

# **CONSULTATION PAPER NO. 7 2015**

## **MISCELLANEOUS AMENDMENTS TO REGULATORY LEGISLATION**

A consultation on proposed maintenance amendments to the laws that regulate the financial services industry and other non-financial businesses and professions in Jersey



# CONSULTATION PAPER

Please note that terms in *italics* are defined in the Glossary of Terms.

The *Commission* invites comments on this consultation paper. **William Byrne** at *Jersey Finance* is co-ordinating an Industry response that will incorporate any matters raised by local businesses. Comments should reach *Jersey Finance* by **25 September 2015**.

Responses should be sent to:

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Alternatively, responses may be sent directly to **Mike Jones** or **Stephen de Gruchy** at the *Commission* by **25 September 2015**. If you require any assistance, clarification or wish to discuss any aspect of the proposal prior to formulating a response, it is of course appropriate to contact the *Commission*. The *Commission* contacts are:

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**It is the policy of the *Commission* to make the content of all responses available for public inspection unless specifically requested otherwise.**

# GLOSSARY OF TERMS

AIF Regulations	means the Alternative Investment Funds (Jersey) Regulations 2012.
BBJL	means the Banking Business (Jersey) Law 1991.
CIFJL	means the Collective Investment Funds (Jersey) Law 1988.
Commission	means the Jersey Financial Services Commission.
Commission Law	means the Financial Services Commission (Jersey) Law 1998.
FSJL	means the Financial Services (Jersey) Law 1998.
IBJL	means the Insurance Business (Jersey) Law 1996.
Jersey Finance	means Jersey Finance Limited.
Miscellaneous Provisions Law	means the proposed Financial Regulation (Miscellaneous Provisions) (No. 3) (Jersey) Law 201-.
principal person	means, for the purposes of this paper:- <ul style="list-style-type: none"><li>• a principal person as defined in the <i>AIF Regulations</i>, the <i>CIFJL</i>, the <i>FSJL</i> and the <i>SBJL</i>;</li><li>• a director, controller or manager as referred to in the <i>BBJL</i>;</li><li>• a director, chief executive or shareholder controller as referred to in the <i>IBJL</i>.</li></ul>
regulated business	means a person who is registered, or holds a permit or certificate, as applicable, under one or more of the <i>regulatory laws</i> .
regulatory laws	means the <i>AIF Regulations</i> , the <i>BBJL</i> , the <i>CIFJL</i> , the <i>FSJL</i> , the <i>IBJL</i> and the <i>SBJL</i> .
reporting professional	means an auditor, accountant or other professional commissioned by a <i>regulated business</i> to prepare a report on specified matters, in response to a requirement to do so imposed on the <i>regulated business</i> by the <i>Commission</i> using a statutory power it has under one (or more) of the <i>regulatory laws</i> .
SBJL	means the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008.

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# 1 EXECUTIVE SUMMARY

## 1.1 Overview

- 1.1.1 The legislative changes proposed in this consultation paper consist of a miscellany of items, the need for which has been identified over the past two or three years as a result of the use and continuous review of the regulatory processes undertaken by the *Commission*.
- 1.1.2 The majority of the changes impact all of the *regulatory laws*. Because of this, rather than prepare separate amending laws, it is proposed that the legislative changes would be made by means of an omnibus statute, the *Miscellaneous Provisions Law* (see Appendix B).

## 1.2 What is proposed and why?

- 1.2.1 In summary, the legislative changes that would be made by the *Miscellaneous Provisions Law* are as follows:
- 1.2.1.1 an amendment to the *BBJL* to enable a registration to be revoked at the request of the deposit-taker;
  - 1.2.1.2 amendments to several of the *regulatory laws* to explicitly provide for the *Commission* to be able to withdraw a direction;
  - 1.2.1.3 amendments to the *regulatory laws* to exclude custodians of shares from the statutory provisions that apply to *principal persons*;
  - 1.2.1.4 making the *AIF Regulations*, the *CIFJL* and the *IBJL* consistent with the other *regulatory laws* by providing the *Commission* with the power to require an applicant (for a permit or certificate, as the case may be) to provide a report by an appropriate professional on such aspects of its application as the *Commission* specifies;
  - 1.2.1.5 addressing lacunae in, and making consistent, the provisions in the *regulatory laws* under which auditors and other reporting professionals may pass relevant information to the *Commission* without contravening any duty to which they may be subject (such as a contractual obligation of confidentiality).

## 1.3 Who would be affected?

- 1.3.1 The legislative changes that would be made by the *Miscellaneous Provisions Law* have the potential to variously affect a range of persons including *regulated businesses*, applicants for permits or certificates (as the case may be) under the *AIF Regulations*, the *CIFJL* and the *IBJL*, auditors and *reporting professionals*.

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## 2 CONSULTATION

### 2.1 Basis for consultation

2.1.1 The *Commission* has issued this consultation paper in accordance with Article 8(3) of the *Commission Law*, under which the *Commission* “may, in connection with the carrying out of its functions - ...consult and seek the advice of such persons or bodies whether inside or outside Jersey as it considers appropriate”.

### 2.2 Responding to the consultation

2.2.1 The *Commission* invites comments in writing from interested parties on the proposals included in this consultation paper. Where comments are made by an industry body or association, that body or association should also provide a summary of the type of individuals and/or institutions that it represents.

2.2.2 To assist in analysing responses to the consultation paper, respondents are asked to:

2.2.2.1 prioritise comments and to indicate their relative importance; and

2.2.2.2 respond as specifically as possible and, where they refer to costs, to quantify those costs.

### 2.3 Next steps

2.3.1 Following the consideration of responses to this consultation and the making of any amendments deemed necessary to the *Miscellaneous Provisions Law*, the *Commission* will recommend that the Chief Minister lodge the finalised version for debate in the States.

2.3.2 If adopted by the States and once Privy Council approval has been obtained, the *Miscellaneous Provisions Law* would come into force seven days after being registered in the Royal Court.

## 3 THE COMMISSION

### 3.1 Overview

3.1.1 The *Commission* is a statutory body corporate established under the *Commission Law*. It is responsible for the supervision and development of financial services provided in or from within Jersey.

### 3.2 Commission's functions

3.2.1 The *Commission Law* prescribes that the *Commission* shall be responsible for:

- 3.2.1.1 the supervision and development of financial services provided in or from within Jersey;
- 3.2.1.2 providing the States of Jersey, any Minister or any other public body with reports, advice, assistance and information in relation to any matter connected with financial services;
- 3.2.1.3 preparing and submitting to Ministers recommendations for the introduction, amendment or replacement of legislation appertaining to financial services, companies and other forms of business structure;
- 3.2.1.4 such functions in relation to financial services or such incidental or ancillary matters:
  - as are required or authorised by or under any enactment, or
  - as the States of Jersey may, by Regulations, transfer; and
- 3.2.1.5 such other functions as are conferred on the *Commission* by any other Law or enactment.

### 3.3 Guiding principles

3.3.1 The *Commission's* guiding principles require it to have particular regard to:

- 3.3.1.1 the reduction of risk to the public of financial loss due to dishonesty, incompetence, malpractice, or the financial unsoundness of persons carrying on the business of financial services in or from within Jersey;
- 3.3.1.2 the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters;
- 3.3.1.3 the best economic interests of Jersey; and
- 3.3.1.4 the need to counter financial crime in both Jersey and elsewhere.

## 4 THE DRAFT LEGISLATION

### 4.1 Introduction

- 4.1.1 This section describes, and explains the reasons for, the legislative changes that would be made by the *Miscellaneous Provisions Law*. Whilst that law itself is structured so that amendments are set out law-by-law, for ease of describing the changes, this section sets them out thematically.
- 4.1.2 Necessarily, the information in this section sometimes paraphrases provisions of the *Miscellaneous Provisions Law*, so readers are encouraged to consider the precise text of the legislation, which is shown in Appendix B

### 4.2 Revocation of deposit-taking registrations

- 4.2.1 Article 10 of the *BBJL* sets out the circumstances when the *Commission* may revoke the registration of a deposit-taker.
- 4.2.2 Unlike all of the other *regulatory laws*, the *BBJL* does not explicitly provide for the *Commission* to be able to revoke a registration at the request of the regulated business. Article 2(3) of the *Miscellaneous Provisions Law* would amend Article 10 of the *BBJL* to address this lacuna.

### 4.3 Withdrawal of directions

- 4.3.1 All of the *regulatory laws* provide the *Commission* with the power to issue a person with directions that, in summary, may require the person to take certain action or refrain from taking certain action.
- 4.3.2 Both the *FSJL* and the *SBJL* provide the *Commission* with an explicit power to “withdraw” a direction (Article 23(4) in each law).
- 4.3.3 However, the provisions in the *AIF Regulations*, the *BBJL*, the *CIFJL* and the *IBJL* concerning directions do not explicitly state that the *Commission* may “withdraw” a direction. However, in each of those statutes the *Commission* is given the power to “vary” a direction. Because “vary” is defined in each of those statutes as including the power to “revoke”, the practice has been to regard “revoking” a direction as analogous to “withdrawing” a direction.
- 4.3.4 However, to put the position beyond doubt, and to avoid any inconsistency between the *regulatory laws*, the *Miscellaneous Provisions Law* would amend the *AIF Regulations*, the *BBJL*, the *CIFJL* and the *IBJL* to provide the *Commission* with an explicit power to “withdraw” a direction.
- 4.3.5 The relevant amendments can be found in Articles 1(5), 2(4), 3(5) and 6(4) of the *Miscellaneous Provisions Law*.

## 4.4 Principal persons: excluding custodians of shares

- 4.4.1 The *regulatory laws* provide the *Commission* with certain powers over *principal persons*.
- 4.4.2 One of the key types of principal person is a significant beneficial owner in a *regulated business*.
- 4.4.3 The statutory definition of a *principal person* may currently result in persons who hold shares in a *regulated business* only in a custodial capacity being brought within the scope of the relevant statutory provisions. This is unnecessary: the *Commission's* interest, from a regulatory perspective, is in the beneficial owner of the shares rather than in a custodian of them, where there is one.
- 4.4.4 Consequently, the *Miscellaneous Provisions Law* would amend the *regulatory laws* to exclude from the scope of the *principal person* provisions a person who, "holds shares [in the *regulated business*] only as custodian or its nominee and able to exercise the voting rights attached to the shares only under instructions given in writing (including by electronic means)."<sup>1</sup>
- 4.4.5 The relevant amendments can be found in Articles 1(2), 2(2), 2(5), 3(2), 4(2), 5(2), and 6(2) of the *Miscellaneous Provisions Law*.

## 4.5 Licence applications: reports by professionals

- 4.5.1 The *BBJL*, the *FSJL*, and the *SBJL* provide the *Commission* with the power to require an applicant for registration to provide a report by a *reporting professional* approved by the *Commission* on such aspects of the application information as the *Commission* may require for the purposes of evaluating the application.
- 4.5.2 However, no equivalent provision exists in the *AIF Regulations*, the *CIFJL* or the *IBJL*, in respect of applications made for a certificate or permit (as applicable) under those statutes.
- 4.5.3 This lacuna would be addressed by the amendments shown in Articles 1(3), 3(3) and 6(3) of the *Miscellaneous Provisions Law*.

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<sup>1</sup> This text is based on the European norm as established by Article 9.4 of European Union Directive 2004/109/EC (Transparency Directive).

## 4.6 Communication with the Commission by auditors and reporting professionals

- 4.6.1 With the exception of the *SBJL*, all of the *regulatory laws* contain an Article<sup>2</sup> that enables an auditor to pass to the *Commission*, in good faith, relevant information relating to a *regulated business* – whether or not in response to a request from the *Commission* – without contravening any duty to which the auditor may be subject (such as a contractual duty of confidentiality).
- 4.6.2 Similarly, the *regulatory laws* (with the exception of the *IBJL* and the *SBJL*) also enable a *reporting professional* appointed to provide a report to the *Commission* (such as of the type referred to in paragraph 4.5.1) to pass relevant information to the *Commission* without contravening any duty to which the *reporting professional* may otherwise be subject.
- 4.6.3 However, the current provisions in the *regulatory laws* covering the communication with the *Commission* by auditors and *reporting professionals* are inconsistent in several respects and have a number of lacunae. The most substantive of these are as follows.
- 4.6.3.1 Unlike the other *regulatory laws*<sup>3</sup>, the *IBJL* does not contain a statutory provision that enables a *reporting professional* to pass relevant information to the *Commission* without contravening any duty to which the *reporting professional* may otherwise be subject.
- 4.6.3.2 Except for the *FSJL*, none of the *regulatory laws* provide *reporting professionals* with protection from any contravention of a duty when they pass relevant information on *principal persons* to the *Commission*, despite the fact that the professional's report may be regarding a *principal person*.
- 4.6.3.3 In contrast, not one of the *regulatory laws* provides auditors with protection from any contravention of a duty when they pass relevant information on a *principal person* to the *Commission*, despite the fact that when auditing they may become aware of relevant information, for example, on a director of the audited company.
- 4.6.3.4 Whilst the *FSJL* provides for a *reporting professional* appointed pursuant to Article 8(5) [Application for registration] to be protected from any contravention of a duty where it provides relevant information relating to a *regulated business*, no such protection is afforded where the information relates to an applicant for registration – despite the fact that Article 8(5) specifically provides that a *reporting professional* may be required to produce a report on a person's application.

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<sup>2</sup> A Regulation, rather than an Article, in the case of the *AIF Regulations*.

<sup>3</sup> With the exception of the *SBJL*. See paragraphs 4.6.3.7 and 4.6.4.

- 4.6.3.5 The protection under the *BBJL* for a *reporting professional* only extends to a professional appointed pursuant to Article 26(7) [General power to require information and documents] and not to one appointed pursuant to Article 9(7) [Application for registration].
- 4.6.3.6 Not all of the *regulatory laws* provide protection to auditors and *reporting professionals* where the information that would be communicated to the *Commission* relates to former *regulated businesses*, or former *principal persons*.
- 4.6.3.7 Unlike the other *regulatory laws*, the *SBJL* does not contain provision for auditors and *reporting professionals* to be able to pass relevant information to the *Commission* without contravening any duty to which they may be subject.
- 4.6.3.8 Not all of the *regulatory laws* make it clear that the protection to disclose relevant information to the *Commission* extends to a past auditor of a *regulated business*, and not just to the present auditor.
- 4.6.4 Rather than make piece-meal amendments to each relevant Article to address these issues, a replacement Article for each of the *AIF Regulations*, the *BBJL*, the *CIFJL*, the *FSJL* and the *IBJL* has been drafted. This approach has the benefit of ensuring that a consistent style is adopted for these Articles across the *regulatory laws*, which is not the case at the moment. A new Article (33A), consistent with the replacement Articles for the other *regulatory laws*, would be inserted into the *SBJL*.
- 4.6.5 These changes would be effected by means of the following Articles in the *Miscellaneous Provisions Law*: 1(6), 2(6), 3(4), 4(3), 5(3) and 6(5).
- 4.6.6 **Question: Do you have any observations or concerns on the proposed amendments that the *Miscellaneous Provisions Law* would implement? If so, please state in detail what your observation or concern is and the reason for it.**

## 5 COST BENEFIT ANALYSIS

### 5.1 Costs to Industry

- 5.1.1 The only proposed legislative change that may result in any substantive costs for Industry is the amendment to the *AIF Regulations*, the *CIFJL* and the *IBJL* described in section 4.5. Even then, that amendment would only impact a person who is required to provide a professional's report on aspects of its application for a certificate or permit (as applicable). Such reports are rarely required by the Commission.

### 5.2 Costs to the Commission

- 5.2.1 It is not expected that the *Commission* will incur any substantive additional costs as a result of any of the proposed amendments.

### 5.3 Benefits

- 5.3.1 The change to exclude custodians of shares from the *principal person* provisions (see section 4.4) may result in reduced costs for some *regulated businesses*, given that the notification requirements in respect of such persons would no longer apply.
- 5.3.2 Auditors and *reporting professionals* would benefit from the greater degree of consistency and the expanded scope of the information communication provisions described in section 4.6.

## 6 SUMMARY OF QUESTIONS

REFERENCE	QUESTION
4.6.6	<b>Question:</b> Do you have any observations or concerns on the proposed amendments that the <i>Miscellaneous Provisions Law</i> would implement? If so, please state in detail what your observation or concern is and the reason for it.

# APPENDIX A

## List of representative bodies and other persons who have been sent this consultation paper.

- Association of English Solicitors Practising in Jersey
- Chartered Institute for Securities & Investment – Jersey branch
- Institute of Directors – Jersey branch
- Jersey Association of Trust Companies
- Jersey Bankers’ Association
- Jersey Chamber of Commerce and Industry Incorporated
- Jersey Compliance Officers Association
- Jersey Estate Agents Association
- Jersey Finance Limited
- Jersey Funds Association
- Jersey International Insurance Association
- Jersey Society of Chartered and Certified Accountants
- Law Society of Jersey
- Personal Finance Society - Jersey branch
- Society of Trust and Estates Practitioners (STEP), Jersey branch

# APPENDIX B

## Financial Regulation (Miscellaneous Provisions) (No. 3) (Jersey) Law 201-<sup>4</sup>

(pages are separately numbered)

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<sup>4</sup> Draft 5A - 16 June 2015



Jersey

## FINANCIAL REGULATION (MISCELLANEOUS PROVISIONS) (NO. 3) (JERSEY) LAW 201-

### Report

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### Explanatory Note

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This Law makes the following amendments to the Laws governing financial regulation:

- (a) an amendment to clarify that definitions relating to shareholding excludes where shares are held only as a custodian or its nominee without independent voting rights;
- (b) an amendment that enables the Commission to require an applicant to be registered under the relevant law to furnish documents as well as information and to require a report by an auditor, accountant or other qualified person approved by the Commission on specified aspect of the particulars, information and documents required by the Commission;
- (c) an amendment to make it clear that the Commission may withdraw directions given to persons it regulates;
- (d) a revision of the provision that prevents any contravention of professional duty by persons appointed to make reports as referred to in b) above in communicating with the Commission. The amendment widens the scope of the communications afforded protection by the provision.

The amendments to the Collective Investment Funds (Jersey) Law 1988 are in *Article 1*.

The amendments to the Banking Business (Jersey) Law 1991 are in *Article 2*. They relate only to amendments (a), (c) and (d) as amendment (b) is already covered in the Law. Paragraph (3) also adds a provision enabling the Commission to revoke a registration at the request of the registered person.

The amendments to the Insurance Business (Jersey) Law 1996 are in *Article 3*.

The amendments to the Financial Services (Jersey) Law 1998 are in *Article 4*. These relate only to amendments (a) and (d) above (as the substance of the other amendments are already contained in the Law).

The amendments to the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 are in *Article 5*. These too relate only to amendments (a) and (d) above, in the latter case a new Article being inserted to deal with the matter from scratch.

The amendments to the Alternative Investment Funds (Jersey) Regulation 2012 are in *Article 6*.

*Article 7* provides for the citation of the Law and for it to come into force 7 days after it is registered.



Jersey

## FINANCIAL REGULATION (MISCELLANEOUS PROVISIONS) (NO. 3) (JERSEY) LAW 201-

### Arrangement

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#### Article

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Jersey

## FINANCIAL REGULATION (MISCELLANEOUS PROVISIONS) (NO. 3) (JERSEY) LAW 201-

A LAW to amend further 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, the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 and the Alternative Investment Funds (Jersey) Regulations 2012.

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>

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

### 1 Amendment of Collective Investment Funds (Jersey) Law 1988

- (1) The Collective Investment Funds (Jersey) Law 1988 is amended as follows.
- (2) In Article 1, at the end of paragraph (b)(i) of the definition of “principal person”, there shall be added the following continuation text –
  - “other than a person holding shares only as a custodian or its nominee and able to exercise the voting rights attached to the shares only under instructions given in writing (including by electronic means);”.
- (3) For Article 6(2) there shall be substituted the following paragraph –
  - “(2) Without limiting paragraph (1)(d) the Commission may –
    - (a) require an applicant to provide such information and documents relating to the collective investment fund to which the applicant’s function relates, verified in such

manner as the Commission may require, for the purposes of considering whether to grant or refuse a permit under Article 7(1);

- (b) by written notice require the applicant, or any person who is to be a principal person in relation to the applicant, to provide a report by an auditor or accountant, or other qualified person approved by the Commission, on such aspects of the particulars required by paragraph (1)(d), or the information and documents required by paragraph (2)(a), as the Commission may specify.”.

- (4) For Article 8A(3) there shall be substituted the following paragraph –

“(3) Without limiting paragraph (2)(c) the Commission may –

- (a) require an applicant to provide such information and documents relating to the collective investment fund to which the applicant’s function relates, verified in such manner as the Commission may require, for the purposes of considering whether to grant or refuse a certificate under Article 8B(1);
- (b) by written notice require the applicant, or any person who is to be a principal person in relation to the applicant, to provide a report by an auditor or accountant, or other qualified person approved by the Commission, on such aspects of the particulars required by paragraph (2)(c), or the information and documents required by paragraph (3)(a), as the Commission may specify.”.

- (5) In Article 13(4) after the word “vary” there shall be inserted the words “or withdraw”.

- (6) For Article 32 there shall be substituted the following Article –

**“32 Communication with Commission by auditors and approved professionals**

- (1) No duty to which an auditor or an approved professional may be subject is contravened by reason of his or her communicating in good faith to the Commission, whether or not in response to a request made by it, any information or opinion on a matter to which this Article applies and which is relevant to any function of the Commission under this Law.
- (2) In relation to an auditor, this Article applies to any matter of which the auditor becomes aware in his or her capacity as auditor and which relates to the business or affairs of –
  - (a) a holder or former holder of a permit;
  - (b) a certificate holder or former certificate holder;

- 
- (c) a fund service provider or former fund service provider in relation to a certified fund; or
  - (d) a collective investment fund or former collective investment fund;
  - (e) a principal person, or former principal person, of a person mentioned in subparagraphs (a) to (d); or
  - (f) a company that is a holding company or subsidiary in relation to a person mentioned in subparagraphs (a) to (d).
- (3) In relation to an approved professional, this Article applies to any matter of which that person becomes aware in his or her capacity as the person making the report and which relates to the business or affairs of –
- (a) an applicant for a permit or a certificate;
  - (b) a holder of a permit;
  - (c) a certificate holder;
  - (d) a fund service provider in relation to a certified fund;
  - (e) a collective investment fund;
  - (f) a former holder of a permit;
  - (g) a former certificate holder;
  - (h) a former fund service provider in relation to a certified fund;
  - (i) a former collective investment fund;
  - (j) a principal person or proposed principal person of a person mentioned in sub-paragraphs (a) to (e);
  - (k) a former principal person of a person mentioned in subparagraphs (b) to (i); or
  - (l) a company that is a holding company or subsidiary in relation to a person mentioned in sub-paragraphs (a) to (i),
- in relation to whom the report is made.
- (4) The Minister may by Order specify circumstances in which an auditor or approved professional is required to communicate any information or opinion to the Commission on a matter to which this Article applies, and which is relevant to any function of the Commission under this Law.
- (5) Orders under this Article may be made only –
- (a) on the recommendation of the Commission; and
  - (b) after consultation with such persons as appear to the Commission to represent the interests of auditors, approved professionals, holders of permits, certificate holders and fund service providers in relation to certified funds.
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- (6) A person who contravenes an Order made under this Article is guilty of an offence and liable to imprisonment for a term of 6 months and a fine.
- (7) In this Article –
- ‘approved professional’ means a person appointed to make a report as referred to in Article 6(2)(b), Article 8A(3)(b) or Article 9(6);
- ‘auditor’ means an auditor of –
- (a) a holder or a former holder of a permit;
  - (b) a certified fund, a former certified fund or a fund service provider or a former fund service provider in relation to a certified fund ; or
  - (c) a collective investment fund or former collective investment fund,
- and includes –
- (d) a person who was the auditor of a holder of a permit or former holder of a permit at any time during the period the permit was held; and
  - (e) a person who was the auditor of a certificate holder or former certificate holder, a fund service provider or former fund service provider in relation to a certified fund at any time during the period in which the certificate in relation to the fund was in force.”.

## 2 Amendment of Banking Business (Jersey) Law 1991

- (1) The Banking Business (Jersey) Law 1991 is amended as follows.
- (2) In Article 1, at the end of paragraph (e) of the definition of “controller” there shall be added the words “other than a person holding shares giving rise to that voting power only as a custodian or its nominee and able to exercise the voting rights attached to the shares only under instructions given in writing (including by electronic means),”.
- (3) After Article 10(3) there shall be added the following paragraph –
  - “(4) The Commission may also revoke a registration at the request of the registered person.”.
- (4) In Article 21(4) for the words “a direction given under this Article” there shall be substituted the words “or withdraw any direction, as well as the power to issue further directions”.
- (5) At the end of Article 25(2) there shall be inserted the words “other than a person holding shares giving rise to that voting power only as a custodian or its nominee and able to exercise the voting rights attached to the shares

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only under instructions given in writing (including by electronic means),”.

(6) For Article 34 there shall be substituted the following Article –

**“34 Communication with Commission by auditors and approved professionals**

(1) No duty to which an auditor of a registered person or an approved professional may be subject is contravened by reason of his or her communicating in good faith to the Commission, whether or not in response to a request made by it, any information or opinion on a matter to which this Article applies and which is relevant to any function of the Commission under this Law.

(2) In relation to an auditor of a registered person, this Article applies to any matter of which the auditor becomes aware in his or her capacity as auditor and which relates to the business or affairs of –

- (a) the registered person or former registered person, or any associated body of such a person; or
- (b) a director, controller or manager, or former director, controller or manager, of a registered person or former registered person.

(3) In relation to an approved professional, this Article relates to any matter of which that person becomes aware in his or her capacity as the person making the report and which relates to the business or affairs of –

- (a) a registered person, former registered person or applicant for registration, or any associated body of such a person;
- (b) a director, controller or manager, or a proposed director, controller or manager of a registered person or applicant for registration; or
- (c) a former director, controller, or manager of a registered person or former registered person,

in relation to whom the report is made.

(4) The Minister may by Order specify circumstances in which an auditor or an approved professional is required to communicate any information or opinion to the Commission on a matter to which this Article applies, and which is relevant to any function of the Commission under this Law.

(5) Orders under this Article may be made only –

- (a) on the recommendation of the Commission; and

(b) after consultation with such bodies as appear to the Commission to represent the interests of auditors, approved professionals and registered persons.

(6) A person who contravenes an Order made under this Article is guilty of an offence and liable to imprisonment for a term of 6 months and a fine.

(7) In this Article –

‘approved professional’ means a person appointed to make a report as referred to in Article 9(7) or Article 26(7);

‘associated body’, in relation to a registered person or an applicant for registration, means any body mentioned in paragraph (j), (k) or (l) of the definition ‘defined person’ in Article 26(15)

‘auditor’ includes a person who was an auditor of a registered person or former registered person at any time during the period of the person’s registration.”.

### 3 Amendment of Insurance Business (Jersey) Law 1996

(1) The Insurance Business (Jersey) Law 1996 is amended as follows.

(2) In Article 1, in the definition of “shareholder controller” after the word “subsidiary” there shall be inserted the words “, other than a person holding shares giving rise to that voting power only as a custodian or its nominee and able to exercise the voting rights attached to the shares only under instructions given in writing (including by electronic means)”.

(3) After Article 6(1) there shall be inserted the following paragraph –

“(1A) Without limiting paragraph (1)(b) the Commission may –

(a) require an applicant to provide such information and documents as the Commission may require relating to the applicant and the applicant’s business, verified in such manner as the Commission may require for the purposes of considering whether to grant or refuse a permit under Article 7(1);

(b) by written notice require the applicant or any person who is, or is to be, the chief executive, a director or shareholder controller of the applicant to provide a report by an auditor or accountant, or other qualified person approved by the Commission, on such aspects of the particulars required by paragraph (1)(b), or the information and documents required by paragraph (1A)(a), as the Commission may specify.”.

(4) For Article 21 there shall be substituted the following Article –

**“21 Communication with Commission by auditors and approved professionals**

- (1) No duty to which an auditor of a permit holder or an approved professional may be subject is contravened by reason of his or her communicating in good faith to the Commission, whether or not in response to a request made by it, any information or opinion on a matter to which this Article applies and which is relevant to any function of the Commission under this Law.
- (2) In relation to an auditor of a permit holder, this Article applies to any matter of which the auditor becomes aware in his or her capacity as auditor and which relates to the business or affairs of –
  - (a) the permit holder or former permit holder, as the case may be;
  - (b) a director, chief executive or shareholder controller, or former director, chief executive or shareholder controller, of a permit holder or former permit holder; or
  - (c) a company that is a holding company or subsidiary in relation to a permit holder or former permit holder.
- (3) In relation to an approved professional, this Article applies to any matter of which that person becomes aware in his or her capacity as the person making the report and which relates to the business or affairs of –
  - (a) an applicant for a permit;
  - (b) a permit holder;
  - (c) a former permit holder;
  - (d) a director, chief executive or shareholder controller, or a proposed director, chief executive or shareholder controller, of a permit holder or an applicant for a permit;
  - (e) a former director, chief executive or shareholder controller of a permit holder or former permit holder; or
  - (f) a company that is a holding company or subsidiary in relation to a person mentioned in sub-paragraphs (a) to (c),  
in relation to whom the report is made.
- (4) The Minister may by Order specify circumstances in which an auditor or an approved professional is required to communicate any information or opinion to the Commission on a matter to which this Article applies, and which is relevant to any function of the Commission under this Law.
- (5) Orders under this Article may be made only –
  - (a) on the recommendation of the Commission; and

- 
- (b) after consultation with such bodies as appear to the Commission to represent the interests of auditors, approved professionals and permit holders.
  - (6) A person who contravenes an Order made under this Article is guilty of an offence and liable to imprisonment for a term of 6 months and a fine.
  - (7) In this Article –
    - ‘approved professional’ means a person appointed to make a report as referred to in Article 6(1A)(b) or Article 10(6);
    - ‘auditor’ includes a person who was an auditor of a permit holder or former permit holder at any time during the period when the permit was held.”;
  - (5) In Article 36(4) for the words “a direction given under this Article” there shall be substituted the words “or withdraw any direction, as well as the power to issue further directions”.

#### 4 Amendment of Financial Services (Jersey) Law 1998

- (1) The Financial Services (Jersey) Law 1998 is amended as follows.
- (2) In Article 1, at the end of paragraph (b)(i) of the definition of “principal person”, there shall be added the following continuation text –
  - “other than a person holding shares only as a custodian or its nominee and able to exercise the voting rights attached to the shares only under instructions given in writing (including by electronic means);”.
- (3) For Article 18 there shall be substituted the following Article –

#### “18 Communication with Commission by auditors and approved professionals

- (1) No duty to which an auditor of a registered person or an approved professional may be subject is contravened by reason of his or her communicating in good faith to the Commission, whether or not in response to a request made by it, any information or opinion on a matter to which this Article applies and which is relevant to any function of the Commission under this Law.
  - (2) In relation to an auditor of a registered person, this Article applies to any matter of which the auditor becomes aware in his or her capacity as auditor and which relates to the business or affairs of –
    - (a) the registered person or former registered person,
    - (b) a principal person or former principal person of a registered person or former registered person; or
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- (c) a company that is a holding company or subsidiary in relation to that registered person or former registered person.
- (3) In relation to an approved professional, this Article relates to any matter of which that person becomes aware in his or her capacity as the person making the report and which relates to the business or affairs of –
- (a) an applicant for registration;
  - (b) a registered person;
  - (c) a former registered person;
  - (d) a principal person or proposed principal person of an applicant for registration or a registered person;
  - (e) a former principal person of a registered person or former registered person; or
  - (f) a company that is a holding company or subsidiary in relation to a person mentioned in sub-paragraphs (a) to (c),
- in relation to whom the report is made.
- (4) The Minister may by Order specify circumstances in which an auditor or an approved professional is required to communicate any information or opinion to the Commission on a matter to which this Article applies, and which is relevant to any function of the Commission under this Law.
- (5) Orders under this Article may be made only –
- (a) on the recommendation of the Commission; and
  - (b) after consultation with such bodies as appear to the Commission to represent the interests of auditors, approved professionals and registered persons.
- (6) A person who contravenes an Order made under this Article is guilty of an offence and liable to imprisonment for a term of 6 months and a fine.
- (7) In this Article –
- ‘approved professional’ means a person appointed to make a report as referred to in Article 8(5) or 32(6);
- ‘auditor’ includes a person who was an auditor of a registered person or former registered person at any time during the period of the person’s registration.”

## 5 Amendment of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008

- (1) The Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 is amended as follows.
- (2) In Article 1, at the end of paragraph (b)(i) of the definition of “principal person”, there shall be added the following continuation text –
 

“other than a person holding shares only as a custodian or its nominee and able to exercise the voting rights attached to the shares only under instructions given in writing (including by electronic means);”.
- (3) After Article 33 there shall be inserted the following Article –

### 33A Communication with supervisory body by auditors and approved professionals

- (1) No duty to which an auditor of a person carrying on a supervised business or an approved professional may be subject is contravened by reason of his or her communicating in good faith to a suitable supervisory body, whether or not in response to a request made by it, any information or opinion on a matter to which this Article applies and which is relevant to any function of the suitable supervisory body under this Law.
- (2) In relation to an auditor of a person carrying on a supervised business, this Article applies to any matter of which the auditor becomes aware in his or her capacity as auditor and which relates to the business or affairs of –
  - (a) a person who is or was carrying on a supervised business;
  - (b) a principal person or former principal person of a person who is or was carrying on a supervised business; or
  - (c) a company that is a holding company or subsidiary in relation to a person who is or was carrying on a supervised business.
- (3) In relation to an approved professional, this Article relates to any matter of which that person becomes aware in his or her capacity as the person making the report and which relates to the business or affairs of –
  - (a) an applicant for a Level 1 registration;
  - (b) a person who is or was carrying on a supervised business;
  - (c) a principal person or proposed principal person of that applicant or a person carrying on a supervised business; or
  - (d) a former principal person of a person who is or was carrying on a supervised business; or

- 
- (e) a company that is a holding company or subsidiary in relation to a person mentioned in sub-paragraphs (a) or (b), in relation to whom the report is made.
  - (4) The Minister may by Order specify circumstances in which an auditor or an approved professional is required to communicate any information or opinion to a suitable supervisory body on a matter to which this Article applies, and which is relevant to any function of the suitable supervisory body under this Law.
  - (5) Orders under this Article may be made only –
    - (a) on the recommendation of the relevant supervisory body; and
    - (b) after consultation with such bodies as appear to the relevant supervisory body to represent the interests of auditors, approved professionals and persons carrying on supervised business.
  - (5) A person who contravenes an Order made under this Article is guilty of an offence and liable to imprisonment for a term of 6 months and a fine.
  - (6) In this Article –
    - ‘approved professional’ means a person appointed to make a report as referred to in Article 13(4) or 30(6);
    - ‘auditor’ includes a person who was an auditor of a person who is or was carrying on a supervised business at any time during the time such business was carried on.”.

## 6 Amendment of Alternative Investment Funds (Jersey) Regulations 2012

- (1) The Alternative Investment Funds (Jersey) Regulations 2012 are amended as follows.
- (2) In Regulation 4, at the end of paragraph (b)(i) of the definition of “principal person”, there shall be added the following continuation text –
  - “other than a person holding shares only as a custodian or its nominee and able to exercise the voting rights attached to the shares only under instructions given in writing (including by electronic means);”.
- (3) For Regulation 8(3) there shall be substituted the following paragraph –
  - “(3) Without limiting paragraph (2)(c) the Commission may –
    - (a) require an applicant to provide such information and documents relating to the AIF to which the applicant’s function relates, verified in such manner as the Commission

may require, for the purposes of considering whether to grant or refuse a certificate under Regulation 9;

- (b) by written notice require the applicant, or any person who is to be a principal person in relation to the applicant, to provide a report by an auditor or accountant, or other qualified person approved by the Commission, on such aspects of the particulars required by paragraph (2)(c), or the information and documents required by paragraph (3)(a), as the Commission may specify.”.

- (4) In Regulation 20(4) after the word “vary” there shall be inserted the words “or withdraw”.
- (5) For Regulation 41 there shall be substituted the following Regulation –

**“41 Communication with Commission by auditors and approved professionals**

- (1) No duty to which an auditor or an approved professional may be subject is contravened by reason of his or her communicating in good faith to the Commission, whether or not in response to a request made by it, any information or opinion on a matter to which this Regulation applies and which is relevant to any function of the Commission under these Regulations.
- (2) In relation to an auditor, this Regulation applies to any matter of which the auditor becomes aware in his or her capacity as auditor and which relates to the business or affairs of –
  - (a) an AIF or former AIF;
  - (b) a certificate holder or former certificate holder;
  - (c) a service provider or former service provider in relation to an AIF;
  - (d) an AIF entity or former AIF entity;
  - (e) a principal person, or former principal person, of a person mentioned in sub-paragraphs (a) to (d); or
  - (f) a company that is a holding company or subsidiary in relation to a person mentioned in sub-paragraphs (a) to (d).
- (3) In relation to an approved professional, this Regulation applies to any matter of which that person becomes aware in his or her capacity as the person making the report and which relates to the business or affairs of –
  - (a) an applicant for a certificate;
  - (b) an AIF;
  - (c) a certificate holder;
  - (d) a service provider in relation to an AIF;

- 
- (e) an AIF entity;
  - (f) a former AIF;
  - (g) a former certificate holder;
  - (h) a former service provider in relation to an AIF;
  - (i) a former AIF entity;
  - (j) a principal person or proposed principal person of a person mentioned in sub-paragraphs (a) to (e);
  - (k) a former principal person of a person mentioned in sub-paragraphs (b) to (i); or
  - (l) a company that is a holding company or subsidiary of a person mentioned in sub-paragraphs (a) to (i),

in relation to whom the report is made.

(4) The Minister may by Order specify circumstances in which an auditor or approved professional is required to communicate any information or opinion to the Commission on a matter to which this Regulation applies, and which is relevant to any function of the Commission under these Regulations.

(5) Orders under this Regulation may be made only –

- (a) on the recommendation of the Commission; and
- (b) after consultation with such persons as appear to the Commission to represent the interests of auditors, approved professionals, certificate holders and service providers in relation to AIFs.

(6) A person who contravenes an Order made under this Regulation is guilty of an offence and liable to imprisonment for a term of 6 months and a fine.

(7) In this Regulation –

‘approved professional’ means a person appointed to make a report as referred to in Regulation 8(3) or Regulation 14(2);

‘auditor’ means an auditor of –

- (a) an AIF or a former AIF;
- (b) a service provider or a former service provider in relation to an AIF; or
- (c) an AIF entity or former AIF entity,

and includes –

- (d) a person who was the auditor of a certificate holder or former certificate holder, a service provider or former service provider in relation to an AIF at any time during the

period in which the certificate in relation to the AIF was in force.”.

**7 Citation and commencement**

This Law may be cited as the Financial Regulation (Miscellaneous Provisions) (No. 3) (Jersey) Law 201- and comes into force 7 days after it is registered.