



Jersey
Financial
Services
Commission

› **FEEDBACK ON CONSULTATION
PAPER NO. 7 2015**

› **MISCELLANEOUS AMENDMENTS TO
REGULATORY LEGISLATION**

Feedback to 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 FEEDBACK

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

This paper reports on responses received by the *Commission* on the *CP*.

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› 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.
CP	means the <i>Commission's</i> Consultation Paper No. 7 of 2015.
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"> • a principal person as defined in the <i>AIF Regulations</i>, the <i>CIFJL</i>, the <i>FSJL</i> and the <i>SBJL</i>; • a director, controller or manager as referred to in the <i>BBJL</i>; • a director, chief executive or shareholder controller as referred to in the <i>IBJL</i>.
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 In the *CP* the *Commission* sought views on draft legislation - the *Miscellaneous Provisions Law* – which, in summary, would make the following changes to the regulatory laws:
- 1.1.1.1 amend the *BBJL* to enable a registration to be revoked at the request of the deposit-taker;
 - 1.1.1.2 amend several of the *regulatory laws* to explicitly provide for the *Commission* to be able to withdraw a direction;
 - 1.1.1.3 amend the *regulatory laws* to exclude custodians of shares from the statutory provisions that apply to *principal persons*;
 - 1.1.1.4 make 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;
 - 1.1.1.5 address gaps in, and make 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).
- 1.1.2 The purpose of this paper is to provide feedback on the responses received to the *CP*.

1.2 Feedback received

- 1.2.1 Respondents provided comments either directly to the *Commission* or indirectly via *Jersey Finance*.
- 1.2.2 *Jersey Finance* provided the *Commission* with comments it had received from one bank. One other respondent, a trust company, provided comments directly to the *Commission*. A full list of respondents is given in Appendix A.
- 1.2.3 Section 2 of this Feedback Paper presents a summary of the substantive comments received and the *Commission's* response.
- 1.2.4 The *Commission* is grateful to respondents for taking the time to consider and comment on the proposals. Each respondent has been sent a copy of this Feedback Paper.

1.3 Next steps

- 1.3.1 The *Commission* has recommended to the Chief Minister that he lodges for debate in the States Assembly the *Miscellaneous Provisions Law* in the form shown in Appendix B (which is the same as the version consulted upon, save for some minor typographical amendments).

2 SUMMARY OF RESPONSES

2.1 Structure of this section

2.1.1 This section summarises the substantive comments received on the *Miscellaneous Provisions Law*, and the *Commission's* response to those comments.

2.1.2 The *CP* asked just one question, as set out below.

2.2 Response to the *CP's* question [asked in paragraph 4.6.6 of the *CP*]

“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 explain the reason for it.”

2.2.1 Both respondents indicated support for the proposals.

2.2.2 The respondent bank specifically commented that it agreed with the proposal to amend the *BBJL* to enable a registration to be revoked at the request of the deposit-taker.

Commission response

2.2.3 The *Commission* notes, and welcomes, the respondents' support for the proposals.

› APPENDIX A

List of respondents to the consultation paper.

- Jersey Finance Limited (whose response consisted of comments it had received from one bank)
- Vivat Trust & Corporate Services Limited

› APPENDIX B

Final draft of the Financial Regulation (Miscellaneous Provisions No. 3) (Jersey) Law 201-¹, as recommended to the Chief Minister

(17 pages, separately numbered)

¹ Draft 5A - 7 October 2015



Jersey

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

REPORT

Explanatory Note

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

- (a) an amendment to clarify that definitions relating to shareholding exclude the situation where a person holds shares 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 is 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

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(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;
 - (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 sub-paragraphs (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.

(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 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(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(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.

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- (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
 - (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(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.

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- (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 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.

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