



Jersey

## FINANCIAL REGULATION (MISCELLANEOUS PROVISIONS) (JERSEY) LAW 2009

### Arrangement

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Jersey

## **FINANCIAL REGULATION (MISCELLANEOUS PROVISIONS) (JERSEY) LAW 2009**

**A LAW** to amend further the Collective Investment Funds (Jersey) Law 1988, the Banking Business (Jersey) Law 1991, the Insurance Business (Jersey) Law 1996 and the Financial Services (Jersey) Law 1998.

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*Adopted by the States*

*12th September 2008*

*Sanctioned by Order of Her Majesty in Council*

*10th December 2008*

*Registered by the Royal Court*

*2nd January 2009*

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

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### **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 Article 1 amended**

In Article 1 of the principal Law –

- (a) for the definition “money laundering compliance officer” there shall be substituted the following definition –

“ ‘money laundering compliance officer’ means a person appointed as ‘compliance officer’ under the Money Laundering (Jersey) Order 2008<sup>2</sup>;

- (b) for the definition “money laundering reporting officer” there shall be substituted the following definition –

“ ‘money laundering reporting officer’ means a person appointed as ‘reporting officer’ under the Money Laundering (Jersey) Order 2008;”.

**3 Article 2 amended**

In Article 2 of the principal Law after the words “granted permits” there shall be inserted the words “or certificates”.

**4 Article 8 amended**

At the end of Article 8 of the principal Law there shall be added the following paragraph –

“(6) Paragraph (1) shall not apply to such persons or class of persons as may be prescribed.”.

**5 Article 8E amended**

In Article 8E(1)(e) of the principal Law for the words “Article 8C(2) or (3)” there shall be substituted the words “Article 8C(2) or (3) or 13(2)(d) or (f)”.

**6 Article 12 amended**

In Article 12 of the principal Law –

- (a) the existing paragraph shall be numbered (1);
- (b) there shall be added after paragraph (1) the following paragraph –
- “(2) Without prejudice to the generality of paragraph (1), Regulations may in particular make provision –
- (a) for levies to be imposed on the persons described in paragraph (1)(a) and (b) for the purpose of meeting expenses incurred, or expected to be incurred, including expenses related to establishing the scheme and paying compensation;
  - (b) for the procedure to be followed in making a claim;
  - (c) for making interim payments before a claim is finally determined;
  - (d) limiting the amount payable on a claim to a specified maximum amount or a maximum amount calculated in a specified manner;
  - (e) for payment to be made, in specified circumstances, to a person other than the claimant;
  - (f) for the determination and regulation of matters relating to the scheme by any specified person;
  - (g) as to the effect of a payment of compensation under the scheme in relation to rights or obligations arising out of the

- claim against a person described in paragraph (1)(a) or (b) in respect of which the payment was made;
- (h) for conferring on any person managing the scheme a right of recovery against a person described in paragraph (1)(a) or (b).”.

**7 Article 13 amended**

After Article 13(7) there shall be added the following paragraphs –

- “(8) A person who allows an individual to perform a function, engage in employment or hold a position where the person knows that such performance, engagement or holding is in contravention of a direction that makes a requirement referred to in paragraph (2)(d) shall be guilty of an offence and liable to a term of imprisonment for 2 years and a fine.
- (9) The record of the conviction of a person for an offence under paragraph (7) or (8) is admissible in civil proceedings as evidence of the facts constituting the offence.”.

**8 Article 17 amended**

For Article 17(2)(c)(ii) there shall be substituted the following clause –

- “(ii) a person in respect of whom it appears to the Commission that he or she is holding, or has held, himself or herself out, whether in Jersey or in a country or territory outside Jersey, as being a functionary of a collective investment fund, a fund service provider in relation to an unclassified fund, a holder of a permit or a certificate holder,”.

**9 Article 17B amended**

In Article 17B(3) of the principal Law for sub-paragraph (a) there shall be substituted the following sub-paragraph –

- “(a) the Commission decides on reasonable grounds that the interests of –
  - (i) existing or potential participants in a collective investment fund,
  - (ii) existing or potential participants in funds of any class of collective investment fund, or
  - (iii) the public,in the issue of the relevant public statement on a date earlier than the date that would apply under that paragraph outweighs the detriment to the persons identified in the statement, being the detriment attributable to that earliness; and”.

**10 Article 20 amended**

In Article 20 of the principal Law –

- (a) for the heading there shall be substituted the following heading –

**“20 Regulations and Orders”;**

- (b) for Article 20(3) of the principal Law there shall be substituted the following paragraph –

“(3) Regulations or an Order made under this Law may contain such transitional, consequential, incidental or supplementary provisions as appear to the States or Minister (as the case requires) to be necessary or expedient for the purposes of the Regulations or Order.”.

**11 Article 27 amended**

In Article 27 of the principal Law –

- (a) for paragraphs (1) and (2) there shall be substituted the following paragraphs –

“(1) Article 26 does not preclude the disclosure of information by or to any person in any case in which disclosure is for the purpose of enabling or assisting any of the following –

- (a) the Commission or any person acting on its behalf;
- (b) a person appointed under an enactment by any of the following –
  - (i) the Commission,
  - (ii) the Court, on the application of the Commission,
  - (iii) a Minister, where that Minister and the Commission are each specified in that enactment as having power to appoint that person,

to discharge the Commission’s functions or that person’s functions under this Law or under any other enactment.

(2) Article 26 does not preclude the disclosure of information by the Commission to the auditor of –

- (a) a permit holder or a certificate holder;
- (b) a former permit holder or a former certificate holder; or
- (c) a person who appears to the Commission to be acting or to have acted in contravention of Article 5 or Article 8,

if it appears to the Commission that disclosing the information would be in the interests of participants or potential participants in a collective investment fund or funds of any class of collective investment fund.”;

- (b) paragraph (3) shall be repealed.



**12 Article 28 amended**

For Article 28 of the principal Law there shall be substituted the following Article –

**“28 Disclosure to public persons and bodies**

- (1) Article 26 does not preclude the disclosure of information by the Commission to –
  - (a) the Viscount;
  - (b) the Comptroller and Auditor General for the purpose of enabling or assisting the carrying out of any of the Comptroller and Auditor General’s functions in relation to the Commission; or
  - (c) 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 Commission has statutory functions.
- (2) Article 26 does not preclude the disclosure of information for the purpose of enabling or assisting a relevant supervisory authority to exercise any of its supervisory functions.”.

**13 Article 29 amended**

In Article 29 of the principal Law –

- (a) paragraph (1)(c) shall be deleted;
- (b) for paragraphs (2), (3) and (4) there shall be substituted the following paragraphs –
  - “(2) Article 26 does not preclude the disclosure by the Commission to the Attorney General or to a police officer of –
    - (a) information obtained by virtue of any of Articles 9, 22 or 24; or
    - (b) information in the possession of the Commission as to any matter in relation to which the powers conferred by any of those Articles are exercisable.
  - (3) Information disclosed under paragraph (2) may only be disclosed by the Attorney General or a police officer for the purposes of an investigation into a suspected offence in Jersey or a prosecution in Jersey or, at the discretion of the Attorney General, a suspected offence or prosecution in a country or territory outside Jersey.
  - (4) Article 26 does not preclude the disclosure of information by the Commission to any person or body responsible for a compensation scheme in relation to one or more collective investment funds (whether in Jersey or in a country or territory outside Jersey) if –

- (a) it appears to the Commission that disclosing the information would enable or assist the recipient of the information or the Commission to discharge its functions; and
  - (b) the recipient of the information gives to the Commission prior to disclosure a written undertaking that the information will not be further disclosed without the prior consent of the Commission.
- (5) Article 26 does not preclude the disclosure of information by the Commission to any person acting on behalf of an international body or organization where that body's or organization's functions include the assessment of Jersey's compliance with international standards relating to regulation of the financial sector and the disclosure is for the purpose of enabling or assisting that body or organization to discharge those functions.
- (6) Article 26 does not preclude disclosure of information by –
- (a) the Commission;
  - (b) a person appointed under an enactment by any of the following –
    - (i) the Commission,
    - (ii) the court, on the application of the Commission,
    - (iii) 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.”.

#### **14 Article 30 substituted**

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

##### **“30 Attachment of conditions to disclosure**

No information shall be disclosed under or by virtue of Article 25(1)(g), 27(1)(a), 28(1)(b) or (c) or (2) or 29(5) or (6) unless the Commission or person, as the case requires, making the disclosure (‘the disclosing party’) is satisfied that the person or body to whom or which disclosure is made complies with or will comply with, any conditions to which the disclosing party may, in its discretion, subject such disclosure.”.

**15 Article 30A inserted**

After Article 30 there shall be inserted the following Article –

**“30A Regulation making power to amend disclosure provisions**

The States may by Regulations amend Articles 27, 28 and 29 by –

- (a) adding further persons or bodies to or by whom disclosure may be made and specifying in each case the purpose for which disclosure of information may be made; and
- (b) amending the circumstances in which disclosure may be made to whom or by any person or body specified in those Articles, including the purposes for which and conditions in which such disclosure may be made.”.

**16 Article 31 amended**

For Article 31 of the principal Law there shall be substituted the following Article –

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

Articles 26 to 30 apply also to information supplied to the Commission for the purposes of its functions under this Law by a relevant supervisory authority.”.

**17 Article 34 amended**

In Article 34 of the principal Law –

- (a) in paragraph (8)(a) after the words “or permit or certificate granted,” there shall be inserted the words “or conditions prescribed or attached to a permit or certificate.”;
- (b) after paragraph (10) there shall be substituted the following paragraphs –
  - “(11) If, on the application of the Commission, the court is satisfied in relation to the holder of a permit or a certificate holder (each referred to in this paragraph as ‘holder’) that –
    - (a) the holder 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 which the holder is purporting to carry on, or is not fit to carry it on to the extent to which the holder is purporting to do; or
    - (b) the holder has failed, or is likely to fail, to comply with any of the things described in paragraph (8)(a), andit is desirable for the protection of participants or potential participants in a collective investment fund, 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 person, by entering into any transaction, has –

- (a) contravened Article 5 or 8, as the case requires;
- (b) contravened any conditions applicable to that person (whether prescribed or attached to a certificate or permit); or
- (c) entered into any transaction with another party who was induced to enter the transaction as a result of the person's contravening Article 10,

the court may order that person 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 the parties to the position in which they were before the transaction was entered into.

(13) Without prejudice to the generality of paragraph (11) or (12), an order issued under either of those paragraphs may include a requirement that all assets, or all assets of a specified description, which, at any time while the requirement is in force when the holder carries on business relating to a collective investment fund –

- (a) belong to the holder concerned; or
- (b) belong to persons with whom the holder is transacting business relating to a collective investment fund and that are held by or to the holder's order,

shall be transferred to and held by a person whose appointment is approved by the court (in this Article referred to as an 'appointed person').

(14) Where a requirement of a type referred to in paragraph (13) is imposed under this Article, it shall be the duty of the holder concerned to transfer the assets to the appointed person and to give the appointed person all such other assistance as may be required to enable the appointed person to discharge his or her functions in accordance with this requirement.

(15) Assets held by an appointed person in accordance with a requirement of a type referred to in paragraph (13) shall not be released or dealt with except in accordance with directions given by the court or in such circumstances as may be specified by it.

(16) An order including a requirement of a type referred to in paragraph (13) may relate to assets in a country or territory outside Jersey.

(17) 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 such person may otherwise have independently of the Commission.”.

## PART 2

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

#### 18 Interpretation

In this Part, “principal Law” means the Banking Business (Jersey) Law 1991<sup>3</sup>.

#### 19 Article 1 amended

In Article 1 of the principal Law –

- (a) in the definition “former registered person” there shall be inserted as fall-out words after paragraph (b) the following words –

“however paragraph (b) shall not apply for the purposes of any of the following Articles –

22(3);

26(10);

28(6);

34(7);

43(2);”;

- (b) for the definition “money laundering compliance officer” there shall be substituted the following definition –

“ ‘money laundering compliance officer’ means a person appointed as ‘compliance officer’ under, the Money Laundering (Jersey) Order 2008<sup>4</sup>;”;

- (c) for the definition “money laundering reporting officer” there shall be substituted the following definition –

“ ‘money laundering reporting officer’ means a person appointed as ‘reporting officer’ under the Money Laundering (Jersey) Order 2008;”.

#### 20 Article 9 amended

After paragraph (8) there shall be added the following paragraph –

“(9) An applicant who, while his or her application is awaiting determination by the Commission under this Article –

(a) determines to bring about any alteration in; or

(b) becomes aware of any event which may affect in any material respect,

any information or documents supplied by the applicant to the Commission in connection with the application shall forthwith give written notice of that matter to the Commission.”.

**21 Article 18 amended**

In Article 18(1)(c) of the principal Law for the words “Article 13(2) or (3)” there shall be substituted the words “Article 13(2) or (3) or 21(2)(c) or (d)”.

**22 Article 19 substituted**

For Article 19 there shall be substituted the following Article –

**“19 Powers of intervention**

- (1) Where, on the application of the Commission, the Court is satisfied in relation to a registered person that –
  - (a) the registered person is not, in terms of Article 10(3)(a) a fit and proper person to carry on a deposit-taking business which the registered person is purporting to carry on, or is not fit to carry it on to the extent to which the registered person is purporting to do; or
  - (b) the registered person has committed or is likely to commit a contravention of a type referred to in Article 37B, andit is desirable for the protection of persons with whom a 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 person, by entering into any transaction, has contravened Article 8 or entered into any transaction with another party who was induced to enter the transaction as a result of the person’s contravening Article 23, the Court may order that person 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 the parties 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 such person may otherwise have independently of the Commission.”.

**23 Article 19A amended**

For Article 19A(1)(b) of the principal Law there shall be substituted the following sub-paragraph –

- “(b) revise any such code by revoking, varying, amending or adding to the provisions of the code;”.

**24 Article 21 amended**

In Article 21 of the principal Law –

- (a) after paragraph (7) there shall be inserted the following paragraph –  
“(7A) A person who allows an individual to perform a function, engage in employment or hold a position where the person knows that such performance, engagement or holding is in contravention of a direction that makes a requirement referred to in paragraph (2)(c) shall be guilty of an offence and liable to a term of imprisonment for 2 years and a fine.”;
- (b) in paragraph (8) there shall be added after the words “paragraph (7)” the words “or (7A)”.

**25 Article 37 amended**

In Article 37 of the principal Law –

- (a) the existing paragraph shall be numbered (1);
- (b) there shall be added after paragraph (1) the following paragraph –  
“(2) Without prejudice to the generality of paragraph (1), Regulations may in particular make provision –
  - (a) for levies to be imposed on registered persons for the purpose of meeting expenses incurred, or expected to be incurred, including expenses related to establishing the scheme and paying compensation;
  - (b) for the procedure to be followed in making a claim;
  - (c) for making interim payments before a claim is finally determined;
  - (d) limiting the amount payable on a claim to a specified maximum amount or a maximum amount calculated in a specified manner;
  - (e) for payment to be made, in specified circumstances, to a person other than the claimant;
  - (f) for the determination and regulation of matters relating to the scheme by any specified person;
  - (g) as to the effect of a payment of compensation under the scheme in relation to rights or obligations arising out of the claim against a registered person or former registered person in respect of which the payment was made;
  - (h) for conferring on any person managing the scheme a right of recovery against a registered person or former registered person.”.

**26 Article 37B inserted**

After Article 37A there shall be inserted the following Article –

**“37B Injunctions and remedial orders**

- (1) Where, on the application of the Commission, the Court is satisfied that it is likely that a person will contravene (or continue or repeat a contravention of) –
  - (a) Article 8(1);
  - (b) any condition prescribed or attached under Article 11;
  - (c) any provision of Article 20, 22 or 23;
  - (d) any direction given under Article 21; or
  - (e) any Regulations or Order made under this Law,
 the Court may if it thinks fit issue an injunction restraining that person from committing (or, as the case may be, continuing or repeating) the contravention.
- (2) Where on the application of the Commission, the Court is satisfied that any person has committed a contravention of a type referred to in paragraph (1), and that there are steps which could be taken to remedy the contravention, the Court may make an order requiring that person, or any other person who appears to the Court to have been knowingly concerned, to take such steps as the Court may direct to remedy the contravention.”.

**27 Article 43 amended**

In Article 43 of the principal Law –

- (a) for the heading there shall be substituted the following heading –

**“43 Disclosure for facilitating discharge of functions of Commission and specified persons”**

- (b) for paragraphs (1) and (2) there shall be substituted the following paragraphs –

“(1) Article 42 does not preclude the disclosure of information by or to any person in any case in which such disclosure is for the purpose of enabling or assisting any of the following –

- (a) the Commission or any person acting on its behalf;
- (b) a person appointed under an enactment by any of the following –
  - (i) the Commission,
  - (ii) the Court, on the application of the Commission,
  - (iii) a Minister, where that Minister and the Commission are each specified in that enactment as having power to appoint that person,

to discharge the Commission’s functions or that person’s functions under this Law or under any other enactment.

- (2) Article 42 does not preclude the disclosure of information by the Commission to the auditor of –



- (a) a registered person;
  - (b) a former registered person; or
  - (c) a person who appears to the Commission to be acting or to have acted in contravention of Article 8,  
if it appears to the Commission that disclosing the information would be in the interests of depositors or potential depositors.”;
- (c) paragraph (3) shall be repealed.

**28 Article 44 amended**

For Article 44(1) of the principal Law there shall be substituted the following paragraph –

- “(1) Article 42 does not preclude the disclosure of information by the Commission to –
- (a) the Viscount;
  - (b) the Comptroller and Auditor General for the purpose of enabling or assisting the carrying out of any of the Comptroller and Auditor General’s functions in relation to the Commission; or
  - (c) 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 Commission has statutory functions.”.

**29 Article 45 amended**

In Article 45 of the principal Law –

- (a) paragraphs (1)(a) and (1)(d) shall be repealed;
- (b) in paragraph (1)(b) after the words “with a view to” there shall be inserted the words “the investigation of a suspected offence or”;
- (c) in paragraph (1)(e) the words “which apply to that person or” shall be deleted;
- (d) for paragraphs (2) and (3) there shall be substituted the following paragraphs –

“(2) Article 42 does not preclude the disclosure by the Commission to the Attorney General or to a police officer of –

  - (a) information obtained by virtue of any of Articles 26, 28, 29 or 30; or
  - (b) information in the possession of the Commission as to any matter in relation to which the powers conferred by any of those Articles are exercisable.

(3) Information disclosed under paragraph (2) may only be disclosed by the Attorney General or a police officer for the purposes of an investigation into a suspected offence in Jersey or a prosecution in

Jersey or, at the discretion of the Attorney General, a suspected offence or prosecution in a country or territory outside Jersey.

- (4) Article 42 does not preclude the disclosure of information by the Commission to any person or body responsible for a compensation scheme in relation to one or more deposit-taking businesses (whether in Jersey or in a country or territory outside Jersey) if –
  - (a) it appears to the Commission that disclosing the information would enable or assist the recipient of the information or the Commission to discharge its functions; and
  - (b) the recipient of the information gives to the Commission prior to disclosure a written undertaking that the information will not be further disclosed without the prior consent of the Commission.
- (5) Article 42 does not preclude the disclosure of information by the Commission to any person acting on behalf of an international body or organization where that body's or organization's functions include the assessment of Jersey's compliance with international standards relating to regulation of the financial sector and the disclosure is for the purpose of enabling or assisting that body or organization to discharge those functions.
- (6) Article 42 does not preclude the disclosure of information by –
  - (a) the Commission;
  - (b) a person appointed under an enactment by any of the following –
    - (i) the Commission,
    - (ii) the Court, on the application of the Commission,
    - (iii) 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.
- (7) No information shall be disclosed under or by virtue of paragraph (5) or (6) or Article 43(1)(a), 44(1)(b) or (c) or (2) or 47(1)(f) unless the Commission or person, as the case requires, making the disclosure ('the disclosing party') is satisfied that the person or body to whom or which the disclosure is made complies with or will comply with any conditions to which the disclosing party may, in its discretion, subject such disclosure."

**30 Article 45A inserted**

After Article 45 of the principal Law there shall be inserted the following Article –

**“45A Regulation making power to amend disclosure provisions**

The States may by Regulations amend Articles 43, 44 and 45 by –

- (a) adding further persons or bodies to or by whom disclosure may be made and specifying in each case the purpose for which disclosure of information may be made; and
- (b) amending the circumstances in which disclosure may be made to whom or by any person or body specified in those Articles, including the purposes for which and conditions in which such disclosure may be made.”.

**31 Article 46 substituted**

For Article 46 of the principal Law there shall be substituted the following Article –

**“46 Information supplied to Commission by relevant overseas authority**

Articles 42 to 45 apply also to information supplied to the Commission for the purposes of its functions under this Law by a relevant supervisory authority.”.

**32 Article 47 amended**

After Article 47(1)(b) there shall be inserted the following sub-paragraph –

“(ba) on the application of the Commission, the powers under Article 19;”.

**33 Article 48 amended**

For Article 48(2)(c) of the principal Law there shall be substituted the following sub-paragraph –

“(c) a public statement concerning a person if it appears to the Commission that the person is, or has been, carrying on a deposit-taking business, whether in Jersey or in a country or territory outside Jersey, and it appears to the Commission to be desirable to issue the statement –

- (i) in the best interests of persons who have transacted or may transact deposit-taking business with the person, or
- (ii) in the best interests of the public.”.

**34 Article 48B amended**

For Article 48B(3)(a) there shall be substituted the following sub-paragraph –

- “(a) the Commission decides on reasonable grounds that the interests of –
  - (i) persons who have transacted or may transact deposit-taking business with the person, or
  - (ii) the public,in the issue of the relevant public statement on a date earlier than the date that would apply under that paragraph outweighs the detriment to the persons identified in the statement, being the detriment attributable to the earliness; and”.

**35 Article 51 amended**

In Article 51 of the principal Law –

- (a) For the heading there shall be substituted the following heading –

“**51 Regulations and Orders**”;

- (b) paragraph (3) there shall be substituted the following paragraph –

“(3) Regulations or an Order under this Law may contain such transitional, consequential, incidental or supplementary provisions as appear to the States or Minister (as the case requires) to be necessary or expedient for the purposes of the Regulations or Order.”.

### **PART 3**

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

**36 Interpretation**

In this Part “principal Law” means the Insurance Business (Jersey) Law 1996<sup>5</sup>.

**37 Article 1 amended**

In Article 1 of the principal Law –

- (a) for the definition of “money laundering compliance officer” there shall be substituted the following definition –
  - “ ‘money laundering compliance officer’ means a person appointed as ‘compliance officer’ under the Money Laundering (Jersey) Order 2008<sup>6</sup>;”;
- (b) for the definition of “money laundering reporting officer” there shall be substituted the following definition –

“ ‘money laundering reporting officer’ means a person appointed as ‘reporting officer’ under the Money Laundering (Jersey) Order 2008;”.

**38 Article 6 amended**

In Article 6 of the principal Law there shall be added the following paragraph –

“(3) An applicant who, while his or her application is awaiting determination by the Commission under this Article –

- (a) determines to bring about any alteration in; or
- (b) becomes aware of any event which may affect in any material respect,

any information or documents supplied by the applicant to the Commission in connection with the application shall forthwith give written notice of that matter to the Commission.”.

**39 Article 8A amended**

In Article 8A(1)(a) of the principal Law for the words “Article 7A(2) or (3) or Article 25(4)” there shall be substituted the words “Article 7A(2) or (3) or 25(4), 36(2)(c) or (d)”.

**40 Article 10 amended**

In Article 10 of the principal Law –

- (a) there shall be inserted after paragraph (5) the following paragraph –

“(5A) Any officer or agent of the Commission may, on producing, if required, evidence of his or her authority, enter, at a reasonable time, any premises occupied by a person on whom notice has been served under paragraph (1) or paragraph (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 or of exercising the powers referred to in paragraph (5), as the case requires.”;

- (b) in paragraph (11) for the words “A person shall not under paragraph (3) or (4) be required” there shall be substituted the words “Nothing in this Article shall require a person”.

**41 Article 11 amended**

In Article 11 of the principal Law for paragraphs (1) and (2) there shall be substituted the following paragraphs –

“(1) If it appears to the Commission desirable to do so in the interests of persons transacting insurance business with a permit holder, the Commission may appoint one or more competent persons to investigate and report to the Commission on –

- (a) the nature, conduct or state of the permit holder's insurance business or any particular aspect of it; or
  - (b) the integrity, competence, financial standing or organization of the permit holder.
- (2) The Commission shall give written notice of any such appointment to the permit holder concerned.”.

#### 42 Article 30 amended

In Article 30 of the principal Law –

- (a) for paragraphs (1) and (2) there shall be substituted the following paragraphs –

“(1) Article 29 does not preclude the disclosure of information by or to any person in any case in which disclosure is for the purpose of enabling or assisting any of the following –

- (a) the Commission or any person acting on its behalf;
- (b) any person appointed under an enactment by any of the following –
  - (i) the Commission,
  - (ii) the Court, on the application of the Commission,
  - (iii) a Minister, where that Minister and the Commission are each specified in that enactment as having power to appoint that person,

to discharge the Commission's functions or that person's functions under this Law or under any other enactment.

(2) Article 29 does not preclude the disclosure of information by the Commission to the auditor of –

- (a) a permit holder;
- (b) a former permit holder; or
- (c) a person who appears to the Commission to be acting or to have acted in contravention of Article 5,

if it appears to the Commission that disclosing the information would be in the interests of policy holders or potential policy holders.”;

- (b) paragraph (3) shall be repealed.

#### 43 Article 31 amended

For Article 31(1) of the principal Law there shall be substituted the following paragraph –

“(1) Article 29 does not preclude the disclosure of information by the Commission to –

- (a) the Viscount;

- (b) the Comptroller and Auditor General for the purpose of enabling or assisting the carrying out of any of the Comptroller and Auditor General's functions in relation to the Commission; or
- (c) 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 Commission has statutory functions."

**44 Article 32 amended**

In Article 32 of the principal law –

- (a) in paragraph (1)(a) there shall be inserted after the words "with a view to" the words "the investigation of a suspected offence or";
- (b) paragraph (1)(c) shall be repealed;
- (c) for paragraphs (2) and (3) there shall be substituted the following paragraphs –
  - "(2) Article 29 does not preclude the disclosure by the Commission to the Attorney General or to a police officer of –
    - (a) information obtained by virtue of any of Articles 10 to 13; or
    - (b) information in the possession of the Commission as to any matter in relation to which the powers conferred by any of those Articles are exercisable.
  - (3) Information disclosed under paragraph (2) may only be disclosed by the Attorney General or a police officer for the purposes of an investigation into a suspected offence in Jersey or a prosecution in Jersey or, at the discretion of the Attorney General, a suspected offence or prosecution in a country or territory outside Jersey.
  - (4) Article 29 does not preclude the disclosure of information by the Commission to any person or body responsible for a compensation scheme in relation to one or more insurance businesses (whether in Jersey or in a country or territory outside Jersey) if –
    - (a) it appears to the Commission that disclosing the information would enable or assist the recipient of the information or the Commission to discharge its functions; and
    - (b) the recipient of the information gives to the Commission prior to disclosure a written undertaking that the information will not be further disclosed without the prior consent of the Commission.
  - (5) No information shall be disclosed under or by virtue of paragraph (6) or (7) or Article 30(1)(a), 31(1)(b) or (c) or (2), or 33(1)(f) unless the Commission or person, as the case requires, making the disclosure ("the disclosing party") is satisfied that the person or body to whom or which disclosure is made complies with or will comply with any conditions to which the disclosing party may, in its discretion, subject such disclosure.

- (6) Article 29 does not preclude the disclosure of information by the Commission to any person acting on behalf of an international body or organization where that body's or organization's functions include the assessment of Jersey's compliance with international standards relating to regulation of the financial sector and the disclosure is for the purpose of enabling or assisting that body or organization to discharge those functions.
  - (7) Article 29 does not preclude the disclosure of information by any of the following –
    - (a) the Commission;
    - (b) a person appointed under an enactment by any of the following –
      - (i) the Commission,
      - (ii) the Court, on the application of the Commission,
      - (iii) 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.”.

#### **45 Article 32A inserted**

After Article 32 there shall be inserted the following Article –

##### **“32A Regulation making power to amend disclosure provisions**

The States may by Regulations amend Articles 30, 31 and 32 by –

- (a) adding further persons or bodies to or by whom disclosure may be made and specifying in each case the purpose for which disclosure of information may be made; and
- (b) amending the circumstances in which disclosure may be made to whom or by any person or body specified in those Articles, including the purposes for which and conditions in which such disclosure may be made.”.

#### **46 Article 33 amended**

After Article 33(1)(e) there shall be inserted the following sub-paragraph –

- “(ea) on the application of the Commission, the powers under Article 36B;”.



**47 Article 34 substituted**

For Article 34 there shall be substituted the following Article –

**“34 Information supplied to the Commission by relevant overseas authority**

Articles 29 to 32 apply also to information supplied to the Commission for the purpose of its functions under this Law by a relevant supervisory authority.”.

**48 Article 36 amended**

After Article 36(7) there shall be added the following paragraphs –

“(8) A person who allows an individual to perform a function, engage in employment or hold a position where the person knows that such performance, engagement or holding is in contravention of a direction that makes a requirement referred to in paragraph (2)(c) shall be guilty of an offence and liable to a term of imprisonment for 2 years and a fine.

(9) The record of the conviction of any person for an offence under paragraph (7) or (8) shall be admissible in any civil proceedings as evidence of the facts constituting the offence.”.

**49 Articles 36A and 36B inserted**

After Article 36 there shall be inserted the following Articles –

**“36A Injunctions and remedial Orders**

(1) Where, on the application of the Commission, the Court is satisfied that it is likely that a person will contravene (or continue or repeat a contravention of) –

- (a) Article 5;
- (b) any condition prescribed or attached under Article 7;
- (c) any provision of Article 15, 35 or 38;
- (d) any direction given under Article 36; or
- (e) any Regulations or Order made under this Law,

the Court may if it thinks fit issue an injunction restraining that person from committing (or, as the case may be, continuing or repeating) the contravention.

(2) Where, on the application of the Commission, the Court is satisfied that any person has committed a contravention of a type referred to in paragraph (1), and that there are steps which could be taken to remedy the contravention, the Court may make an order requiring that person, or any other person who appears to the Court to have

been knowingly concerned, to take such steps as the Court may direct to remedy the contravention.

### **36B Powers of intervention**

(1) Where, on the application of the Commission, the Court is satisfied in relation to a permit holder that –

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

it is desirable for the protection of persons with whom a 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 person, by entering into any transaction, has contravened Article 5 or entered into any transaction with another party who was induced to enter the transaction as a result of the person's contravening Article 15, the Court may order that person 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 the parties to the position in which they were before the transaction was entered into.

(3) Without prejudice to the generality of paragraph (1) or (2), an order issued under either of those paragraphs may include a requirement that all assets, or all assets of a specified description, which, at any time while the requirement is in force when the permit holder carries on insurance business –

- (a) belong to the permit holder concerned; or
- (b) belong to persons with whom the permit holder is transacting insurance business and that are held by or to the holder's order,

shall be transferred to and held by a person whose appointment is approved by the Court (in this Article referred to as an 'appointed person').

(4) Where a requirement of a type referred to in paragraph (3) is imposed under this Article, it shall be the duty of the permit holder concerned to transfer the assets to the appointed person and to give the appointed person all such other assistance as may be required to enable the appointed person to discharge his or her functions in accordance with this requirement.

- (5) Assets held by an appointed person in accordance with a requirement of a type referred to in paragraph (3) shall not be released or dealt with except in accordance with directions given by the Court or in such circumstances as may be specified by it.
- (6) An order including a requirement of a type referred to in paragraph (3) may relate to assets in a country or territory outside Jersey.
- (7) 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 such person may otherwise have independently of the Commission.”.

**50 Article 37 amended**

In Article 37 of the principal Law –

- (a) the existing paragraph shall be numbered (1);
- (b) there shall be added after paragraph (1) the following paragraph –
  - “(2) Without prejudice to the generality of paragraph (1), Regulations may in particular make provision –
    - (a) for levies to be imposed on permit holders for the purpose of meeting expenses incurred, or expected to be incurred including expenses related to establishing the scheme and paying compensation;
    - (b) for the procedure to be followed in making a claim;
    - (c) for making interim payments before a claim is finally determined;
    - (d) limiting the amount payable on a claim to a specified maximum amount or a maximum amount calculated in a specified manner;
    - (e) for payment to be made, in specified circumstances, to a person other than the claimant;
    - (f) for the determination and regulation of matters relating to the scheme by any specified person;
    - (g) as to the effect of a payment of compensation under the scheme in relation to rights or obligations arising out of the claim against a permit holder or former permit holder in respect of which the payment was made;
    - (h) for conferring on any person managing the scheme a right of recovery against a permit holder or former permit holder.”.

**51 Article 41 amended**

In Article 41 of the principal Law –

- (a) for the heading there shall be substituted the following heading –

**“41 Regulations and Orders”;**

(b) for paragraph (3) of the principal Law there shall be substituted the following paragraph –

“(3) Regulations or an Order under this Law may contain such transitional, consequential, incidental or supplementary provisions as appear to the States or Minister (as the case requires) to be necessary or expedient for the purposes of the Regulations or Order.”.

**52 Article 42 amended**

For Article 42(1)(b) of the principal Law there shall be substituted the following sub-paragraph –

“(b) revised any such code by revoking, varying, amending or adding to the provisions of the code.”.

**53 Article 43 amended**

For Article 43(2)(c) of the principal Law there shall be substituted the following sub-paragraph –

“(c) a public statement concerning a person if it appears to the Commission that the person is, or has been, carrying on insurance business, whether in Jersey or in a country or territory outside Jersey, and it appears to the Commission to be desirable to issue the statement –

- (i) in the best interests of persons who have transacted or may transact insurance business with the person, or
- (ii) in the best interests of the public.”.

**54 Article 43B amended**

For Article 43B(3)(a) of the principal Law there shall be substituted the following sub-paragraph –

“(a) the Commission decides on reasonable grounds that the interests of –

- (i) persons who have transacted or may transact insurance business with the person, or
- (ii) the public,

in the issue of the relevant public statement on a date earlier than the date that would apply under that paragraph outweighs the detriment to the persons identified in the statement, being the detriment attributable to that earliness;”.

## PART 4

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

#### 55 Interpretation

In this Schedule, “principal Law” means the Financial Services (Jersey) Law 1998<sup>7</sup>.

#### 56 Article 1 amended

In Article 1 of the principal Law –

- (a) for the definition of “money laundering compliance officer” there shall be substituted the following definition –

“ ‘money laundering compliance officer’ means a person appointed as ‘compliance officer’ under the Money Laundering (Jersey) Order 2008<sup>8</sup>;”;

- (b) for the definition of “money laundering reporting officer” there shall be substituted the following definition –

“ ‘money laundering reporting officer’ means a person appointed as ‘reporting officer’ under the Money Laundering (Jersey) Order 2008;”.

#### 57 Article 11 amended

In Article 11(2) of the principal Law for the words “the applicant or the registered person” and the following words to the end of that paragraph there shall be substituted the words “the Commission shall at the same time give a statement in writing of its reasons for that decision.”.

#### 58 Article 23 amended

In Article 23 of the principal Law –

- (a) for paragraph (5)(b) there shall be substituted the following sub-paragraph –

“(b) specify when the direction is to have effect and, if the direction makes a requirement referred to in paragraph 2(c) or (d), give particulars of paragraph (12);”;

- (b) for paragraphs (12) and (13) there shall be substituted the following paragraphs –

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

- (a) one month after the date the notice of direction is given;  
(b) such date as is specified in the notice of the direction; or

- (c) if any appeal is lodged in respect of the requirement under paragraph (6), before the appeal is determined by the Court or withdrawn,

whichever is the latest time.

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

- (a) the person on whom the requirement is imposed agrees with the Commission 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 Commission, the Court is satisfied that it is in the best interests of –

- (a) persons who have transacted or may transact financial service business (other than trust company business) with the person carrying on such business;
- (b) persons who have entered or may enter into agreements for the provision of services to be provided by a registered person when carrying on trust company business;
- (c) persons who have received or may receive the benefit of services to be provided or arranged by the registered person when 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.

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

(c) after paragraph (15) there shall be inserted the following paragraph –

“(15A) A person who allows an individual to perform a function, engage in employment or hold a position where the person knows that such performance, engagement or holding is in contravention of a direction that makes a requirement referred to in paragraph (2)(c) shall be guilty of an offence and liable to a term of imprisonment for 2 years and a fine.”;

(d) in paragraph (16) there shall be inserted after the words “paragraph (15)” the words “or (15A)”.

## 59 Article 25 amended

For Article 25(d) there shall be substituted the following paragraph –

“(d) a public statement concerning a person if it appears to the Commission that the person is, or has been, carrying on financial service business, whether in Jersey or in a country or territory outside Jersey, and it appears to the Commission to be desirable to issue the statement –

- (i) in the best interests of –

- (A) persons who have transacted or may transact financial service business (other than trust company business) with the person,
  - (B) persons who have entered or may enter into agreements for the provision of services to be provided by a registered person when carrying on trust company business,
  - (C) persons who have received or may receive the benefit of services to be provided or arranged by the registered person when carrying on trust company business, or
- (ii) in the best interests of the public.”.

**60 Article 25B amended**

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

- “(a) the Commission decides on reasonable grounds that the interests of –
- (i) persons who have transacted or may transact financial service business (other than trust company business) with the person,
  - (ii) persons who have entered or may enter into agreements for the provision of services to be provided by a registered person when carrying on trust company business,
  - (iii) persons who have received or may receive the benefit of services to be provided or arranged by the registered person when 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 outweighs the detriment to the persons identified in the statement, being the detriment attributable to that earliness; and”.

**61 Article 27 amended**

In Article 27 of the principal Law –

- (a) the existing paragraph shall be numbered (1);
- (b) there shall be added after paragraph (1) the following paragraph –
  - “(2) Without prejudice to the generality of paragraph (1), Regulations may in particular make provision –
    - (a) for levies to be imposed on registered persons for the purpose of meeting expenses incurred, or expected to be

- incurred, including expenses related to establishing the scheme and paying compensation;
- (b) for the procedure to be followed in making a claim;
- (c) for making interim payments before a claim is finally determined;
- (d) limiting the amount payable on a claim to a specified maximum amount or a maximum amount calculated in a specified manner;
- (e) for payment to be made, in specified circumstances, to a person other than the claimant;
- (f) for the determination and regulation of matters relating to the scheme by any specified person;
- (g) as to the effect of a payment of compensation under the scheme in relation to rights or obligations arising out of the claim against a registered person or former registered person in respect of which the payment was made;
- (h) for conferring on any person managing the scheme a right of recovery against a registered person or former registered person.”.

## 62 Article 38 amended

In Article 38 of the principal Law –

- (a) for paragraph (1)(a), (b) and (c) there shall be substituted the following sub-paragraphs –
  - “(a) by the Commission –
    - (i) to the Viscount,
    - (ii) to the Comptroller and Auditor General for the purpose of enabling or assisting the carrying out of any of the Comptroller and Auditor General’s functions in relation to the Commission, or
    - (iii) 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 Commission has statutory functions;
  - (b) by or to any person in any case in which disclosure is for the purpose of enabling or assisting any of the following –
    - (i) the Commission or any person acting on its behalf,
    - (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 discharge the Commission's functions or that person's functions under this Law or under any other enactment;
- (c) by the Commission to a relevant supervisory authority pursuant to Article 36;";
- (b) in paragraph (1)(da) the words “, or any person on its behalf,” shall be deleted;
- (c) in paragraph (1)(e) after the words “or institution of, or” there shall be inserted the word “otherwise”;
- (d) paragraph (1)(g) shall be repealed;
- (e) for paragraph (1)(h) there shall be substituted the following sub-paragraph –
- “(h) by the Commission to the Attorney General or to a police officer being information obtained under any of Articles 32 to 34 or being information in the possession of the Commission as to any matter in relation to which the powers conferred by those Articles are exercisable, but any information so disclosed may only be disclosed by the Attorney General or a police officer for the purposes of an investigation into a suspected offence in Jersey or a prosecution in Jersey or, at the discretion of the Attorney General, a suspected offence or prosecution in a country or territory outside Jersey.”;
- (f) in paragraph (1)(i) –
- (i) before the words “to any person” there shall be inserted the words “by the Commission”,
- (ii) for the words “scheme for compensating investors, or insurance policy holders” there shall be substituted the words “compensation scheme in relation to one or more financial services businesses”, and
- (iii) for the words “has given to the Commission” there shall be substituted the words “gives to the Commission prior to disclosure”;
- (g) for paragraphs (1)(j) and (1)(k) there shall be substituted the following sub-paragraphs –
- “(j) by the Commission to the auditor of –
- (i) a registered person,
- (ii) a formerly registered person, or
- (iii) a person who appears to the Commission to be acting or have acted in contravention of Article 7,
- if it appears to the Commission that disclosing the information would be in the interests of persons who have transacted or may transact financial service business with a person described in any of clauses (i) to (iii) or, in respect of

a person carrying on trust company business, in the interests of persons who –

- (A) have entered into or may enter into agreements for the provision of services to be provided by a person described in any of clauses (i) to (iii) when carrying on trust company business, or
- (B) have received or may receive the benefit of services provided or arranged by a person described in any of clauses (i) to (iii) when carrying on trust company business;

(k) by the Commission to any person acting on behalf of an international body or organization where that body's or organization's functions include the assessment of Jersey's compliance with international standards relating to regulation of the financial sector and the disclosure is for the purpose of enabling or assisting that body or organization to discharge those functions;

(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.”;

(h) for paragraph (2) there shall be inserted the following paragraph –

“(2) No information shall be disclosed under or by virtue of paragraphs (1)(a)(ii), or (iii), or (b)(i) or (c), or (k) or (l) or Article 36(1)(g) unless the Commission or person, as the case requires, making the disclosure (‘the disclosing party’) is satisfied that the person or body to whom or which disclosure is made complies with or will comply with any conditions to which the disclosing party may, in its discretion, subject such disclosure.”;

(i) after paragraph (2) there shall be added the following paragraph –

“(3) The States may by Regulations amend this Article by –

- (a) adding further persons or bodies to or by whom disclosure may be made and specifying in each case the purpose for which disclosure of information may be made; and
- (b) amending the circumstances in which disclosure may be made to whom or by any person specified in those Articles, including the purposes for which and conditions in which such disclosure may be made.”.

**63 Article 39 amended**

In Article 39 of the principal Law the words “in a country or territory outside Jersey” shall be deleted.

**PART 5**  
**CLOSING**

**64 Citation and commencement**

This Law may be cited as the Financial Regulation (Miscellaneous Provisions) (Jersey) Law 2009 and shall come into force 7 days after it is registered.

**M.N. DE LA HAYE**

*Greffier of the States*

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- <sup>1</sup> *chapter 13.100*  
<sup>2</sup> *chapter 08.780.30*  
<sup>3</sup> *chapter 13.075*  
<sup>4</sup> *chapter 08.780.30*  
<sup>5</sup> *chapter 13.425*  
<sup>6</sup> *chapter 08.780.30*  
<sup>7</sup> *chapter 13.225*  
<sup>8</sup> *chapter 08.780.30*