Laws and the SBL provide for the Commission to be able to exercise many of its powers to assist regulatory authorities in other jurisdictions, subject to appropriate criteria being satisfied. For example, the provisions allow the Commission to assist an overseas regulator by refusing an application for a registration, permit or certificate; or by adding a condition to a registration, permit or certificate that is in force; or even for the registration, permit or certificate to be cancelled.

The amendment proposed will also allow the Commission to use its powers to issue a direction (for example, to limit what activities a regulated business can carry on) to assist an overseas regulator. To date, there has been no instance where the inability to use its power of direction has prevented the Commission from giving assistance to an overseas regulator, but it is anticipated that circumstances may well arise where the flexibility of the power of direction would be more appropriate than the more draconian alternatives of adding a condition to, or cancelling, a regulated business's registration, permit or certificate.

## **Solvency margin requirements**

To ensure that the holder of a Category B permit<sup>3</sup> under the IB(J)L maintains an adequate margin of solvency, the amount and nature of assets it must hold are prescribed by an Order made under that Law.

Under the IB(J)L, the Commission already has the power to waive the prescribed requirements in relation to a named permit holder and for any waiver to be made subject to terms and conditions.

Experience has shown that in exceptional circumstances it would be helpful to allow the Commission to have some discretion to vary one or more of the particular elements of the prescribed requirements for a permit holder, usually for a limited period of time. In such cases, both the waiver and the only other alternative of an amendment to the Order would be too drastic a measure for the intended purpose: a waiver sets aside all the requirements; whilst an amendment would apply to all Category B permit holders.

What is therefore now proposed is to allow the Commission to exercise discretion to vary the requirements and to apply its judgement by attaching a condition to the permit, the terms of which would be substituted for the requirements of the Order. Attaching a condition to a permit is an established mechanism that includes the right of appeal to the Royal Court if the permit holder should be aggrieved by the new requirements.

Article 24 of the IB(J)L makes particular provision for how the Commission may deal with a permit holder that fails to maintain its solvency margin at the prescribed level. Whilst such a failure could be grounds for the permit being cancelled, it does not constitute a criminal offence. This contrasts with the provisions relating to conditions attached to a permit, non-compliance of which is a criminal offence for which the penalty may be a period of imprisonment of up to 2 years, or a fine, or both imprisonment and a fine. Accordingly, a consequential amendment is proposed to Article 7 that will disapply the offence and penalty provisions in respect of this type of

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<sup>3</sup> A Category B permit is required by a person who carries on insurance business in or from within Jersey and who is not authorized by another jurisdiction to carry on such business lawfully in that jurisdiction.

condition only. The Attorney General has reviewed this proposed amendment and its content.

## **Other proposed amendments**

### ***Amendments applicable to the SBL alone***

With one exception, all the proposed amendments to the SBL are being made in order to maintain consistency with the corresponding provisions in the Regulatory Laws. These fall into 3 categories: those already described above; those that were implemented in the Regulatory Laws at or about the time when the SBL was coming into force; and the amendments that were introduced to the Regulatory Laws by the Financial Regulation (Disclosure of Information) (Amendments) (Jersey) Regulations 2012.

The third of these categories comprise the changes to Article 36 which contains the limited circumstances in which it is permissible for 'restricted information' (non-public information) to be disclosed. They could not be made to the SBL at the same time as to other Laws because there is currently no provision for the Article to be amended by Regulations. The amendments now proposed include such a provision.

### ***Supervision of Payment Service Providers***

The exception referred to in paragraph 3.1 above consists of the amendments to Articles 2(a) and 31 so that the relevant powers in the SBL will apply to the supervision of payment service providers under the 2007 Regulations. The 2007 Regulations form part of the Island's defences against money laundering and terrorist financing by requiring payment services providers (which are primarily banks) to include on electronic money transfers information identifying the person who initiated the transfer.

Since the 2007 Regulations came into force they have included an explicit obligation, under Regulation 14A, for the Commission to monitor payment service providers for compliance with the requirements of the Regulations, with the Commission being given the necessary supervisory powers by extension, under Regulation 14B, of the relevant provisions of the FS(J)L.

Since then, the SBL has been enacted to provide for the supervision by the Commission of relevant businesses' compliance with their anti-money laundering and countering the financing of terrorism obligations. As the supervisory powers required by the Commission in connection with the 2007 Regulations are also now in the SBL, there is no longer a need for them to be exercised under the FS(J)L. To achieve this, the amendments to the SBL are proposed, together with the repeal of Regulations 1A and 14B in the 2007 Regulations.

### ***The Bankruptcy Law***

The important, though small, amendment to this Law will allow the Commission to apply to the Royal Court for an *en désastre* declaration to be made in respect of the property of an unclassified fund regulated under the CIF(J)L. It will correct the omission of a consequential amendment that should have been made in 2008 when changes were made to the way such funds were regulated in Jersey under the CIF(J)L.

The change in regulation included replacing permits under the CIF(J)L with certificates for unclassified funds. The Bankruptcy Law provides for the Commission to make applications in respect of holders of permits under the CIF(J)L, which now



relates only to recognized funds and their functionaries. The proposed amendment will not affect the ability of the Commission to make applications in respect of other types of financial service business regulated in Jersey.

The only other amendment proposed is a minor drafting change to the way in which the term “registrar” is defined and has no material effect on its meaning.

### **Consultation**

In July 2012, the Commission publicly consulted on the Draft Law. The respondents to the consultation were generally supportive of the proposed amendments and no substantive changes to the form of the Draft Law consulted upon have been considered necessary as a result of the comments received.

The Commission published a Feedback Paper in February 2014 that summarised the comments received and the Commission’s responses thereto.

### **Financial and manpower implications**

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

### **Human Rights**

The notes on the human rights aspects of the draft Law in the Appendix have been prepared by the Law Officers’ Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

## APPENDIX TO REPORT

### **Human Rights Notes on the Draft Financial Regulation (Miscellaneous Provisions No. 2) (Jersey) Law 201-**

These Notes have been prepared in respect of the Draft Financial Regulation (Miscellaneous Provisions No. 2) (Jersey) Law 201- (the “**draft Law**”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“**ECHR**”).

**These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.**

The draft Law will amend, amongst others, the Collective Investment Funds (Jersey) Law 1988 (the “**CIFJL**”), the Banking Business (Jersey) Law 1991, the Insurance Business (Jersey) Law 1996, the Financial Services (Jersey) 1998 and the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 (the “**PCSBL**”). Generally speaking, the nature and purpose of the proposed amendments is to enhance the Jersey Financial Services Commission’s (the “**Commission**”) powers to act in certain circumstances, extending powers granted to the Court and to achieve consistency across the numerous laws engaged. The various Laws that are amended by the draft Law are referred to collectively as the ‘Principal Laws’.

The draft Law engages various Articles of the ECHR, which are addressed in turn.

#### **Article 6 ECHR – The right to a fair trial**

Articles 13, 21, 39, 41, 44, 52 and 64 of the draft Law concern, generally, amendments to provisions in the Principal Laws that would allow the imposition of restrictions on regulated businesses or the placing of conditions on regulatory permits and certificates issued under the Principal Laws. Regulatory features of this nature have been found to amount to a ‘determination of civil rights’ for the purposes of Article 6 and any such determination must comply with fair trial features, the most important being the need for such rights to be adjudged by an ‘independent and impartial tribunal’. The amendments do not in themselves offend Article 6. The reason for their mention here is simply to note that the Principal Laws, as amended by the draft Law, will most certainly operate to enable the determination of ‘civil rights’ by the Commission and the Court. Accordingly those bodies must in practice ensure their procedures and handling of regulatory or supervisory functions pursuant to the Principal Laws are conducted in a manner compatible with Article 6.

#### **Article 8 ECHR – The right to respect for private and family life**

Provisions in the draft Law that amend or substitute Articles in the Principal Laws relating to the Commission’s investigatory powers (Articles 5, 22, 33, 53 and 66) engage the Article 8(1) right to private life in 2 respects: firstly, by allowing for the requisition of information protected by Article 8(1) and, secondly, by providing for powers of entry and investigation against private premises.

#### *Requesting information and documents*

The draft Law provides for the inclusion of powers in the Principal Laws that would enable the Commission to request information or documents as are required “for the purposes of the performance of the Commission’s functions”. The Commission’s functions are regulatory in nature and it is conceivable that its regulatory reach might

involve requiring information containing details regarding key persons in regulated entities. Information of this nature could capture names and addresses, which is prime personal data and would amount to an interference with the Article 8(1) right to private life. Correspondence is also covered by Article 8(1) and will be engaged by the slightest degree of interference. Any interference with the Article 8(1) right must be justified under Article 8(2), meaning it must be (i) in accordance with the law; (ii) in pursuit of one of the legitimate aims set out in Article 8(2); and (iii) necessary in a democratic society.

The nature of the interference constituted by those provisions enabling the Commission to request information would be deemed to be ‘in accordance with the law’; those provisions have a basis in domestic law and can be viewed as sufficiently precise and accessible, therefore being foreseeable. The ‘legitimate aim’ for the information-gathering powers is pointed to in Consultation Paper No.4 2012, ‘Miscellaneous Amendments to Regulatory Legislation’ (paragraphs 4.5.25 – 4.5.36). It is noted there that the Commission has an obligation to protect the public and the finance industry and, in order to fulfil these statutory functions, it is essential that the Commission is able to make all relevant enquiries that will enable it to decide what regulatory action would be appropriate, and to be able to collect associated information for the performance of its functions. The draft Law would, in implementing amendments designed to bolster these objectives, fall neatly within the “economic well-being of the country” category of justification provided for in Article 8(2).

‘Necessity’ requires the identification of a pressing social need for the interference with the Article 8(1) right, and the existence of relevant and sufficient reasons to justify that interference. In the present case, stringent regulation of financial services is necessary for the maintenance of that industry, and a healthy finance industry is itself a pressing social need, not least given the dependence of the Island on that sector. Information-gathering powers are necessary for the Commission in order to obtain physical evidence of compliance and contravention with the Principal Laws, thereby complementing its regulatory functions. Taken as a whole, the proposed powers are proportionate, when supported by the strength of rationale for maintaining effective regulation.

Identifying procedural safeguards which mitigate the exercise of powers interfering with the Article 8(1) right is an important step in determining whether that interference is ‘necessary in a democratic society’. A number of features of the information-gathering powers set out in the draft Law perform this safeguard role. For example, a request by the Commission for the provision of information or for a person to answer questions should only be made if reasonably required for the purposes of the performance of the Commission’s functions. Moreover, information must be demanded by notice in writing and, where such information is required for the investigation of a contravention of the legislation, there must be reasonable grounds for that suspicion.

#### *Powers of entry and investigation*

The powers of entry and investigation contained in the amending provisions of the draft Law (see for example Article 5, inserting Article 9(4) to the CIFJL) will engage the Article 8(1) right to private life. That right can be relied upon by corporations, in addition to individuals, so searches of the offices of financial services providers could amount to an interference with the Article 8(1) right.

In the context of entry and investigation powers, the justification for the interference is much the same as explained further above: the legislative provisions relating to entry are ‘in accordance with the law’, the ‘legitimate aim’ for those powers is to enhance the investigatory measures associated with the various regulatory regimes and, therefore, maintaining a healthy finance industry and contributing to the “economic well-being” of the Island. The entry powers are ‘necessary in a democratic society’ and proportionate to achieving that aim by ensuring the obtaining of evidence of compliance and contravention.

In the context of entry powers, there are numerous examples of adequate safeguards in the provisions contained in the draft Law. Entry must be exercised only by a Commission officer or an authorised agent; evidence of authority is required; the extent of the powers to be exercised on entry are clearly detailed: for example, to obtain information or documents, asking questions, or taking copies or extracts of documents or retaining them. Moreover, the entry powers are to be exercised at reasonable times and arrangements for the handling of documents retained following an investigation are detailed (i.e. retained for one year or the conclusion of associated proceedings, and documents must be returned as soon as practicable if required for person’s business). Overall, the safeguards in place compliment the scope of the Commission’s investigation powers and, therefore, achieve a balance which would ensure compatibility with the ECHR.

*Provision for permitted disclosures in the PCSBL (Article 69)*

Article 69 of the draft Law substitutes a new Article 36 to the PCSBL, with the intention of updating the scope of permitted disclosures, or ‘information gateways’, bringing the PCSBL into line with other regulatory laws. Information gathered for the purposes of the PCSBL will include information that could be considered ‘personal data’ for the purposes of Article 8(1) and the justification for that interference will be based on similar ‘legitimate aim’ and proportionality arguments as described above.

In the context of permitted disclosures under the PCSBL, a disclosure of any ‘personal data’ without the individual’s consent has the potential to constitute an interference with Article 8(1). Much will depend on the intended use of personal data. A limited, rather than general or public, exposure of data might not amount to interference. It is likely that the regulatory rationale for making such disclosures, and the public regulatory character of the users (i.e. the Viscount and overseas supervisory authorities) will mean that data disclosed pursuant to Article 36 PCSBL should be used in a limited, focussed and Article 8(1) compatible manner.

In the likelihood that an interference with Article 8(1) is established by virtue of the exercise of Article 36 PCSBL, the justification for that interference will follow the logic explained above in connection with information-gathering and entry powers. There is a clear legitimate aim in permitting disclosures of information, including personal data, to local and foreign regulatory or government bodies where that disclosure is needed for the prevention of money laundering and criminal activity. The basis on which a disclosure can be made is detailed extensively in Article 36 PCSBL, and this will aid the proper exercise of the power. In turn, this facilitates a proportionate approach to interferences with the Article 8(1) right. Safeguards which mitigate the interference are also present in the construction of Article 36 PCSBL, such as the ability to impose restrictive conditions on the use of disclosed information.

## **Article 1 of the First Protocol to the ECHR (“A1P1”) – Right to Property**

A1P1 is engaged by Articles 13, 21, 41, 52 and 64 of the draft Law, which substitute provisions in the Principal Laws to permit the Court to make a variety of orders, whether that is: (i) for supervisory or restrictive purposes or for imposing conditions; or (ii) for restitution. In the former case, an order may be made where, generally speaking, the regulated entity is not regarded a fit and proper person to perform regulated services. In the latter case, a restitution order can be imposed where a transaction has resulted in a contravention of certain other regulatory provisions, e.g. transacting outside the scope of the terms of a permit or certificate held by the regulated business (e.g. a contravention of Articles 5 and 8 CIFJL) or directions. Supervision orders and the like may inhibit business to a detrimental extent, and a restitution order will require the payment of a monetary amount in order to return the affected person to the financial position prior to the offending transaction. Both consequences will amount to an interference with the A1P1 right.

In the context of A1P1, the imposition of a financial penalty pursuant to a restitution order will amount to a ‘deprivation of possessions’, and the power to make supervision, restraining and conditional orders, depending on the circumstances, might well amount to a ‘control of use’ as they would impact on the way in which a business is conducted. A deprivation of property will be justified under A1P1 where it is in the public interest, subject to conditions laid down by law and subject to the general principles of international law. Further, only in the most exceptional circumstances will a deprivation be justifiable if compensation is not paid. The measure must also be proportionate to the aim pursued. A ‘control of use’ will be justified if it is in accordance with the law and for the ‘general interest’, and must be proportionate to the aim pursued.

Case law of the European Court of Human Rights (“ECtHR”) has recognised a ‘public interest’ in measures implemented for economic and legal reasons, and for the prevention of crime. In the context of the draft Law and the Court’s order-making powers, the ‘public interest’ is ensuring that financial entities are properly regulated, their business curtailed where necessary, and ensuring that such entities do not unfairly benefit from transacting beyond the regulatory checks placed on them. There is also a public interest element in providing the Court with sufficient supervisory powers. Each of these factors would sit squarely with the nature of interests recognised in justifying interference under A1P1. It is important to note also that, where property rights are concerned, states have a considerable margin of appreciation in determining the existence of a problem of general public concern and in implementing measures designed to meet it. As such, the order-making powers would be regarded as addressing an identifiable public interest, i.e. a robust, healthy and compliant finance sector, are necessary to achieve that end and come within the States’ margin of appreciation in enacting provisions to meet the public interest.

A further strand of justification under A1P1 is the need for measures to be in ‘accordance with the law’ and general principles of international law. The former aspect requires the law to be sufficiently precise and foreseeable, which it is. The latter aspect is generally thought not applicable in domestic matters and therefore does not warrant consideration.

As for whether these measures are proportionate, the enactment of order-making powers and the exercise of those powers by the Court would be deemed a proportionate act particularly where the intention is to enforce regulation and protect those subjected to malpractice. Although the need for compensation is often key to

ensuring a ‘deprivation of possessions’ is justified, the rationale behind the measures discussed above is the need to address malpractice in the financial sector. In this situation, a requirement to also provide for compensation to address the impact of an order would clearly defeat the purpose of the power. The ECtHR has recognised that, where the deprivation of property arises from the enforced cessation of an unlawful activity (which would flow from a Court order being made) no compensation is payable.

Overall, it is likely that any interference following the exercise of order-making powers would be justified. The measures themselves are logical and their justification has a firm basis in the wide margin of appreciation ascribed to the States in this sphere, coupled with the particularly convincing public interest in ensuring the enforcement of regulation.

## Explanatory Note

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This proposed Law amends the Collective Investment Funds (Jersey) Law 1988, the Banking Business (Jersey) Law 1991, the Insurance Business (Jersey) Law 1996, the Financial Services (Jersey) Law 1998 and the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008. The substantive amendments are largely parallel, though the opportunity is taken also to make amendments to individual Laws for the sake of statute law revision.

The proposed Law also amends the Bankruptcy (Désastre) (Jersey) Law 1990 and the Community Provisions (Wire Transfers) (Jersey) Regulations 2007.

### *Part 1 Amendments to the Collective Investment Funds (Jersey) Law 1988*

*Article 1* specifies that the Collective Investment Funds (Jersey) Law 1988 (referred to in this explanatory note as “CIFL”) may be referred to in Part 1 as the “principal Law”.

*Article 2* amends Article 1 of CIFL to make the definition of “Court” (that is, the Royal Court) uniform with that in other Jersey financial services legislation, and introduces a definition of “documents” (instead of “books and papers” and “books or papers”), which is taken from the Financial Services (Jersey) Law 1998 and is being added to other legislation being amended by this Law. *Article 2* also brings together in one place (Article 1(2) and (3) of CIFL) the power to amend the definitions in Articles 1 and 3 of CIFL by Regulations. The power to amend Article 3 of CIFL is presently set out in Article 38. The change also means that the power to amend Article 3 of CIFL by Regulations will include a power to exclude or modify the effect of those Regulations.

*Article 3* removes the words “or fails to comply with” from Article 7 of CIFL because the word “contravenes” in that Article means the same thing.

*Article 4* amends Article 8E of CIFL to correct 2 expressions and to ensure that paragraph (3) (which allows the Court to reduce or eliminate the delay imposed by Article 8E on certain actions of the Commission) is uniform with parallel provisions in other Jersey financial services legislation and requires the Court to take into account the interests of the public.

*Article 5* replaces Article 9 of CIFL, which enables the Commission and certain persons to demand information or documents for the sake of the enforcement of the Law. The new Article 9 will parallel provisions also being substituted by this Law in other Jersey financial services legislation.

*Article 6* amends Article 12B of CIFL to enable the Commission to require verification of information provided about key persons or principal persons. This change parallels that being made by this Law to other Jersey financial services legislation.

*Article 7* amends Article 16 of CIFL to change a cross-reference as a consequence of the substitution of Article 9 of CIFL and also consequentially on the introduction of the expression “documents” (referred to above at *Article 2*).

*Article 8* makes an amendment to Article 22 of CIFL consequential on the introduction of the expression “documents” (referred to above at *Article 2*).

*Article 9* makes amendments to Article 23 of CIFL consequential on the introduction of the expression “documents” (referred to above at *Article 2*).

*Article 10* amends Article 24 of CIFL (which enables warrants to be granted for search and entry) to change cross-references and certain expressions as a consequence of the substitution of Article 9 of CIFL and also consequentially on the introduction of the expression “documents” (referred to above at *Article 2*).

*Article 11* amends Article 25 of CIFL to allow the Commission, for the sake of co-operation with other regulators of financial services, to exercise its power to give directions. This change parallels that being made by this Law to other Jersey financial services legislation. Article 9 also changes cross-references in Article 25 of CIFL as a consequence of the substitution of Article 9 of CIFL.

*Article 12* amends Article 32 of CIFL to change a cross-reference as a consequence of the substitution of Article 9 of CIFL.

*Article 13* amends Article 34 of CIFL as a consequence of the change to the definition of “Court” referred to above at *Article 2*. The amendment touches also on the grounds on which the Commission may seek orders from the Court against a permit holder or certificate holder, those orders being for the supervision of the business of the holder or requiring one or more of the parties to transactions in which a holder played a role to be put back in the positions in which they were before those transactions took place.

In relation to supervision orders under Article 34(11) of CIFL, the amendment –

- (i) makes it clear that the funds the interests of whose participants or potential participants the Court will take into account are any funds in relation to which the permit holder or certificate holder carries on business or purports to carry on business; and
- (ii) sets out more clearly the criteria for the exercise of the power of the Court to make supervision orders.

In relation to restoration orders under Article 34(12) of CIFL the amendment makes it clear –

- (i) that if a permit holder or certificate holder induces a person to enter into a transaction with the holder or with a third party, the Court may order that one or more of the persons involved be put back in the positions in which they were beforehand;
- (ii) that if a third party induces a person to enter into a transaction with a permit holder or certificate holder, the Court may order that one or more of the persons involved be put back in the positions in which they were beforehand.

*Article 14* deletes Article 38 of CIFL because the power to amend Article 3 of CIFL by Regulations is now set out as part of Article 1(2) of CIFL (see note on *Article 2* above).

#### *Part 2 Amendments to the Bankruptcy (Désastre) (Jersey) Law 1990*

*Article 15* corrects an error in the setting out of the definition of “registrar” in Article 1 of the Bankruptcy (Désastre) (Jersey) Law 1990.



Article 3 of the Bankruptcy (Désastre) (Jersey) Law 1990 refers to applications for declarations declaring the property of a person to be en désastre. That Article currently refers to declarations against holders of permits under the Collective Investment Funds (Jersey) Law 1988. *Article 16* of the proposed Law extends Article 3 of the Bankruptcy (Désastre) (Jersey) Law 1990 so that it will apply also to applications for declarations against holders of certificates under that Law.

*Part 3 Amendments to the Banking Business (Jersey) Law 1991*

*Article 17* specifies that the Banking Business (Jersey) Law 1991 (referred to in this explanatory note as “BBL”) may be referred to in Part 3 as the “principal Law”.

*Article 18* amends Article 1 of BBL to introduce a definition of “documents” parallel to that in the Financial Services (Jersey) Law 1998 and to change a cross-reference as a consequence of the substitution of Article 26 of BBL.

*Article 19* amends Article 14 of BBL to enable the Commission to require verification of information provided about persons who change their level of control of a registered person.

*Article 20* amends Article 18 of BBL –

- (i) to delete an otiose “before” in paragraph (1);
- (ii) to ensure that paragraph (3) (which allows the Court to reduce or eliminate the delay imposed by Article 18 on certain actions of the Commission) is uniform with parallel provisions in other Jersey financial services legislation;
- (iii) to require the Court to take into account additionally the interests of the public;
- (iv) to widen the classes of registered persons concerned.

*Article 21* substitutes Article 19 of BBL in relation to the grounds on which the Commission may seek orders from the Court against a registered person, those orders being for the supervision of the business of the registered person or requiring one or more of the parties to transactions in which a registered person played a role to be put back in the positions in which they were before those transactions took place.

In relation to supervision orders under Article 19(1) of BBL, the substitute provision sets out more clearly the criteria for the exercise of the power of the Court.

In relation to restoration orders under Article 19(2) of BBL, the new provision makes it clear –

- (i) that if a registered person induces a person to enter into a transaction with the registered person or with a third party (and not only with the registered person as the wording is at present), the Court may order that one or more of the persons involved be put back in the positions in which they were beforehand;
- (ii) that if a third party induces a person to enter into a transaction with the registered person, the Court may order that one or more of the persons involved be put back in the positions in which they were beforehand.

*Article 22* replaces Article 26 of BBL, which enables the Commission and certain persons to demand information or documents for the sake of the enforcement of the

Law. The new Article 26 (except Article 26(4)) will parallel provisions being substituted by this Law in other Jersey financial services legislation.

The new Article 26(4) is an equivalent to the present Article 26(11) allowing the Commission and certain persons to demand information about present or future directors, managers, and persons with control, so that a determination can be made as to whether they are fit and proper. (Note that in other Jersey financial services legislation, the equivalent provision appears outside the equivalent to Article 26 of BBL.)

*Article 23* repeals Articles 27 and 29 of BBL, because the substance of these Articles is now swept up into the new Article 26 of BBL.

*Article 24* amends Article 28 of BBL to change a cross-reference as a consequence of the substitution of Article 26 of BBL.

*Article 25* amends Article 30 of BBL to change cross-references as a consequence of the repeal of Article 29 of BBL.

*Article 26* amends Article 34 of BBL to change cross-references as a consequence of the substitution of Article 26 of BBL.

*Article 27* amends Article 45 of BBL to delete a cross-reference to Article 29 of BBL.

*Article 28* amends Article 47 of BBL to change cross-references as a consequence of the repeal of Articles 27 and 29 of BBL and to allow the Commission, for the sake of co-operation with other regulators of financial services, to exercise its power to give directions under Article 21 of BBL.

#### *Part 4 Amendments to the Insurance Business (Jersey) Law 1996*

*Article 29* specifies that the Insurance Business (Jersey) Law 1996 (referred to in this explanatory note as “IBL”) may be referred to in Part 4 as the “principal Law”.

*Article 30* amends Article 1 of IBL to introduce a definition of “documents” parallel to that in the Financial Services (Jersey) Law 1998.

*Article 31* amends Article 7 of IBL –

- (i) to make more accurate a *mutatis mutandis* reference (where the Commission’s power to cancel a permit is based on the grounds on which it can refuse a permit);
- (ii) to correct a cross-reference;
- (iii) to ensure that the offence of failing to comply with a condition of a permit does not apply where the condition is one setting a solvency margin different from that applying under an Order under Article 24 of IBL, because that failure will be subject to the remedies applying under Article 24 of IBL instead.

*Article 32* amends Article 8A of IBL –

- (i) to delete an otiose “before” in paragraph (1);
- (ii) to ensure that paragraph (3) (which allows the Court to reduce or eliminate the delay imposed by Article 30 on certain actions of the Commission) is uniform with parallel provisions in other Jersey financial services legislation;

- (iii) to require the Court to take into account additionally the interests of the public;
- (iv) to widen the classes of permit holders concerned.

*Article 33* replaces Article 10 of IBL, which enables the Commission and certain persons to demand information or documents for the sake of the enforcement of the Law. The new Article 10 will parallel provisions also being substituted by this Law in other Jersey financial services legislation.

*Article 34* amends cross-references in Article 11 of IBL to refer to the entire Articles 5 and 15 of IBL and not to certain paragraphs of those Articles.

*Article 35* repeals Article 12 of IBL (referring to the investigation of suspected contraventions), because the substance of that Article is now swept up into the new Article 10 of IBL.

*Article 36* amends Article 13 of IBL consequentially to change the cross-references to Article 12 of that Law to cross-references to Article 10.

*Article 37* amends Article 14 of IBL consequentially to change the cross-reference to Article 12 of that Law to a cross-reference to Article 10.

*Article 38* amends Article 23 of IBL to enable the Commission to require verification of information provided about directors, key persons or other persons who have influence over the running of a permit holder.

*Article 39* amends Article 24 of IBL to allow a condition imposed under Article 7 of IBL to set a solvency margin different from that applying under an Order under Article 24 of IBL.

*Article 40* amends Article 33 of IBL –

- (i) to change a cross-reference as a consequence of the repeal of Article 12 of IBL;
- (ii) to allow the Commission, for the sake of co-operation with other regulators of financial services, to exercise its power to give directions under Article 36 of IBL or, under Article 36B of IBL, to seek orders for the supervision of a permit holder or to restore one or more of the parties to their previous positions;
- (iii) so that certain cross-references refer to the entire Articles 5 and 15 of IBL and not to certain paragraphs of those Articles.

*Article 41* amends Article 36B of IBL –

- (i) to set out more clearly the criteria for the exercise of the power of the Court to make supervision orders;
- (ii) to provide that if a permit holder induces a person to enter into a transaction with the permit holder or with a third party, the Court may order that one or more of the persons involved be put back in the positions in which they were beforehand;
- (iii) to provide that if a third party induces a person to enter into a transaction with a permit holder, the Court may order that one or more of the persons involved be put back in the positions in which they were beforehand.

*Article 42* amends a cross-reference in Article 43 of IBL to refer to the entire Article 5 of IBL and not to one paragraph of that Article.

*Part 5 Amendments to the Financial Services (Jersey) Law 1998*

*Article 43* specifies that the Financial Services (Jersey) Law 1998 (referred to in this explanatory note as “FSL”) may be referred to in Part 5 as the “principal Law”.

*Article 44* amends Article 9 of FSL to specify, in the context of the refusal of registration, the circumstances in which certain transactions are carried out. The term “in carrying on trust company business” or the like is substituted for “when carrying on trust company business”. Similar terminology is applied in that Article to the context of the revocation of registration.

General grounds for revocation are added that refer directly to the reputation, integrity and economic interests of Jersey. At present these last grounds are applied only indirectly (by referring, in the context of revocation, to the grounds for refusal).

*Article 45* amends Article 11 of FSL to ensure that paragraph (4) (which allows the Court to reduce or eliminate the delay imposed by Article 11 in relation to refusals, revocations or the imposition of conditions on registration) harmonizes with the re-worded Article 9 of FSL.

*Article 46* amends Article 13 of FSL to ensure that paragraph (4) (which allows the Court to reduce or eliminate the delay imposed by Article 13 in relation to objections to principal persons, key persons or shareholdings) harmonizes with the re-worded Article 9 of FSL.

*Article 47* amends Article 14 of FSL to enable the Commission to require verification of information provided about persons who change their level of control of a registered person.

*Article 48* amends Article 18 of FSL to change a cross-reference as a consequence of the substitution of Article 32 of FSL.

*Article 49* amends Article 23 of FSL (dealing with the power to issue directions) –

- (i) to ensure that it harmonizes with the re-worded Article 9 of FSL;
- (ii) to widen the classes of registered persons concerned.

*Article 50* amends Article 25 of FSL (dealing with public statements) to ensure that paragraph (d) harmonizes with the re-worded Article 9 of FSL.

*Article 51* amends Article 25B of FSL (dealing with notice periods for public statements) to ensure that paragraph (3) harmonizes with the re-worded Article 9 of FSL.

*Article 52* amends Article 26 of FSL –

- (i) to set out more clearly the criteria in paragraph (1) for the exercise of the power of the Court to make supervision orders;
- (ii) to ensure that paragraph (1) harmonizes with the re-worded Article 9 of FSL;
- (iii) to provide that if a registered person induces a person to enter into a transaction with the registered person or with a third party, the Court may

order that one or more of the persons involved be put back in the positions in which they were beforehand;

- (iv) to provide that if a third party induces a person to enter into a transaction with a registered person, the Court may order that one or more of the persons involved be put back in the positions in which they were beforehand.

*Article 53* replaces Article 32 of FSL, which enables the Commission and certain persons to demand information or documents for the sake of the enforcement of the Law. The new Article 32 will parallel provisions also being substituted by this Law in other Jersey financial services legislation.

*Article 54* amends Article 33 of FSL to change a cross-reference as a consequence of the substitution of Article 32 of FSL.

*Article 55* amends Article 34 of FSL to change a cross-reference as a consequence of the substitution of Article 32 of FSL.

*Article 56* amends Article 36 of FSL to change cross-references as a consequence of the substitution of Article 32 of FSL and to allow the Commission, for the sake of co-operation with other regulators of financial services, to exercise its power to give directions under Article 16 or 23 of FSL.

*Article 57* substitutes Article 38(1)(l) of FSL in order to correct the ranging of the last part of the sub-paragraph (“to any person...”) so that the words there relate back to both clause (i) (“the Commission,”) and clause (ii) (“a person appointed...”) within the sub-paragraph.

#### *Part 6 Amendments to the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008*

This Part contains amendments that parallel the amendments made in Parts 1, 3, 4 and 5 of this Law, as well as “information gateway” amendments that parallel those made to other Jersey financial services legislation by the Financial Regulation (Disclosure of Information) (Amendments) (Jersey) Regulations 2012.

*Article 58* specifies that the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 (referred to in this explanatory note as “PCSBL”) may be referred to in Part 6 as the “principal Law”.

*Article 59* amends Article 1 of PCSBL to introduce a definition of “documents” parallel to that in the Financial Services (Jersey) Law 1998, and to introduce definitions of “ESAs” [i.e. the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority] and “supervisor of a securities market”.

*Article 60* amends the definition of “supervisory functions” set out in Article 2 of PCSBL to add functions under the Community Provisions (Wire Transfers) (Jersey) Regulations 2007. The supervision of those transfers and the monitoring and enforcement of those Regulations are being brought under PCSBL by Article 67.

*Article 61* amends Article 10 of PCSBL to make clearer the scope of the power to prescribe by Order persons and institutions that fall outside the scope of PCSBL.

*Article 62* amends Article 14 of PCSBL mainly to add express references to breaches of other Jersey financial services legislation to the list of wrongs conviction for which makes a person not fit and proper for level 1 registration under PCSBL.

*Article 63* amends Article 23 of PCSBL to bring it closer to provisions about directions under other Jersey financial services legislation (including by adding more comprehensive provisions for a delay in effect and limitations on that delay).

*Article 64* amends Article 25 of PCSBL in relation to the grounds on which a suitable supervisory body may seek orders from the Court against a supervised person, those orders being for the supervision of the supervised person or requiring one or more of the parties to transactions in which a supervised person played a role to be put back in the positions in which they were before those transactions took place.

In relation to supervision orders under Article 25(1) of PCSBL, the amended provision sets out more clearly the criteria for the exercise of the power of the Court to make those orders.

In relation to restoration orders under Article 25(3) of PCSBL the amended provision makes it explicit that, if a supervised person by entering into a transaction with another person breaches either directions given under Article 23 to the supervised person or conditions attached to the supervised person's registration, the Court may order that one or more of the persons involved be put back in the positions in which they were beforehand. At present the reference to breaches in Article 25(3) of PCSBL is only to breaches of Article 10 of that Law.

*Article 65* amends Article 26 of PCSBL to make it clear that a suitable supervisory body may issue a public statement about a person who formerly carried on supervised business and that the supervised business could have been one carried on in Jersey or in any jurisdiction outside Jersey.

*Article 66* replaces Article 30 of PCSBL, which enables a suitable supervisory body and certain persons to demand information or documents for the sake of the enforcement of the Law. The new Article 30 will parallel provisions also being substituted by this Law in other Jersey financial services legislation.

*Article 67* amends Article 31 of PCSBL to add investigatory powers relating to compliance with the Community Provisions (Wire Transfers) (Jersey) Regulations 2007 in order to bring the supervision of those transfers and the monitoring and enforcement of those Regulations under PCSBL. Article 65 also changes a cross-reference as a consequence of the substitution of Article 30 of PCSBL.

*Article 68* amends Article 32 of PCSBL (dealing with entry and search of premises) to change cross-references as a consequence of the substitution of Article 30 of PCSBL.

*Article 69* substitutes Article 36 of PCSBL (dealing with permitted disclosures of information) in order to bring the Article closer to the drafting already used in other Jersey financial services legislation. *Article 69* also applies, in the PCSBL context, the recent changes (relating to "information gateways" and, in particular, disclosure to the ESAs and to supervisors of securities markets) made to other Jersey financial services legislation by the Financial Regulation (Disclosure of Information) (Amendments) (Jersey) Regulations 2012. The ESAs are the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority. However, unlike the changes to the other Jersey financial services legislation, the changes to PCSBL do not include disclosures that are made to the European Systemic Risk Board.

*Article 70* amends Article 39 of PCSBL to change cross-references as a consequence of the substitution of Article 30 of PCSBL and to allow a suitable supervisory body,

for the sake of co-operation with other regulators, to exercise its power to give directions under Article 23 of PCSBL.

*Part 7 Miscellaneous*

*Article 71* removes from the Community Provisions (Wire Transfers) (Jersey) Regulations 2007 functions relating to the supervision of those transfers and the monitoring and enforcement of those Regulations, functions which are brought under the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 by *Article 67* of this Law.

*Article 72* sets out the short title of this Law and provides for it to come into force 7 days after it is registered in the Royal Court.







Jersey

**DRAFT FINANCIAL REGULATION  
(MISCELLANEOUS PROVISIONS No. 2) (JERSEY)  
LAW 201-**

**Arrangement**

**Article**

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Jersey

**DRAFT FINANCIAL REGULATION  
(MISCELLANEOUS PROVISIONS No. 2) (JERSEY)  
LAW 201-**

**A LAW** to amend further the Collective Investment Funds (Jersey) Law 1988, the Bankruptcy (Désastre) (Jersey) Law 1990, the Banking Business (Jersey) Law 1991, the Insurance Business (Jersey) Law 1996, the Financial Services (Jersey) Law 1998, the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 and the Community Provisions (Wire Transfers) (Jersey) Regulations 2007.

*Adopted by the States* [date to be inserted]

*Sanctioned by Order of Her Majesty in Council* [date to be inserted]

*Registered by the Royal Court* [date to be inserted]

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

**PART 1**

**AMENDMENTS TO THE COLLECTIVE INVESTMENT FUNDS (JERSEY)  
LAW 1988**

**1 Interpretation**

In this Part, “principal Law” means the Collective Investment Funds (Jersey) Law 1988<sup>1</sup>.

**2 Articles 1, 22 and 29 amended**

- (1) In Article 1 of the principal Law –
  - (a) in paragraph (1), the definition of “books and papers” and “books or papers” shall be deleted;

- (b) in paragraph (1), for the definition of “court”, there shall be substituted the following definitions –
- “ ‘Court’ means the Royal Court;
- ‘documents’ includes accounts, deeds, writings and information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its provision or production include references to providing or producing a copy of the information in legible form;”;
- (c) for paragraph (2) the following paragraphs shall be substituted –
- “(2) The States may by Regulations amend paragraph (1) or Article 3.
- (3) The States may by Regulations exclude or modify the effect of Regulations made under paragraph (2) on any enactment (which may include this Law) that is expressed to have effect in relation to a collective investment fund.”.
- (2) In Article 22 of the principal Law –
- (a) in paragraph (8) for the word “court” there shall be substituted the word “Court”;
- (b) in paragraph (9) for the word “court”, in each place where it occurs except the last, there shall be substituted the word “Court”;
- (c) in paragraph (10) for the word “court” there shall be substituted the word “Court”.
- (3) In Article 29(6)(b)(ii) of the principal Law for the word “court” there shall be substituted the word “Court”.

### 3 Article 7 amended

In Article 7(10) of the principal Law, the words “or fails to comply with” shall be deleted.

### 4 Article 8E amended

In Article 8E of the principal Law –

- (a) in paragraph (1), the word “before” shall be deleted;
- (b) in paragraph (1)(e), for the words “imposition of requirement” the words “imposition of a requirement” shall be substituted;
- (c) for paragraph (3) the following paragraph shall be substituted –
- “(3) If, on the application of the Commission, the Court is satisfied that it is in the best interests of existing or potential participants in a collective investment fund to which a permit or certificate relates, or of the public, that paragraph (1) should not have effect, or should cease to have effect in a particular case, or that the period specified in paragraph (1) should be reduced, the Court may so order.”.

**5 Article 9 substituted**

For Article 9 of the principal Law the following Article shall be substituted –

**“9 General power to require information and documents**

- (1) The Commission, an officer or an agent may by notice in writing served on a defined person require the person to do either or both of the following –
  - (a) to provide the Commission, an officer or an agent, at such times and places as are specified in the notice, with such information or documents as are specified in the notice and as the Commission, an officer or an agent reasonably requires the person to provide for the purposes of the performance of the Commission’s functions under this Law;
  - (b) to attend at such times and places as may be specified in the notice and answer such questions as the Commission, an officer or an agent reasonably requires the person to answer for the purposes of the performance of the Commission’s functions under this Law.
- (2) If the Commission has reasonable grounds to suspect that a person has contravened Article 5, 8 or 10, the Commission, an officer or an agent may, by notice in writing served on that person, require the person to do either or both of the following –
  - (a) to provide the Commission, an officer or an agent, at such times and places as are specified in the notice, with such information or documents as are specified in the notice and as the Commission, an officer or an agent reasonably requires for the purposes of investigating the suspected contravention;
  - (b) to attend at such times and places as are specified in the notice and answer such questions as the Commission, an officer or an agent reasonably requires the person to answer for the purpose of investigating the suspected contravention.
- (3) In a case where the Commission, an officer or an agent may, by notice in writing served on a person under paragraph (1) or (2), require the person to provide information or documents, the Commission, an officer or an agent may in addition or instead require any other person (by notice in writing served on the latter person) who appears to be in possession of some or all of the information or documents to do something that the Commission, an officer or an agent could have required the first-mentioned person to do under sub-paragraph (a) or (b) of that paragraph.
- (4) An officer or an agent may, on producing if required evidence of his or her authority, enter, at a reasonable time, any premises occupied by a person on whom a notice has been served under paragraph (1), (2) or (3), or any other premises where information or documents are kept by such person, for the purpose of obtaining there the information or documents required by that notice, putting

the questions referred to in paragraph (1)(b) or (2)(b) or of exercising the power conferred by paragraph (8), as the case may be.

- (5) If the Commission, an officer or an agent serves notice on a person under paragraph (1) or (2), the Commission, officer or agent may, by the same or another notice served on the person, require the person to provide verification, in accordance with the latter notice, of any information, or documents, required from the person under paragraph (1) or (2) (as the case may be).
- (6) The Commission, an officer or an agent may by notice in writing served on a person specified in paragraph (15) require the person to provide a report, by an accountant, or other person with relevant professional skill, nominated or approved by the Commission and appointed by the person served with the notice under this paragraph, being a report –
  - (a) on, or on any aspect of, any information, documents, or questions, that the Commission, an officer or an agent could require the person, by notice under paragraph (1) or (2), to provide or answer (whether or not notice has in fact been served on the person under paragraph (1) or (2)); and
  - (b) in such form (if any) as the notice under this paragraph may specify.
- (7) If, under this Article, a person provides documents in the person's possession but claims a lien on the documents so provided, the provision of the documents shall be without prejudice to the lien.
- (8) The power under this Article to require documents to be provided includes power –
  - (a) if the documents are provided, to retain them, to take copies of them or to take extracts from them, and to require the person providing the documents, or any person who appears to possess information relating to the documents, to provide an explanation of them; or
  - (b) if the documents are not provided, to require the person to whom the requirement was directed to state, to the best of the person's knowledge and belief, where they are.
- (9) If documents provided under this Article are retained under paragraph (8)(a) the documents may be so retained –
  - (a) for a period of one year; or
  - (b) if within that period proceedings to which the documents are relevant are commenced against any person, until the conclusion of those proceedings.
- (10) If the person providing a document that is retained under paragraph (8)(a) requires the document for the purpose of the person's business and requests the document (or a copy of it) from the Commission, the Commission shall supply the person with a copy of the document as soon as practicable.



- (11) If a person fails without reasonable excuse to comply with a requirement imposed on the person under this Article or obstructs an officer, or agent, exercising powers under paragraph (4), the person shall be guilty of an offence and liable to imprisonment for a term of 6 months and a fine.
- (12) Nothing in this Article shall require the disclosure or provision by a person to the Commission, an officer or an agent of information, or documents, that the person would, in proceedings in the Court, be entitled to refuse to disclose or to provide on the grounds of legal professional privilege, except, if the person is a lawyer, the name and address of his or her client.
- (13) A statement made by a person in compliance with a requirement imposed under this Article shall not be used by the prosecution in evidence against the person in any criminal proceedings except proceedings under paragraph (11) or proceedings under any provision of Article 16 other than paragraph (6) of Article 16.
- (14) In this Article –
- ‘agent’, in any provision, means an agent of the Commission, being an agent who has been authorized by the Commission to perform the functions set out or referred to in that provision;
- ‘defined person’ means any of the following persons –
- (a) a fund person;
  - (b) a person who was a fund person at any time;
  - (c) a person who is a principal person, or key person, in relation to another person who is a fund person or was a fund person at any time;
  - (d) a person who was at any time a principal person, or key person, in relation to another person who is a fund person or was a fund person at, before or after that time;
  - (e) a person who is, or was at any time, an associate in relation to a defined person within the meaning of sub-paragraph (c) or (d);
  - (f) a person who is an employee of, or party to a contract for services with, another person who is a fund person or was a fund person at any time;
  - (g) a person who was at any time an employee of, or party to a contract for services with, another person who is a fund person or was a fund person at, before or after that time;
  - (h) a person who is an employee of a person who is a party to a contract for services with another person who is a fund person;
  - (i) a person who was at any time an employee of a person who was at that time a party to a contract for services with another person who was a fund person at that time;
- ‘fund person’ means a holder of a permit, a fund service provider (in relation to an unclassified fund) or a certificate holder;

‘officer’, in any provision, means an officer of the Commission, being an officer who has been authorized by the Commission to perform the functions set out or referred to in that provision.

(15) For the purposes of paragraph (6), the following persons are specified –

- (a) a person within sub-paragraph (a) or (b) of the definition of ‘defined person’ in paragraph (14) or a person within sub-paragraph (c) or (d) of that definition (other than as a key person);
- (b) a person who the Commission has reasonable grounds to suspect has contravened Article 5 or 8.

(16) For the avoidance of doubt, in sub-paragraph (d), (g) or (i) of the definition of ‘defined person’ in paragraph (14), the reference to a person who was a fund person includes such a person who is no longer in existence at the time when the relevant function is exercised under this Article.

(17) For the avoidance of doubt –

- (a) a time that is specified for the purposes of any provision of this Article may be, but is not required to be, expressed in terms of times, dates, intervals, periods or time limits; and
- (b) a document, or information, that is specified for the purposes of any provision of this Article may be, but is not required to be, specified in terms of one or more classes or descriptions.”.

## 6 Article 12B amended

After Article 12B(8) of the principal Law the following paragraph shall be inserted –

“(8A) Notice under paragraph (8) may include a requirement that the person concerned or the holder of a permit or certificate holder (as the case may be) provide verification, in accordance with the notice, of any information or documents referred to in that paragraph.”.

## 7 Article 16 amended

In Article 16 of the principal Law –

- (a) in paragraph (3) for the words “books or papers” wherever occurring the words “documents” shall be substituted;
- (b) in paragraph (8) for the words “paragraph (6)” the words “paragraph (4)” shall be substituted.

## 8 Article 22 amended

In Article 22(8)(a) of the principal Law the words “book or” shall be deleted.

**9 Article 23 amended**

In Article 23 of the principal Law –

- (a) in paragraph (1)(a) for the words “information, books or papers are or are likely to be” the words “any information or document is, or is likely to be,” shall be substituted;
- (b) in paragraph (1) for the words “of information, books or papers” the words “of any information, or document,” shall be substituted;
- (c) in paragraph (2) for the words “information, books or papers” wherever occurring the words “information or documents” shall be substituted.

**10 Article 24 amended**

In Article 24 of the principal Law –

- (a) for paragraph (1) of the principal Law the following paragraph shall be substituted –

“(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 Article 9 it would not be complied with;
- (b) if any person were required to produce documents under Article 9, those documents 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 or documents in response to a notice or requirement referred to in sub-paragraph (a) or (b);
- (e) an officer, or agent, within the meaning of Article 9 has been or may be obstructed in exercising a power under Article 9(4); or
- (f) an inspector appointed under Article 22 has been or may be obstructed in exercising a power under Article 22(6),

the Bailiff may grant a warrant under this paragraph.”;

- (b) in paragraphs (2)(b), (c) and (e) and (4), (5) and (7) for the words “books or papers” wherever occurring the word “documents” shall be substituted;
- (c) in paragraph (8) for the words “information, books or papers” the words “information, or documents,” shall be substituted.

**11 Article 25 amended**

In Article 25 of the principal Law –

- (a) after paragraph (1)(c) the following sub-paragraph shall be inserted –
  - “(ca) the power to give a direction under Article 13;”;
- (b) for paragraph (6)(a)(i) the following clause shall be substituted –

- “(i) in Article 9 to a contravention of Article 5 or of Article 8 or of Article 10, or”.

## 12 Article 32 amended

In Article 32(1) and (3) of the principal Law for the words “under Article 9(2)” in each place where they occur the words “as referred to in Article 9(6)” shall be substituted.

## 13 Article 34 amended

In Article 34 of the principal Law –

- (a) in the heading and paragraphs (5), (6), (8), (9), (10), (13) and (15) for the word “court”, in each place where it occurs, there shall be substituted the word “Court”;
- (b) for paragraphs (11) and (12) there shall be substituted the following paragraphs –

“(11) Where, on the application of the Commission, the Court is satisfied that –

- (a) the holder of a permit or a certificate holder (each referred to in this Article as ‘holder’) –
  - (i) is not, in terms of Article 7(6)(a) or 8B(7)(a), as the case requires, a fit and proper person to carry on business in relation to a collective investment fund, being business that the holder is purporting to carry on,
  - (ii) is not fit to carry on business in relation to a collective investment fund to the extent to which the holder is purporting to do, or
  - (iii) has, in relation to a collective investment fund, failed, or is likely to fail, to comply with a provision or direction as described in paragraph (8)(a); and
- (b) it is desirable for the Court to act under this paragraph for the protection of participants or potential participants in that or any other collective investment fund in relation to which the holder carries on or purports to carry on business,

the Court may, as it thinks just, make an order making the holder’s business subject to such supervision, restraint or conditions from such time and for such periods as the Court may specify, and may also make such ancillary orders as the Court thinks desirable.

- (12) If, on an application made under paragraph (11), the Court is satisfied that a holder has –
  - (a) by entering into any transaction with another person, contravened Article 5 or 8;
  - (b) by entering into any transaction with another person, contravened any condition applicable to the holder (whether

- attached to a certificate or permit or prescribed by Order) or any direction given to the holder under Article 13;
- (c) contravened Article 10 with the result that another person has been induced to enter into a transaction with the holder or with a third person; or
  - (d) entered into any transaction with another person who was induced to enter into the transaction as a result of the contravention of Article 10 by a third person,

the Court may order any one or more of those persons (and any other person who appears to the Court to have been knowingly concerned in the contravention) to take such steps as the Court may direct for restoring one or more of the persons to the position in which they were before the transaction was entered into.”.

**14 Article 38 deleted**

Article 38 of the principal Law shall be repealed.

**PART 2**

**AMENDMENT TO THE BANKRUPTCY (DÉSASTRE) (JERSEY)  
LAW 1990**

**15 Article 1 of Bankruptcy (Désastre) (Jersey) Law 1990 amended**

For the definition of “registrar” in Article 1(1) of the Bankruptcy (Désastre) (Jersey) Law 1990<sup>2</sup> the following definition shall be substituted –

“ ‘registrar’ means in relation to –

- (a) a company registered under the Companies Law;
- (b) a foundation;
- (c) an incorporated limited partnership; or
- (d) a limited liability partnership,

the registrar appointed pursuant to Article 196 of the Companies Law;”.

**16 Article 3 of Bankruptcy (Désastre) (Jersey) Law 1990 amended**

For Article 3(1)(c) of the Bankruptcy (Désastre) (Jersey) Law 1990<sup>3</sup> the following sub-paragraph shall be substituted –

“(c) the Commission, in the case of a person who –

- (i) holds or has held a permit under the Insurance Business (Jersey) Law 1996<sup>4</sup> or the Collective Investment Funds (Jersey) Law 1988<sup>5</sup>,
- (ii) holds or has held a certificate under the Collective Investment Funds (Jersey) Law 1988,

- (iii) is or was registered under the Banking Business (Jersey) Law 1991<sup>6</sup> or the Financial Services (Jersey) Law 1998<sup>7</sup>, or
- (iv) is a foundation.”.

### **PART 3**

#### **AMENDMENTS TO THE BANKING BUSINESS (JERSEY) LAW 1991**

#### **17 Interpretation**

In this Part, “principal Law” means the Banking Business (Jersey) Law 1991<sup>8</sup>.

#### **18 Article 1 amended**

In Article 1 of the principal Law –

- (a) for the definition of “documents” there shall be substituted the following definition –
  - “ ‘documents’ includes accounts, deeds, writings and information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its provision or production include references to providing or producing a copy of the information in legible form;”;
- (b) in the definition of “former registered person” for the matter “26(10);” there shall be substituted the matter “26(19);”.

#### **19 Article 14 amended**

After Article 14(3) of the principal Law the following paragraph shall be inserted –

“(3AA) Notice under paragraph (3) may include a requirement that the person concerned provide verification, in accordance with the notice, of any information or documents referred to in that paragraph.”.

#### **20 Article 18 amended**

In Article 18 of the principal Law –

- (a) in paragraph (1), the word “before” shall be deleted;
- (b) for paragraph (3) the following paragraphs shall be substituted –
  - “(3) If, on the application of the Commission, the Court is satisfied that it is in the best interests of persons with whom a relevant person transacted or may transact deposit-taking business, or of the public, that paragraph (1) should not have effect, or should cease to have effect in a particular case, or that the period specified in paragraph (1) should be reduced, the Court may so order.

- (3A) In paragraph (3), ‘relevant person’ means –
- (a) in the case of a direction under Article 21(2)(c) in respect of functions for, employment by, or the business of, a specified registered person, that registered person;
  - (b) in the case of a direction under Article 21(2)(c) in respect of functions for, employment by, or the business of, any registered person at all, any registered person at all;
  - (c) in the case of an act under Article 10, 11(2), 13(2) or (3) or 15, or of a direction under Article 21(2)(d), in respect of a registered person, the registered person; or
  - (d) in the case of a direction under Article 21(2)(d) in respect of a former registered person, the former registered person.”.

## 21 Article 19 substituted

For Article 19 of the principal Law the following Article shall be substituted –

### “19 Powers of intervention

- (1) Where, on the application of the Commission, the Court is satisfied that –
- (a) a registered person –
    - (i) is not, in terms of Article 10(3)(a), a fit and proper person to carry on a deposit-taking business that the registered person is purporting to carry on,
    - (ii) is not fit to carry on a deposit-taking business to the extent to which the registered person is purporting to carry it on, or
    - (iii) has committed or is likely to commit a contravention of a type referred to in Article 37B(1), and
  - (b) it is desirable for the Court to act under this paragraph for the protection of persons with whom the registered person has transacted or may transact deposit-taking business,
- the Court may, as it thinks just, make an order making the registered person’s business subject to such supervision, restraint or conditions from such time and for such periods as the Court may specify, and may also make such ancillary orders as the Court thinks desirable.
- (2) If, on an application made under paragraph (1), the Court is satisfied that a registered person has –
- (a) by entering into any transaction with another person, contravened Article 8;
  - (b) by entering into any transaction with another person, contravened any condition applicable to the registered person (whether attached to the registered person’s registration or prescribed by Order) or any direction given to the registered person under Article 21;

- (c) contravened Article 23 with the result that another person has been induced to enter into a transaction with the registered person or with a third person; or
- (d) entered into any transaction with another person who was induced to enter into the transaction as a result of the contravention of Article 23 by a third person,

the Court may order any one or more of those persons (and any other person who appears to the Court to have been knowingly concerned in the contravention) to take such steps as the Court may direct for restoring one or more of the persons to the position in which they were before the transaction was entered into.

- (3) The provisions of this Article shall be without prejudice to any right of any aggrieved person to bring proceedings directly in respect of any right that the person may otherwise have independently of the Commission.”.

## 22 Article 26 substituted

For Article 26 of the principal Law the following Article shall be substituted –

### “26 General power to require information and documents

- (1) The Commission, an officer or an agent may by notice in writing served on a defined person require the person to do either or both of the following –
  - (a) to provide the Commission, an officer or an agent, at such times and places as are specified in the notice, with such information or documents as are specified in the notice and as the Commission, an officer or an agent reasonably requires the person to provide for the purposes of the performance of the Commission’s functions under this Law;
  - (b) to attend at such times and places as may be specified in the notice and answer such questions as the Commission, an officer or an agent reasonably requires the person to answer for the purposes of the performance of the Commission’s functions under this Law.
- (2) If the Commission has reasonable grounds to suspect that a person has contravened Article 8 or 23, the Commission, an officer or an agent may, by notice in writing served on that person, require the person to do either or both of the following –
  - (a) to provide the Commission, an officer or an agent, at such times and places as are specified in the notice, with such information or documents as are specified in the notice and as the Commission, an officer or an agent reasonably requires for the purposes of investigating the suspected contravention;
  - (b) to attend at such times and places as are specified in the notice and answer such questions as the Commission, an



officer or an agent reasonably requires the person to answer for the purpose of investigating the suspected contravention.

- (3) In a case where the Commission, an officer or an agent may, by notice in writing served on a person under paragraph (1) or (2), require the person to provide information or documents, the Commission, an officer or an agent may in addition or instead require any other person (by notice in writing served on the latter person) who appears to be in possession of some or all of the information or documents to do something that the Commission, an officer or an agent could have required the first-mentioned person to do under sub-paragraph (a) or (b) of that paragraph.
- (4) The Commission, an officer or an agent may by notice in writing served on any person who is, or is to be, a director, controller or manager in relation to a registered person, require the person to provide the Commission, an officer or an agent, at such times as may be specified in the notice, with such information or documents as the Commission, an officer or an agent may reasonably require for determining whether the person is a fit and proper person to be a director, controller or manager (as the case may be) in relation to that registered person.
- (5) An officer or an agent may, on producing if required evidence of his or her authority, enter, at a reasonable time, any premises occupied by a person on whom a notice has been served under paragraph (1), (2) or (3), or any other premises where information or documents are kept by such person, for the purpose of obtaining there the information or documents required by that notice, putting the questions referred to in paragraph (1)(b) or (2)(b) or of exercising the power conferred by paragraph (9), as the case may be.
- (6) If the Commission, an officer or an agent serves notice on a person under paragraph (1), (2) or (4), the Commission, officer or agent may, by the same or another notice served on the person, require the person to provide verification, in accordance with the latter notice, of any information, or documents, required from the person under paragraph (1), (2) or (4) (as the case may be).
- (7) The Commission, an officer or an agent may by notice in writing served on a person specified in paragraph (16) require the person to provide a report, by an accountant, or other person with relevant professional skill, nominated or approved by the Commission and appointed by the person served with the notice under this paragraph, being a report –
  - (a) on, or on any aspect of, any information, documents, or questions, that the Commission, an officer or an agent could require the person, by notice under paragraph (1) or (2), to provide or answer (whether or not notice has in fact been served on the person under paragraph (1) or (2)); and
  - (b) in such form (if any) as the notice under this paragraph may specify.

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- (8) If, under this Article, a person provides documents in the person's possession but claims a lien on the documents so provided, the provision of the documents shall be without prejudice to the lien.
- (9) The power under this Article to require documents to be provided includes power –
- (a) if the documents are provided, to retain them, to take copies of them or to take extracts from them, and to require the person providing the documents, or any person who appears to possess information relating to the documents, to provide an explanation of them; or
  - (b) if the documents are not provided, to require the person to whom the requirement was directed to state, to the best of the person's knowledge and belief, where they are.
- (10) If documents provided under this Article are retained under paragraph (9)(a) the documents may be so retained –
- (a) for a period of one year; or
  - (b) if within that period proceedings to which the documents are relevant are commenced against any person, until the conclusion of those proceedings.
- (11) If the person providing a document that is retained under paragraph (9)(a) requires the document for the purpose of the person's business and requests the document (or a copy of it) from the Commission, the Commission shall supply the person with a copy of the document as soon as practicable.
- (12) If a person fails without reasonable excuse to comply with a requirement imposed on the person under this Article or obstructs an officer, or an agent, exercising powers under paragraph (5), the person shall be guilty of an offence and liable to imprisonment for a term of 6 months and a fine.
- (13) Nothing in this Article shall require the disclosure or provision by a person to the Commission, an officer or an agent of information, or documents, that the person would, in proceedings in the Court, be entitled to refuse to disclose or to provide on the grounds of legal professional privilege, except, if the person is a lawyer, the name and address of his or her client.
- (14) A statement made by a person in compliance with a requirement imposed under this Article shall not be used by the prosecution in evidence against the person in any criminal proceedings except proceedings under paragraph (12) or Article 22.
- (15) In this Article –
- 'agent', in any provision, means an agent of the Commission, being an agent who has been authorized by the Commission to perform the functions set out or referred to in that provision;
  - 'defined person' means any of the following persons –
    - (a) a registered person;
    - (b) a person who was a registered person at any time;

- (c) a person who is a director, controller, manager, or key person, in relation to another person who is a registered person or was a registered person at any time;
- (d) a person who was at any time a director, controller, manager, or key person, in relation to another person who is a registered person or was a registered person at, before or after that time;
- (e) a person who is, or was at any time, an associate in relation to a defined person within the meaning of sub-paragraph (c) or (d);
- (f) a person who is an employee of, or party to a contract for services with, another person who is a registered person or was a registered person at any time;
- (g) a person who was at any time an employee of, or party to a contract for services with, another person who is a registered person or was a registered person at, before or after that time;
- (h) a person who is an employee of a person who is a party to a contract for services with another person who is a registered person;
- (i) a person who was at any time an employee of a person who was at that time a party to a contract for services with another person who was a registered person at that time;
- (j) a company that is or has at any relevant time been –
  - (i) a holding company, subsidiary or related company of a registered person,
  - (ii) a subsidiary of a holding company of a registered person,
  - (iii) a holding company of a subsidiary of a registered person, or
  - (iv) a company in the case of which a shareholder controller in relation to a registered person, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, more than 50% of the voting power at a general meeting;
- (k) a partnership of which a registered person is or has at any relevant time been a member;
- (l) a significant shareholder (within the meaning of Article 25) in relation to a registered person;

‘officer’, in any provision, means an officer of the Commission, being an officer who has been authorized by the Commission to perform the functions set out or referred to in that provision;

‘qualifying capital interest’ means, in relation to any company, an interest in shares comprised in the equity share capital of that company of a class carrying rights to vote in all circumstances at general meetings of that company;

‘related company’, in relation to any company A, means any other company B (other than one that is a group company in relation to company A) in which company A holds on a long-term basis a qualifying capital interest for the purpose of securing a contribution to company A’s own activities by the exercise of any control or influence arising from that interest;

‘relevant shares’ means, in relation to any company, any such shares in that company as are mentioned in the definition of ‘qualifying capital interest’;

‘relevant time’ means, in relation to a registered person, a time at which the conduct or other thing occurred that is the subject of the information, documents or questions referred to in paragraph (1), (2) or (3).

(16) For the purposes of paragraph (7), the following persons are specified –

- (a) a person within sub-paragraph (a) or (b) of the definition of ‘defined person’ in paragraph (15) or a person within sub-paragraph (c) or (d) of that definition (other than as a key person);
- (b) a person who the Commission has reasonable grounds to suspect has contravened Article 8.

(17) For the avoidance of doubt, in sub-paragraph (d), (g) or (i) of the definition of ‘defined person’ in paragraph (15), the reference to a person who was a registered person includes such a person who is no longer in existence at the time when the relevant function is exercised under this Article.

(18) Where –

- (a) a company A holds a qualifying capital interest in company B; and
- (b) the nominal value of any relevant shares in company B held by company A is equal to 20% or more of the nominal value of all relevant shares in company B,

company A shall be presumed to hold that interest on the basis and for the purpose mentioned in the definition of ‘related company’ in paragraph (15), unless the contrary is shown.

(19) In paragraph (15), sub-paragraphs (j), (k) and (l) of the definition of ‘defined person’, and the definition of ‘relevant time’, apply to a former registered person as they apply to a registered person.

(20) For the avoidance of doubt –

- (a) a time that is specified for the purposes of any provision of this Article may be, but is not required to be, expressed in terms of times, dates, intervals, periods or time limits; and
- (b) a document, or information, that is specified for the purposes of any provision of this Article may be, but is not required to be, specified in terms of one or more classes or descriptions.”.

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**23 Articles 27 and 29 repealed**

Articles 27 and 29 of the principal Law shall be repealed.

**24 Article 28 amended**

In Article 28(5) of the principal Law for the words “under Article 26(1)(b)” the words “as referred to in Article 26(7)” shall be substituted.

**25 Article 30 amended**

In Article 30 of the principal Law –

- (a) in paragraph (1) for the words “that a person is guilty of such a contravention as is mentioned in Article 29” the words “that a person has contravened Article 8 or 23” shall be substituted;
- (b) in paragraph (1)(a) and (c) for the words “under that Article” in each place where they occur the words “under Article 26(2)” shall be substituted;
- (c) in paragraph (2)(d) for the words “that person is guilty of any such contravention as is mentioned in Article 29” the words “that person has contravened Article 8 or 23” shall be substituted;
- (d) in paragraph (4)(b) for the words “any such contravention as is mentioned in Article 29” the words “any contravention of Article 8 or 23” shall be substituted.

**26 Article 34 amended**

In Article 34 of the principal Law –

- (a) in paragraph (1)(b) for the words “under Article 26” the words “as referred to in Article 26(7)” shall be substituted;
- (b) for paragraph (3) the following paragraph shall be substituted –
  - “(3) In relation to a person appointed to make a report as referred to in Article 26(7), this Article relates to any matter of which the person becomes aware in his or her capacity as the person making the report, being a matter that relates –
    - (a) to the business or affairs of any registered person in relation to which the person’s report is made or of any associated body of that registered person; or
    - (b) if the report relates to an associated body of a registered person, to the business or affairs of that body.”;
- (c) in paragraph (4) for the words “Article 26(6).” the words “sub-paragraph (j), (k) or (l) of the definition of ‘defined person’ in Article 26(15).” shall be substituted.

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**27 Article 45 amended**

In Article 45(2)(a) of the principal Law the matter “, 29” shall be deleted.

**28 Article 47 amended**

In Article 47 of the principal Law –

- (a) after paragraph (1)(ba) the following sub-paragraph shall be inserted –
  - “(bb) the power to give a direction under Article 21;”;
- (b) in paragraph (1)(c) for the words “Articles 26 and 27” the words “Article 26” shall be substituted;
- (c) in paragraph (1)(d) for the words “Articles 28 and 29” the words “Article 28” shall be substituted;
- (d) for paragraph (7)(a) the following sub-paragraph shall be substituted –
  - “(a) a reference in Article 26(2), 30 or 31 to a contravention of Article 8 or 23 shall include a reference to a contravention (committed at any time, including a time before the enactment of this Law) of a law of a country or territory outside Jersey constituted by an act, or omission, that, if it arose in Jersey, would constitute (at the time when the relevant request referred to in paragraph (3) was received) a contravention of Article 8 or 23 (as the case requires), as in force at the latter time; and”.

## **PART 4**

### **AMENDMENTS TO THE INSURANCE BUSINESS (JERSEY) LAW 1996**

**29 Interpretation**

In this Part “principal Law” means the Insurance Business (Jersey) Law 1996<sup>9</sup>.

**30 Article 1 amended**

In Article 1(1) of the principal Law, after the definition of “Court” there shall be inserted the following definition –

- “ ‘documents’ includes accounts, deeds, writings and information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its provision or production include references to providing or producing a copy of the information in legible form;”.

**31 Article 7 amended**

In Article 7 of the principal Law –

- (a) in paragraph (9), for the words “(with the substitution for references to the applicant of references to the holder of the permit)” there shall be

substituted the words “(with the substitution, for references to the applicant, of references to the holder of the permit, and with the substitution, for references to persons who may transact insurance business with the applicant, of references to persons who transacted or may transact insurance business with the holder of the permit)”;

- (b) in paragraph (11), for the words “this paragraph” there shall be substituted the words “this Article”;
- (c) after paragraph (13) the following paragraph shall be inserted –  
“(14) A reference in paragraph (12) to a condition does not include any condition that applies a margin of solvency to a Category B permit holder as referred to in Article 24(12).”.

### 32 Article 8A amended

In Article 8A of the principal Law –

- (a) in paragraph (1), the word “before” shall be deleted;
- (b) for paragraph (3) the following paragraphs shall be substituted –  
“(3) If, on the application of the Commission, the Court is satisfied that it is in the best interests of persons with whom a relevant person transacted or may transact insurance business, or of the public, that paragraph (1) should not have effect, or should cease to have effect in a particular case, or that the period specified in paragraph (1) should be reduced, the Court may so order.  
(3A) In paragraph (3), ‘relevant person’ means –
  - (a) in the case of a direction under Article 36(2)(c) in respect of functions for, employment by, or the business of, a specified permit holder, that permit holder;
  - (b) in the case of a direction under Article 36(2)(c) in respect of functions for, employment by, or the business of, any permit holder at all, any permit holder at all;
  - (c) in the case of an act under Article 7, 7A(2) or (3), 23 or 25(4), or of a direction under Article 36(2)(d), in respect of a permit holder, the permit holder; or
  - (d) in the case of a direction under Article 36(2)(d) in respect of a former permit holder, the former permit holder.”.

### 33 Article 10 substituted

For Article 10 of the principal Law the following Article shall be substituted –

#### “10 General power to require information and documents

- (1) The Commission, an officer or an agent may by notice in writing served on a defined person require the person to do either or both of the following –

- (a) to provide the Commission, an officer or an agent, at such times and places as are specified in the notice, with such information or documents as are specified in the notice and as the Commission, an officer or an agent reasonably requires the person to provide for the purposes of the performance of the Commission's functions under this Law;
  - (b) to attend at such times and places as may be specified in the notice and answer such questions as the Commission, an officer or an agent reasonably requires the person to answer for the purposes of the performance of the Commission's functions under this Law.
- (2) If the Commission has reasonable grounds to suspect that a person has contravened Article 5 or 15, the Commission, an officer or an agent may, by notice in writing served on that person, require the person to do either or both of the following –
  - (a) to provide the Commission, an officer or an agent, at such times and places as are specified in the notice, with such information or documents as are specified in the notice and as the Commission, an officer or an agent reasonably requires for the purposes of investigating the suspected contravention;
  - (b) to attend at such times and places as may be specified in the notice and answer such questions as the Commission, an officer or an agent reasonably requires the person to answer for the purpose of investigating the suspected contravention.
- (3) In a case where the Commission, an officer or an agent may, by notice in writing served on a person under paragraph (1) or (2), require the person to provide information or documents, the Commission, an officer or an agent may in addition or instead require any other person (by notice in writing served on the latter person) who appears to be in possession of some or all of the information or documents to do something that the Commission, an officer or an agent could have required the first-mentioned person to do under sub-paragraph (a) or (b) of that paragraph.
- (4) An officer or an agent may, on producing if required evidence of his or her authority, enter, at a reasonable time, any premises occupied by a person on whom a notice has been served under paragraph (1), (2) or (3), or any other premises where information or documents are kept by such person, for the purpose of obtaining there the information or documents required by that notice, putting the questions referred to in paragraph (1)(b) or (2)(b) or of exercising the power conferred by paragraph (8), as the case may be.
- (5) If the Commission, an officer or an agent serves notice on a person under paragraph (1) or (2), the Commission, officer or agent may, by the same or another notice served on the person, require the person to provide verification, in accordance with the latter notice, of any information, or documents, required from the person under paragraph (1) or (2) (as the case may be).



- (6) The Commission, an officer or an agent may by notice in writing served on a person specified in paragraph (15) require the person to provide a report, by an accountant, or other person with relevant professional skill, nominated or approved by the Commission and appointed by the person served with the notice under this paragraph, being a report –
  - (a) on, or on any aspect of, any information, documents, or questions, that the Commission, an officer or an agent could require the person, by notice under paragraph (1) or (2), to provide or answer (whether or not notice has in fact been served on the person under paragraph (1) or (2)); and
  - (b) in such form (if any) as the notice under this paragraph may specify.
- (7) If a person provides, under this Article, documents in the person's possession but claims a lien on the documents so provided, the provision of the documents shall be without prejudice to the lien.
- (8) The power under this Article to require documents to be provided includes power –
  - (a) if the documents are provided, to retain them, to take copies of them or to take extracts from them, and to require the person providing the documents, or any person who appears to possess information relating to the documents, to provide an explanation of them; or
  - (b) if the documents are not provided, to require the person to whom the requirement was directed to state, to the best of the person's knowledge and belief, where they are.
- (9) If documents provided under this Article are retained under paragraph (8)(a) the documents may be so retained –
  - (a) for a period of one year; or
  - (b) if within that period proceedings to which the documents are relevant are commenced against any person, until the conclusion of those proceedings.
- (10) If the person providing a document that is retained under paragraph (8)(a) requires the document for the purpose of the person's business and requests the document (or a copy of it) from the Commission, the Commission shall supply the person with a copy of the document as soon as practicable.
- (11) If a person fails without reasonable excuse to comply with a requirement imposed on the person under this Article or obstructs an officer, or agent, exercising powers under paragraph (4), the person shall be guilty of an offence and liable to imprisonment for a term of 6 months and a fine.
- (12) Nothing in this Article shall require the disclosure or provision by a person to the Commission, an officer or an agent of information, or documents, that the person would, in proceedings in the Court, be entitled to refuse to disclose or to provide on the grounds of

legal professional privilege, except, if the person is a lawyer, the name and address of his or her client.

- (13) A statement made by a person in compliance with a requirement imposed under this Article shall not be used by the prosecution in evidence against the person in any criminal proceedings except proceedings under paragraph (11) or Article 38.

- (14) In this Article –

‘agent’, in any provision, means an agent of the Commission, being an agent who has been authorized by the Commission to perform the functions set out or referred to in that provision;

‘defined person’ means any of the following persons –

- (a) a permit holder;
- (b) a person who was a permit holder at any time;
- (c) a person who is a director, chief executive, shareholder controller, or key person, in relation to another person who is a permit holder or was a permit holder at any time;
- (d) a person who was at any time a director, chief executive, shareholder controller, or key person, in relation to another person who is a permit holder or was a permit holder at, before or after that time;
- (e) a person who is, or was at any time, an associate in relation to a defined person within the meaning of sub-paragraph (c) or (d);
- (f) a person who is an employee of, or party to a contract for services with, another person who is a permit holder or was a permit holder at any time;
- (g) a person who was at any time an employee of, or party to a contract for services with, another person who is a permit holder or was a permit holder at, before or after that time;
- (h) a person who is an employee of a person who is a party to a contract for services with another person who is a permit holder;
- (i) a person who was at any time an employee of a person who was at that time a party to a contract for services with another person who was a permit holder at that time;

‘officer’, in any provision, means an officer of the Commission, being an officer who has been authorized by the Commission to perform the functions set out or referred to in that provision.

- (15) For the purposes of paragraph (6), the following persons are specified –

- (a) a person within sub-paragraph (a) or (b) of the definition of ‘defined person’ in paragraph (14) or a person within sub-paragraph (c) or (d) of that definition (other than as a key person);
- (b) a person who the Commission has reasonable grounds to suspect has contravened Article 5.

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- (16) For the avoidance of doubt, in sub-paragraph (d), (g) or (i) of the definition of ‘defined person’ in paragraph (14), the reference to a person who was a permit holder includes such a person who is no longer in existence at the time when the relevant function is exercised under this Article.
  - (17) For the avoidance of doubt –
    - (a) a time that is specified for the purposes of any provision of this Article may be, but is not required to be, expressed in terms of times, dates, intervals, periods or time limits; and
    - (b) a document, or information, that is specified for the purposes of any provision of this Article may be, but is not required to be, specified in terms of one or more classes or descriptions.”.

**34 Article 11 amended**

In Article 11(4) of the principal Law for the words “the provisions of Article 5(2) or (6) or Article 15(1)” the words “Article 5 or 15” shall be substituted.

**35 Article 12 repealed**

Article 12 of the principal Law shall be repealed.

**36 Article 13 amended**

In Article 13 of the principal Law –

- (a) in paragraph (1) the words “or 12” shall be deleted;
- (b) in paragraph (3) for the words “Article 12” where firstly occurring the words “Article 10” shall be substituted;
- (c) for paragraph (3)(b) the following sub-paragraph shall be substituted –
  - “(b) that the Commission or, as the case may be, an officer or agent, has power to require the production of documents under Article 10;”.

**37 Article 14 amended**

In Article 14(1) of the principal Law for the words “Article 11 or 12” the words “Article 10 or 11” shall be substituted.

**38 Article 23 amended**

After Article 23(5) of the principal Law the following paragraph shall be inserted –

- “(5A) Notice under paragraph (5) may include a requirement that the permit holder provide verification, in accordance with the notice, of any information or documents referred to in that paragraph.”.

**39 Article 24 amended**

At the end of Article 24 of the principal Law the following paragraphs shall be inserted –

- “(12) One or more conditions to which a Category B permit is subject by virtue of Article 7 may apply, to the holder of the permit, a margin of solvency different from that prescribed for (or otherwise applying to) the holder of the permit by Order made under paragraph (1).
- (13) While one or more such conditions apply such a margin of solvency to a permit holder –
  - (a) any Order made under paragraph (1) shall not apply to the permit holder; and
  - (b) this Article shall apply to the permit holder as if any reference to the margin of solvency prescribed for (or otherwise applying to) the permit holder by Order made under paragraph (1) were a reference to the margin of solvency applying under the conditions.”.

**40 Article 33 amended**

In Article 33 of the principal Law –

- (a) in paragraph (1)(d) for the words “Articles 11 and 12” the words “Article 11” shall be substituted;
- (b) for paragraph (1)(ea) the following sub-paragraphs shall be substituted –
  - “(ea) the power to give a direction under Article 36;
  - (eb) on the application of the Commission, the powers under Article 36B;”;
- (c) for paragraph (7) the following paragraph shall be substituted –
  - “(7) For the purposes of this Article, a reference –
    - (a) in Article 10 or 11(4) to a contravention of Article 5 or 15; or
    - (b) in Article 13(3) to an offence for which the penalty is imprisonment for a term of not less than 2 years,shall include a reference to a contravention (committed at any time, including a time before the enactment of this Law) of a law of a country or territory outside Jersey constituted by an act, or omission, that, if it arose in Jersey, would constitute (at the time when the relevant request referred to in paragraph (3) was received) a contravention of Article 5 or 15 (as the case requires), as in force at the latter time, or (as the case requires) would constitute, at the latter time, an offence for which the penalty is imprisonment for a term of not less than 2 years.”.

**41 Article 36B amended**

For Article 36B(1) and (2) of the principal Law the following paragraphs shall be substituted –

“(1) Where, on the application of the Commission, the Court is satisfied that –

(a) a permit holder –

- (i) is not, in terms of Article 7(4)(b), a fit and proper person to carry on insurance business that the permit holder is purporting to carry on,
- (ii) is not fit to carry on insurance business to the extent to which the permit holder is purporting to carry it on, or
- (iii) has committed or is likely to commit a contravention of a type referred to in Article 36A(1); and

(b) it is desirable for the Court to act under this paragraph for the protection of persons with whom the permit holder has transacted or may transact insurance business,

the Court may, as it thinks just, make an order making the permit holder’s business subject to such supervision, restraint or conditions from such time and for such periods as the Court may specify, and may also make such ancillary orders as the Court thinks desirable.

(2) If, on an application made under paragraph (1), the Court is satisfied that a permit holder has –

- (a) by entering into any transaction with another person, contravened Article 5;
- (b) by entering into any transaction with another person, contravened any condition applicable to the permit holder (whether attached to the permit holder’s permit or prescribed by Order) or any direction given to the permit holder under Article 36;
- (c) contravened Article 15 with the result that another person has been induced to enter into a transaction with the permit holder or with a third person; or
- (d) entered into any transaction with another person who was induced to enter into the transaction as a result of the contravention of Article 15 by a third person,

the Court may order any one or more of those persons (and any other person who appears to the Court to have been knowingly concerned in the contravention) to take such steps as the Court may direct for restoring one or more of the persons to the position in which they were before the transaction was entered into.”.

**42 Article 43 amended**

For Article 43(1)(a) of the principal Law the following sub-paragraph shall be substituted –

“(a) Article 5;”.

## PART 5

### AMENDMENTS TO THE FINANCIAL SERVICES (JERSEY) LAW 1998

#### 43 Interpretation

In this Part, “principal Law” means the Financial Services (Jersey) Law 1998<sup>10</sup>.

#### 44 Article 9 amended

In Article 9 of the principal Law –

- (a) for paragraph (3)(e)(i) and (ii) the following clauses shall be substituted –
- “(i) it is in the best interests of persons who may transact financial service business (other than trust company business) with the applicant that the applicant should not be registered,
  - (ii) it is in the best interests of persons who may enter into agreements for services provided by the applicant in carrying on trust company business that the applicant should not be registered,
  - (iia) it is in the best interests of persons who may receive the benefit of services provided, or arranged, by the applicant in carrying on trust company business that the applicant should not be registered;”;
- (b) for paragraph (4)(e) the following sub-paragraphs shall be substituted –
- “(e) on one or more of the grounds set out in paragraph (3)(a), (b), (c), (d), (f) and (g) (where those sub-paragraphs are read as if references in them to the applicant were references to the registered person);
  - (ea) if it appears to the Commission that it is in the best interests of any of the following persons that the registered person’s registration be revoked –
    - (i) persons who transacted or may transact financial service business (other than trust company business) with the registered person,
    - (ii) persons who entered or may enter into agreements for services provided by the registered person in carrying on trust company business,
    - (iii) persons who received or may receive the benefit of services provided, or arranged, by the registered person in carrying on trust company business;
  - (eb) if it appears to the Commission that, in order to protect the reputation and integrity of Jersey in financial and commercial matters, the registration should be revoked;

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- (ec) if it appears to the Commission that it is in the best economic interests of Jersey that the registration be revoked;”.

**45 Article 11 amended**

For Article 11(4)(a) and (b) of the principal Law the following sub-paragraphs shall be substituted –

- “(a) in the best interests of persons who transacted or may transact financial service business (other than trust company business) with the registered person;
- (b) in the best interests of persons who entered or may enter into agreements for services provided by the registered person in carrying on trust company business; or
- (c) in the best interests of persons who received or may receive the benefit of services provided, or arranged, by the registered person in carrying on trust company business;”.

**46 Article 13 amended**

For Article 13(4)(a) and (b) of the principal Law the following sub-paragraphs shall be substituted –

- “(a) in the best interests of persons who transacted or may transact financial service business (other than trust company business) with the registered person;
- (b) in the best interests of persons who entered or may enter into agreements for services provided by the registered person in carrying on trust company business; or
- (c) in the best interests of persons who received or may receive the benefit of services provided, or arranged, by the registered person in carrying on trust company business;”.

**47 Article 14 amended**

After Article 14(8) of the principal Law the following paragraph shall be inserted –

- “(8A) Notice under paragraph (8) may include a requirement that the person concerned or the registered person (as the case may be) provide verification, in accordance with the notice, of any information or documents referred to in that paragraph.”.

**48 Article 18 amended**

In Article 18(1)(b) of the principal Law for the words “under Article 8(5) or 32(4)” the words “as referred to in Article 8(5) or 32(6)” shall be substituted.

**49 Article 23 amended**

In Article 23 of the principal Law –

(a) for paragraph (1)(b) the following sub-paragraph shall be substituted –

“(b) it is in the best interests of –

- (i) creditors of a registered person,
- (ii) persons who transacted or may transact financial service business (other than trust company business) with a registered person,
- (iii) persons who entered or may enter into agreements for services provided by the registered person in carrying on trust company business,
- (iv) persons who received or may receive the benefit of services provided, or arranged, by the registered person in carrying on trust company business, or
- (v) one or more registered persons;”;

(b) for paragraph (12) the following paragraph shall be substituted –

“(12) If a direction makes a requirement referred to in paragraph (2)(c) or (d), the requirement shall not take effect until the latest of the following times –

- (a) when one month has passed since the notice of the direction was given;
- (b) such date as is specified in the notice of the direction;
- (c) if an appeal is lodged under paragraph (8) against the giving of the direction, when the appeal is determined by the Court or withdrawn.”;

(c) for paragraph (13A) the following paragraphs shall be substituted –

“(13A) If, on the application of the Commission, the Court is satisfied that it is in the best interests of –

- (a) persons who transacted or may transact financial service business (other than trust company business) with the relevant person;
- (b) persons who entered or may enter into agreements for services provided by the relevant person in carrying on trust company business;
- (c) persons who received or may receive the benefit of services provided, or arranged, by the relevant person in carrying on trust company business; or
- (d) the public,

that paragraph (12) should not have effect, or should cease to have effect in a particular case, or that the period specified in paragraph (12) should be reduced, the Court may so order.

(13AB) In paragraph (13A), ‘relevant person’ means –



- (a) in the case of a direction under paragraph (2)(c) in respect of functions for, employment by, or the business of, a specified registered person, that registered person;
- (b) in the case of a direction under paragraph (2)(c) in respect of functions for, employment by, or the business of, any registered person at all, any registered person at all;
- (c) in the case of a direction under paragraph (2)(d) in respect of a registered person, the registered person; or
- (d) in the case of a direction under paragraph (2)(d) in respect of a formerly registered person, the formerly registered person.”.

**50 Article 25 amended**

For Article 25(d) of the principal Law the following paragraph shall be substituted –

- “(d) a public statement concerning a person if it appears to the Commission that the person carried on or is carrying on financial service business (whether or not the person is or was a registered person at the time of carrying on that business and whether the business is or was carried on in Jersey or in a country or territory outside Jersey), and it appears to the Commission to be desirable to issue the statement in the best interests of –
  - (i) persons who transacted or may transact financial service business (other than trust company business) with the person,
  - (ii) persons who entered or may enter into agreements for services provided by the person in carrying on trust company business,
  - (iii) persons who received or may receive the benefit of services provided, or arranged, by the person in carrying on trust company business, or
  - (iv) the public.”.

**51 Article 25B amended**

For Article 25B(3)(a) of the principal Law the following sub-paragraph shall be substituted –

- “(a) the Commission decides on reasonable grounds that the interests of –
  - (i) persons who transacted or may transact financial service business (other than trust company business) with any person identified (within the meaning of Article 25A) in the relevant public statement,
  - (ii) persons who entered or may enter into agreements for services provided by any person (being a person so identified) in carrying on trust company business,

- (iii) persons who received or may receive the benefit of services provided, or arranged, by any person (being a person so identified) in carrying on trust company business, or
  - (iv) the public,
- in the issue of the relevant public statement on a date earlier than the date that would apply under that paragraph outweigh the detriment to the persons identified in the statement, being the detriment attributable to that earliness; and”.

## 52 Article 26 amended

For Article 26(1) and (2) of the principal Law the following paragraphs shall be substituted –

“(1) Where, on the application of the Commission, the Court is satisfied that –

- (a) a registered person –
  - (i) is not in terms of Article 9(3)(a) a fit and proper person to carry on financial service business that the registered person is purporting to carry on,
  - (ii) is not fit to carry on financial service business to the extent to which the registered person is purporting to do, or
  - (iii) has committed or is likely to commit a contravention of a type referred to in Article 24(1); and
- (b) it is desirable for the Court to act under this paragraph for the protection of –
  - (i) persons who transacted or may transact financial service business (other than trust company business) with the registered person,
  - (ii) persons who entered or may enter into agreements for services provided by the registered person in carrying on trust company business, or
  - (iii) persons who received or may receive the benefit of services provided, or arranged, by the registered person in carrying on trust company business,

the Court may, as it thinks just, make an order making the registered person’s business subject to such supervision, restraint or conditions from such time and for such periods as the Court may specify, and may also make such ancillary orders as the Court thinks desirable.

(2) If, on an application made under paragraph (1), the Court is satisfied that a registered person has –

- (a) by entering into any transaction with another person, contravened Article 7;

- (b) by entering into any transaction with another person, contravened any condition applicable to the registered person (whether attached to the registered person's registration or prescribed by Order) or any direction given to the registered person under Article 23;
- (c) contravened Article 39G or 39L with the result that another person has been induced to enter into a transaction with the registered person or with a third person; or
- (d) entered into any transaction with another person who was induced to enter into the transaction as a result of the contravention of Article 39G or 39L by a third person,

the Court may order any one or more of those persons (and any other person who appears to the Court to have been knowingly concerned in the contravention) to take such steps as the Court may direct for restoring one or more of the persons to the position in which they were before the transaction was entered into.”.

### 53 Article 32 substituted

For Article 32 of the principal Law the following Article shall be substituted –

#### “32 General power to require information and documents

- (1) The Commission, an officer or an agent may by notice in writing served on a defined person require the person to do either or both of the following –
  - (a) to provide the Commission, an officer or an agent, at such times and places as are specified in the notice, with such information or documents as are specified in the notice and as the Commission, an officer or an agent reasonably requires the person to provide for the purposes of the performance of the Commission's functions under this Law;
  - (b) to attend at such times and places as may be specified in the notice and answer such questions as the Commission, an officer or an agent reasonably requires the person to answer for the purposes of the performance of the Commission's functions under this Law.
- (2) If the Commission has reasonable grounds to suspect that a person has contravened Article 7, 39G or 39L, the Commission, an officer or an agent may, by notice in writing served on that person, require the person to do either or both of the following –
  - (a) to provide the Commission, an officer or an agent, at such times and places as are specified in the notice, with such information or documents as are specified in the notice and as the Commission, an officer or an agent reasonably requires for the purposes of investigating the suspected contravention;

- (b) to attend at such times and places as are specified in the notice and answer such questions as the Commission, an officer or an agent reasonably requires the person to answer for the purpose of investigating the suspected contravention.
- (3) In a case where the Commission, an officer or an agent may, by notice in writing served on a person under paragraph (1) or (2), require the person to provide information or documents, the Commission, an officer or an agent may in addition or instead require any other person (by notice in writing served on the latter person) who appears to be in possession of some or all of the information or documents to do something that the Commission, an officer or an agent could have required the first-mentioned person to do under sub-paragraph (a) or (b) of that paragraph.
- (4) An officer or an agent may, on producing if required evidence of his or her authority, enter, at a reasonable time, any premises occupied by a person on whom a notice has been served under paragraph (1), (2) or (3), or any other premises where information or documents are kept by such person, for the purpose of obtaining there the information or documents required by that notice, putting the questions referred to in paragraph (1)(b) or (2)(b) or of exercising the power conferred by paragraph (8), as the case may be.
- (5) If the Commission, an officer or an agent serves notice on a person under paragraph (1) or (2), the Commission, officer or agent may, by the same or another notice served on the person, require the person to provide verification, in accordance with the latter notice, of any information, or documents, required from the person under paragraph (1) or (2) (as the case may be).
- (6) The Commission, an officer or an agent may by notice in writing served on a person specified in paragraph (15) require the person to provide a report, by an accountant, or other person with relevant professional skill, nominated or approved by the Commission and appointed by the person served with the notice under this paragraph, being a report –
- (a) on, or on any aspect of, any information, documents, or questions, that the Commission, an officer or an agent could require the person, by notice under paragraph (1) or (2), to provide or answer (whether or not notice has in fact been served on the person under paragraph (1) or (2)); and
- (b) in such form (if any) as the notice under this paragraph may specify.
- (7) If, under this Article, a person provides documents in the person's possession but claims a lien on the documents so provided, the provision of the documents shall be without prejudice to the lien.
- (8) The power under this Article to require documents to be provided includes power –
- (a) if the documents are provided, to retain them, to take copies of them or to take extracts from them, and to require the

- person providing the documents, or any person who appears to possess information relating to the documents, to provide an explanation of them; or
- (b) if the documents are not provided, to require the person to whom the requirement was directed to state, to the best of the person's knowledge and belief, where they are.
- (9) If documents provided under this Article are retained under paragraph (8)(a) the documents may be so retained –
- (a) for a period of one year; or
- (b) if within that period proceedings to which the documents are relevant are commenced against any person, until the conclusion of those proceedings.
- (10) If the person providing a document that is retained under paragraph (8)(a) requires the document for the purpose of the person's business and requests the document (or a copy of it) from the Commission, the Commission shall supply the person with a copy of the document as soon as practicable.
- (11) If a person fails without reasonable excuse to comply with a requirement imposed on the person under this Article or obstructs an officer, or an agent, exercising powers under paragraph (4), the person shall be guilty of an offence and liable to imprisonment for a term of 6 months and a fine.
- (12) Nothing in this Article shall require the disclosure or provision by a person to the Commission, an officer or an agent of information, or documents, that the person would, in proceedings in the Court, be entitled to refuse to disclose or to provide on the grounds of legal professional privilege, except, if the person is a lawyer, the name and address of his or her client.
- (13) A statement made by a person in compliance with a requirement imposed under this Article shall not be used by the prosecution in evidence against the person in any criminal proceedings except proceedings under paragraph (11) or Article 28.
- (14) In this Article –
- ‘agent’, in any provision, means an agent of the Commission, being an agent who has been authorized by the Commission to perform the functions set out or referred to in that provision;
- ‘defined person’ means any of the following persons –
- (a) a registered person;
- (b) a person who was a registered person at any time;
- (c) a person who is a principal person, or key person, in relation to another person who is a registered person or was a registered person at any time;
- (d) a person who was at any time a principal person, or key person, in relation to another person who is a registered person or was a registered person at, before or after that time;

- (e) a person who is, or was at any time, an associate in relation to a defined person within the meaning of sub-paragraph (c) or (d);
- (f) a person who is an employee of, or party to a contract for services with, another person who is a registered person or was a registered person at any time;
- (g) a person who was at any time an employee of, or party to a contract for services with, another person who is a registered person or was a registered person at, before or after that time;
- (h) a person who is an employee of a person who is a party to a contract for services with another person who is a registered person;
- (i) a person who was at any time an employee of a person who was at that time a party to a contract for services with another person who was a registered person at that time;

‘officer’, in any provision, means an officer of the Commission, being an officer who has been authorized by the Commission to perform the functions set out or referred to in that provision.

(15) For the purposes of paragraph (6), the following persons are specified –

- (a) a person within sub-paragraph (a) or (b) of the definition of ‘defined person’ in paragraph (14) or a person within sub-paragraph (c) or (d) of that definition (other than as a key person);
- (b) a person who the Commission has reasonable grounds to suspect has contravened Article 7.

(16) For the avoidance of doubt, in sub-paragraph (d), (g) or (i) of the definition of ‘defined person’ in paragraph (14), the reference to a person who was a registered person includes such a person who is no longer in existence at the time when the relevant function is exercised under this Article.

(17) For the avoidance of doubt –

- (a) a time that is specified for the purposes of any provision of this Article may be, but is not required to be, expressed in terms of times, dates, intervals, periods or time limits; and
- (b) a document, or information, that is specified for the purposes of any provision of this Article may be, but is not required to be, specified in terms of one or more classes or descriptions.”.

#### 54 Article 33 amended

In Article 33(3) of the principal Law for the words “under Article 32(4)” the words “as referred to in Article 32(6)” shall be substituted.

**55 Article 34 amended**

In Article 34(1) of the principal Law –

- (a) in sub-paragraphs (b) and (d) for the matter “32(1)” in each place where it occurs there shall be substituted the matter “32”;
- (b) in sub-paragraph (g) for the matter “32(3)” there shall be substituted the matter “32(4)”.

**56 Article 36 amended**

In Article 36 of the principal Law –

- (a) after paragraph (1)(b) the following sub-paragraph shall be inserted –
  - “(ba) the power to give a direction under Article 16 or 23;”;
- (b) in paragraph (6)(b) for the matter “32(7)” the matter “32(9)” shall be substituted.

**57 Article 38 amended**

For Article 38(1)(l) of the principal Law the following sub-paragraph shall be substituted –

- “(l) by any of the following persons –
  - (i) the Commission,
  - (ii) a person appointed under an enactment by any of the following –
    - (A) the Commission,
    - (B) the Court, on the application of the Commission,
    - (C) a Minister, where that Minister and the Commission are each specified in that enactment as having power to appoint that person,

to any person or body responsible for setting standards of conduct for any profession where that person or body has powers to discipline persons who fail to meet those standards if it appears to the Commission or the appointed person that disclosing the information would enable or assist the person or body responsible for setting standards to discharge its functions in relation to a person who fails, or is alleged to have failed, to meet those standards;”.

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**PART 6****AMENDMENTS TO THE PROCEEDS OF CRIME (SUPERVISORY BODIES) (JERSEY) LAW 2008****58 Interpretation**

In this Part, “principal Law” means the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008<sup>11</sup>.

**59 Article 1 amended**

In Article 1(1) of the principal Law, the following definitions shall be inserted, each according to its alphabetical order –

“ ‘documents’ includes accounts, deeds, writings and information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its provision or production include references to providing or producing a copy of the information in legible form;

‘ESAs’ means the European Supervisory Authorities comprising –

- (a) the European Banking Authority established by Regulation (EU) No. 1093/2010 of the European Parliament and of the Council of 24 November 2010 (O.J. No. L 331, 15.12.2010, p.12);
- (b) the European Insurance and Occupational Pensions Authority established by Regulation (EU) No. 1094/2010 of the European Parliament and of the Council of 24 November 2010 (O.J. No. L 331, 15.12.2010, p.48); and
- (c) the European Securities and Markets Authority established by Regulation (EU) No.1095/2010 of the European Parliament and of the Council of 24 November 2010 (O.J. No. L 331, 15.12.2010, p.84);

‘supervisor of a securities market’ has the meaning given in Article 1(1) of the Financial Services (Jersey) Law 1998<sup>12</sup>, but in reading that definition in the context of this Law the reference in that definition to a relevant supervisory authority within the meaning of the Financial Services (Jersey) Law 1998 is to be taken to be a reference to a relevant overseas supervisory authority within the meaning of this Law.”.

**60 Article 2 amended**

For Article 2(a) of the principal Law the following paragraph shall be substituted –

- “(a) monitoring compliance by a supervised person with any of the following –
- (i) any requirement to which that person is subject under this Law,



- (ii) any Order under Article 37 of the Proceeds of Crime (Jersey) Law 1999<sup>13</sup>,
- (iii) the Community Provisions (Wire Transfers) (Jersey) Regulations 2007<sup>14</sup>,
- (iv) any direction under Article 6 of the Money Laundering and Weapons Development (Directions) (Jersey) Law 2012<sup>15</sup>,
- (v) any Code of Practice that applies to that person or the supervised business carried on by that person;”.

**61 Article 10 amended**

For Article 10(2)(a)(ii) of the principal Law the following clause shall be substituted –

- “(ii) any person, or institution, prescribed for the purposes of this paragraph, subject to such conditions or restrictions as may be so prescribed;”.

**62 Article 14 amended**

For Article 14(4)(b)(ii) of the principal Law the following clauses shall be substituted –

- “(ia) an offence under –
  - (A) this Law,
  - (B) the Banking Business (Jersey) Law 1991<sup>16</sup>,
  - (C) the Collective Investment Funds (Jersey) Law 1988<sup>17</sup>,
  - (D) the Financial Services (Jersey) Law 1998<sup>18</sup>,
  - (E) the Insurance Business (Jersey) Law 1996<sup>19</sup>, or
  - (F) any Regulation or Order made under any of those Laws,
- (ib) an offence, similar to one referred to in clause (ia), under the law of a country or territory outside Jersey,
- (ii) an offence, not referred to in clause (ia) or (ib), under any enactment (whether of Jersey or of a country or territory outside Jersey) relating to building societies, companies, consumer credit, consumer protection, credit unions, friendly societies, industrial and provident societies, insider dealing, insolvency, insurance, money laundering or terrorist financing; or”.

**63 Article 23 amended**

For Article 23(12) and (13) of the principal Law the following paragraphs shall be substituted –

“(12) If a direction makes a requirement referred to in paragraph (2)(c) or (d), the requirement shall not take effect until the latest of the following –

- (a) when one month has passed since the notice of the direction was given;
- (b) such date as is specified in the notice of the direction;
- (c) if an appeal is lodged under paragraph (8) against the giving of the direction, when the appeal is determined by the Court or withdrawn.

(13) Paragraph (12) shall not have effect if –

- (a) the person on whom the requirement is imposed agrees with the supervisory body that gave the direction that the requirement take effect at a time earlier than the time that would apply under paragraph (12); or
- (b) the Court so orders under paragraph (13A).

(13A) If, on the application of the supervisory body that gave the direction, the Court is satisfied that it is in the best interests of –

- (a) persons who transacted or may transact supervised business with the person on whom the relevant requirement was imposed; or
- (b) the public,

that paragraph (12) should not have effect, or should cease to have effect in a particular case, or that the period specified in paragraph (12) should be reduced, the Court may so order.

(13B) Except where paragraph (12)(c) has effect, an appeal made under paragraph (8) shall not suspend the operation of the direction.”.

#### 64 Article 25 amended

For Article 25(1) to (3) of the principal Law the following paragraphs shall be substituted –

“(1) Where, on the application of a suitable supervisory body, the Court is satisfied that –

- (a) a supervised person –
  - (i) is not, in terms of Article 14(4), a fit and proper person to carry on the supervised business that the supervised person is purporting to carry on,
  - (ii) is not fit to carry on the supervised business to the extent to which the supervised person is purporting to do, or
  - (iii) has committed or is likely to commit a contravention of a type referred to in Article 24(1); and
- (b) it is desirable for the Court to act under this paragraph for the protection of persons with whom the supervised person has transacted or may transact supervised business,

the Court may, as it thinks just, make an order making the supervised person subject to such supervision, restraint or conditions from such time and for such periods as the Court may specify, and may also make such ancillary orders as the Court thinks desirable.

- (2) For the purposes of this Article, references to a supervised person include a formerly supervised person.
- (3) If, on an application made under paragraph (1), the Court is satisfied that a supervised person has –
  - (a) by entering into any transaction with another person, contravened Article 10; or
  - (b) by entering into any transaction with another person, contravened any condition applicable to the supervised person (whether attached to the supervised person's registration or prescribed by Order) or any direction given to the supervised person under Article 23,

the Court may order any one or more of those persons (and any other person who appears to the Court to have been knowingly concerned in the contravention) to take such steps as the Court may direct for restoring one or more of the persons to the position in which they were before the transaction was entered into.”.

#### **65 Article 26 amended**

For Article 26(c) of the principal Law the following paragraph shall be substituted –

- “(c) a public statement concerning a person if it appears to the body that the person is carrying on, or formerly carried on, a supervised business, whether in Jersey or in a country or territory outside Jersey, and it appears to that body to be desirable to issue the statement –
  - (i) in the best interests of persons who transacted or may transact supervised business with the person, or
  - (ii) in the best interests of the public.”.

#### **66 Article 30 substituted**

For Article 30 of the principal Law the following Article shall be substituted –

##### **“30 General power to require information and documents**

- (1) A suitable supervisory body, an officer or an agent may by notice in writing served on a defined person require the person to do either or both of the following –
  - (a) to provide that body, an officer or an agent, at such times and places as are specified in the notice, with such information or documents as are specified in the notice and

- as the body, an officer or an agent reasonably requires the person to provide for the purposes of the performance of the body's functions under this Law;
- (b) to attend at such times and places as may be specified in the notice and answer such questions as that body, an officer or an agent reasonably requires the person to answer for the purposes of the performance of the body's functions under this Law.
- (2) If a suitable supervisory body has reasonable grounds to suspect that a person has contravened Article 10, that body, an officer or an agent may, by notice in writing served on that person, require the person to do either or both of the following –
- (a) to provide the body, an officer or an agent, at such times and places as are specified in the notice, with such information or documents as are specified in the notice and as the body, an officer or an agent reasonably requires for the purposes of investigating the suspected contravention;
- (b) to attend at such times and places as are specified in the notice and answer such questions as the body, an officer or an agent reasonably requires the person to answer for the purpose of investigating the suspected contravention.
- (3) In a case where a suitable supervisory body, an officer or an agent may, by notice in writing served on a person under paragraph (1) or (2), require the person to provide information or documents, the body, an officer or an agent may in addition or instead require any other person (by notice in writing served on the latter person) who appears to be in possession of some or all of the information or documents to do something that the body, an officer or an agent could have required the first-mentioned person to do under subparagraph (a) or (b) of that paragraph.
- (4) An officer or an agent may, on producing if required evidence of his or her authority, enter, at a reasonable time, any premises occupied by a person on whom a notice has been served under paragraph (1), (2) or (3), or any other premises where information or documents are kept by such person, for the purpose of obtaining there the information or documents required by that notice, putting the questions referred to in paragraph (1)(b) or (2)(b) or of exercising the power conferred by paragraph (8), as the case may be.
- (5) If the suitable supervisory body, an officer or an agent serves notice on a person under paragraph (1) or (2), the suitable supervisory body, officer or agent may, by the same or another notice served on the person, require the person to provide verification, in accordance with the latter notice, of any information, or documents, required from the person under paragraph (1) or (2) (as the case may be).
- (6) The suitable supervisory body, an officer or an agent may by notice in writing served on a person specified in paragraph (15) require the person to provide a report, by an accountant, or other person

with relevant professional skill, nominated or approved by the suitable supervisory body and appointed by the person served with the notice under this paragraph, being a report –

- (a) on, or on any aspect of, any information, documents, or questions, that the suitable supervisory body, an officer or an agent could require the person, by notice under paragraph (1) or (2), to provide or answer (whether or not notice has in fact been served on the person under paragraph (1) or (2)); and
  - (b) in such form (if any) as the notice under this paragraph may specify.
- (7) If, under this Article, a person provides documents in the person's possession but claims a lien on the documents so provided, the provision of the documents shall be without prejudice to the lien.
- (8) The power under this Article to require documents to be provided includes power –
- (a) if the documents are provided, to retain them, to take copies of them or to take extracts from them, and to require the person providing the documents, or any person who appears to possess information relating to the documents, to provide an explanation of them; or
  - (b) if the documents are not provided, to require the person to whom the requirement was directed to state, to the best of the person's knowledge and belief, where they are.
- (9) If documents provided under this Article are retained under paragraph (8)(a) the documents may be so retained –
- (a) for a period of one year; or
  - (b) if within that period proceedings to which the documents are relevant are commenced against any person, until the conclusion of those proceedings.
- (10) If the person providing a document that is retained under paragraph (8)(a) requires the document for the purpose of the person's business and requests the document (or a copy of it) from the relevant suitable supervisory body, the body shall supply the person with a copy of the document as soon as practicable.
- (11) If a person fails without reasonable excuse to comply with a requirement imposed on the person under this Article or obstructs an officer, or an agent, exercising powers under paragraph (4), the person shall be guilty of an offence and liable to imprisonment for a term of 6 months and a fine.
- (12) Nothing in this Article shall require the disclosure or provision by a person to a suitable supervisory body, an officer, or an agent, of information, or documents, that the person would, in proceedings in the Court, be entitled to refuse to disclose or to provide on the grounds of legal professional privilege, except, if the person is a lawyer, the name and address of his or her client.

(13) A statement made by a person in compliance with a requirement imposed under this Article shall not be used by the prosecution in evidence against the person in any criminal proceedings except proceedings under paragraph (11) or Article 33.

(14) In this Article –

‘agent’, in any provision, means an agent of a suitable supervisory body, being an agent who has been authorized by the body to perform the functions set out or referred to in that provision;

‘defined person’ means any of the following persons –

- (a) a person who is carrying on a supervised business;
- (b) a person who carried on a supervised business at any time;
- (c) a person who is a principal person, or key person, in relation to another person who is carrying on a supervised business or carried on a supervised business at any time;
- (d) a person who was at any time a principal person, or key person, in relation to another person who is carrying on a supervised business or carried on a supervised business at, before or after that time;
- (e) a person who is, or was at any time, an associate in relation to a defined person within the meaning of sub-paragraph (c) or (d);
- (f) a person who is an employee of, or party to a contract for services with, another person who is carrying on a supervised business or carried on a supervised business at any time;
- (g) a person who was at any time an employee of, or party to a contract for services with, another person who is carrying on a supervised business or carried on a supervised business at, before or after that time;
- (h) a person who is an employee of a person who is a party to a contract for services with another person who is carrying on a supervised business;
- (i) a person who was at any time an employee of a person who was at that time a party to a contract for services with another person who carried on a supervised business at that time;

‘officer’, in any provision, means an officer of a suitable supervisory body, being an officer who has been authorized by the body to perform the functions set out or referred to in that provision.

(15) For the purposes of paragraph (6), the following persons are specified –

- (a) a person within sub-paragraph (a) or (b) of the definition of ‘defined person’ in paragraph (14) or a person within sub-paragraph (c) or (d) of that definition (other than as a key person);

- (b) a person who the suitable supervisory body has reasonable grounds to suspect has contravened Article 10.
- (16) For the avoidance of doubt, in sub-paragraph (d), (g) or (i) of the definition of ‘defined person’ in paragraph (14), the reference to a person who carried on a supervised business includes such a person who is no longer in existence at the time when the relevant function is exercised under this Article.
- (17) For the avoidance of doubt –
- (a) a time that is specified for the purposes of any provision of this Article may be, but is not required to be, expressed in terms of times, dates, intervals, periods or time limits; and
  - (b) a document, or information, that is specified for the purposes of any provision of this Article may be, but is not required to be, specified in terms of one or more classes or descriptions.
- (18) Nothing in this Article affects the operation of Article 8.”.

**67 Article 31 amended**

In Article 31 of the principal Law –

- (a) after paragraph (1)(a)(vii) the following clause shall be added –
  - “,
  - (viii) the Community Provisions (Wire Transfers) (Jersey) Regulations 2007<sup>20</sup>”;
- (b) in paragraph (4)(b)(iv) for the words “Article 30(9)” the words “Article 30(6)” shall be substituted.

**68 Article 32 amended**

In Article 32 of the principal Law –

- (a) in paragraph (1)(a) for the words “Article 30(7)” the words “Article 30(2)” shall be substituted;
- (b) in paragraph (1)(b), (c), (d) and (e) for the words “Article 30(4)” in each place where they occur the words “Article 30(1)” shall be substituted;
- (c) in paragraph (1)(g) for the words “Article 30(8)” the words “Article 30(4)” shall be substituted.

**69 Article 36 substituted**

For Article 36 of the principal Law the following Article shall be substituted –

**“36 Permitted disclosures**

- (1) Article 35 does not preclude the disclosure of information –
  - (a) by a supervisory body –
    - (i) to the Viscount,

- (ii) to any person for the purpose of enabling or assisting that person to exercise that person's statutory functions in relation to any person or class of person in respect of whom the supervisory body has or had statutory functions,
  - (iii) to the Comptroller and Auditor General for the purpose of enabling or assisting the exercise of any of his or her functions in relation to the supervisory body,
  - (iv) to a relevant overseas supervisory authority pursuant to Article 39, or
  - (v) to any person for the purposes of enabling or assisting that person to exercise that person's statutory control functions in relation to any person or class of person in respect of whom the supervisory body does not have statutory functions;
- (b) by or to any person in any case in which disclosure is for the purpose of –
- (i) enabling or assisting any supervisory body, or any person acting on its behalf, to exercise that body's, or that person's, functions, or
  - (ii) enabling or assisting any person appointed, under an enactment, by –
    - (A) a supervisory body,
    - (B) the Court, on the application of a supervisory body, or
    - (C) a Minister,to exercise the functions of the person so appointed, or the functions of the supervisory body, under this Law or under any other enactment;
- (c) to a person by a supervisory body showing whether or not any person is registered or was formerly registered under this Law, including any conditions which are attached or were formerly attached to the registration of that person under Article 17;
- (d) with a view to the investigation of a suspected offence, or to the institution of, or for the purposes of, any criminal proceedings, whether under this Law or not;
- (e) in connection with any other proceedings arising under this Law;
- (f) subject to paragraph (2), by –
- (i) a supervisory body, or
  - (ii) a person appointed under an enactment by –
    - (A) a supervisory body,
    - (B) the Court, on the application of a supervisory body, or



- (C) a Minister, where that enactment prescribes that the Minister and a supervisory body each have power to appoint that person,
    - to any person or body responsible for setting standards of conduct for a profession and having powers to discipline persons who fail to meet those standards;
  - (g) by a supervisory body to the Attorney General or to a police officer, if the information –
    - (i) has been obtained under Article 30, 31 or 32, or
    - (ii) is in the possession of the supervisory body and relates to any matter in relation to which a power under Article 30, 31 or 32 is exercisable;
  - (h) by a supervisory body to the auditor of –
    - (i) a supervised person or formerly supervised person, or
    - (ii) a person who appears to the supervisory body to have acted in contravention of Article 10,where it appears to the supervisory body that disclosing the information would be in the interests of persons who transacted or may transact supervised business with such a person;
  - (i) by a supervisory body to any person acting on behalf of an international body or international organization where the body's or organization's functions include the assessment of Jersey's compliance with international standards relating to measures against money-laundering or the financing of terrorism and the disclosure is for the purpose of enabling or assisting that body or organization to discharge those functions; or
  - (j) subject to paragraphs (6) to (8), by a supervisory body to any of the following organizations or persons –
    - (i) the ESAs, or
    - (ii) a supervisor of a securities market.
- (2) Paragraph (1)(f) shall have effect only if it appears to the supervisory body or to the appointed person (as the case requires) that disclosing the information (as referred to in that sub-paragraph) would enable or assist the person or body responsible for setting standards to exercise his, her or its functions in relation to a person who fails, or is alleged to have failed, to meet those standards.
- (3) Article 35 does not preclude the Attorney General from further disclosing the information already disclosed to him or her as referred to in paragraph (1)(g) if he or she makes the further disclosure –
- (a) for the purposes of an investigation into a suspected offence, or of a prosecution, in Jersey; or

- (b) for the purposes of an investigation into a suspected offence, or of a prosecution, in a country or territory outside Jersey.
- (4) Article 35 does not preclude a police officer from further disclosing the information already disclosed to him or her as referred to in paragraph (1)(g) if he or she makes the further disclosure –
  - (a) for the purposes of an investigation into a suspected offence, or of a prosecution, in Jersey; or
  - (b) with the permission of the Attorney General and for the purposes of an investigation into a suspected offence, or of a prosecution, in a country or territory outside Jersey.
- (5) A party shall not make a disclosure under or by virtue of paragraph (1)(a)(ii), (iii), (iv) or (v) or (b), (f), (i) or (j) or Article 39(1)(g) unless satisfied that the party to whom disclosure is made complies with or will comply with any conditions to which the party making the disclosure may, in its discretion, subject the disclosure.
- (6) The supervisory body shall not disclose information under paragraph (1)(j) unless satisfied that –
  - (a) the purpose of the disclosure is in order to assist the relevant organization or person to whom it is disclosed, in the exercise of any of its functions; and
  - (b) that organization or person will treat the disclosed information with appropriate confidentiality.
- (7) In deciding whether to disclose information under paragraph (1)(j), the supervisory body may take the following factors (among others) into account –
  - (a) whether corresponding disclosure of information would be given by the relevant organization or person, if such information were requested by the supervisory body;
  - (b) whether the case concerns the possible breach of a law, or other requirement, which has no close parallel in Jersey;
  - (c) the seriousness of the case and its importance in Jersey;
  - (d) whether the information could be obtained by other means; and
  - (e) whether it is otherwise appropriate in the public interest to disclose the information.
- (8) The supervisory body may refuse to disclose information under paragraph (1)(j) unless the relevant organization or person undertakes to make such contribution towards the costs of the disclosure as the supervisory body considers appropriate.
- (9) The States may by Regulations amend this Article by –
  - (a) adding further parties to or by whom disclosure may be made and specifying in each case the purpose for which disclosure may be made; or

(b) amending the circumstances of disclosure, including the purposes for which and conditions under which disclosure may be made.

(10) In paragraph (1)(a)(v), ‘statutory control functions’ means functions conferred by or under an enactment on any person which requires or enables that person to issue a licence, register, or give consent or any other form of authorization or permission to or in respect of any person or class of persons, including any ancillary functions related thereto, for such purposes as may be prescribed or specified (as the case may be) under that enactment.”.

#### **70 Article 39 amended**

In Article 39 of the principal Law –

- (a) after paragraph (1)(b) the following sub-paragraph shall be inserted –
- “(ba) the power to give a direction under Article 23;”;
- (b) in paragraph (6)(a)(i) and (ii) for the words “Article 30(7)” in each place where they occur the words “Article 30(2)” shall be substituted;
- (c) in paragraph (6)(b) for the words “Article 30(12)” the words “Article 30(9)” shall be substituted.

## **PART 7**

### **MISCELLANEOUS**

#### **71 Community Provisions (Wire Transfers) (Jersey) Regulations 2007 amended**

Regulations 14A and 14B of the Community Provisions (Wire Transfers) (Jersey) Regulations 2007<sup>21</sup> shall be repealed.

#### **72 Citation and commencement**

This Law may be cited as the Financial Regulation (Miscellaneous Provisions No. 2) (Jersey) Law 201- and shall come into force 7 days after it is registered.

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- 1 *chapter 13.100*
  - 2 *chapter 04.160*
  - 3 *chapter 04.160*
  - 4 *chapter 13.425*
  - 5 *chapter 13.100*
  - 6 *chapter 13.075*
  - 7 *chapter 13.225*
  - 8 *chapter 13.075*
  - 9 *chapter 13.425*
  - 10 *chapter 13.225*
  - 11 *chapter 08.785*
  - 12 *chapter 13.225*
  - 13 *chapter 08.780*
  - 14 *chapter 17.245.57*
  - 15 *chapter 08.685*
  - 16 *chapter 13.075*
  - 17 *chapter 13.100*
  - 18 *chapter 13.225*
  - 19 *chapter 13.425*
  - 20 *chapter 17.245.57*
  - 21 *chapter 17.245.57*