



Jersey

# **FINANCIAL SERVICES (JERSEY) LAW 1998**

## **Official Consolidated Version**

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Jersey

# FINANCIAL SERVICES (JERSEY) LAW 1998

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Jersey

## FINANCIAL SERVICES (JERSEY) LAW 1998<sup>1</sup>

A **LAW** to make provision for the supervision of certain types of financial service business, generally to provide for purposes connected with, and incidental to, the supervision of certain types of financial service business, and to create certain offences, including offences relating to insider dealing, market manipulation, and providing misleading information, in respect of financial matters.<sup>2</sup>

Commencement [[see endnotes](#)]

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### PART 1

#### PRELIMINARY<sup>3</sup>

#### 1 General interpretation<sup>4</sup>

(1) In this Law, unless the context otherwise requires –

“address”, in respect of a service provided by a person carrying on trust company business, means an address for the receipt of correspondence or electronic communications (including telephone calls and facsimile communications) or both provided by that person in the course of that business to a third party;

“AIF” means a scheme or arrangement that –

- (a) is an AIF within the meaning of Directive 2011/61/EU, in relation to which an AIFM (as defined in that Directive) is an AIFM to which the provisions of that Directive apply; or
- (b) is an AIF within the meaning of the UK AIFM Regulations, in relation to which an AIFM (as defined in those Regulations) is an AIFM to which the provisions of those Regulations apply;

“AIF services business” has, subject to any Order under Article 4, the meaning given to that expression by Article 2;

“applicant” has the meaning given in Article 8(1);

“associate”, in relation to a person, means –

- (a) the person’s husband, wife or civil partner, child or stepchild;

- (b) the person's partner;
- (c) any company of which the person is a director;
- (ca) any limited liability company of which the person is a manager;
- (cb) where the person is a limited liability company, any manager, any limited liability company in the same group as the limited liability company, and any manager of such a limited liability company;
- (d) where the person is a company, any director or employee of the company, any company in the same group as the company, and any director or employee of such a company; and
- (e) any person with whom the first mentioned person has an agreement, arrangement or other obligation –
  - (i) to act together in exercising voting power,
  - (ii) with respect to the acquisition, holding or disposal of shares or other interests in a company, partnership or other association;

“auditor” means a person qualified under Article 113 of the [Companies \(Jersey\) Law 1991](#) for appointment as auditor of a company under Article 109 of that Law;

“buy” includes to acquire;

“client”, in relation to a registered person, means a person, whether resident on or off Jersey, with or for whom the registered person transacts or has transacted financial service business (other than trust company business) or gives or has given advice about financial service business (other than trust company business);

“client asset” means –

- (a) property belonging to a client, including money, investments and insurance policies; and
- (b) any fund asset;

“Code of Practice” means a Code of Practice under Article 19;

“collective investment fund” has the meaning given to that expression by Article 3 of the [Collective Investment Funds \(Jersey\) Law 1988](#);

“Commission” means the Jersey Financial Services Commission established by the [Financial Services Commission \(Jersey\) Law 1998](#);

“company” (except for the purposes of Part 3A or paragraph 1 of Schedule 1) means any body corporate (other than a limited liability company registered as a body corporate under the LLC Law) incorporated with or without limited liability in any part of the world;

“compliance officer” means a person so designated, under a Code of Practice, by a registered person and having the function of monitoring whether the law of Jersey, and the Codes of Practice, are being complied with in the conduct of the business in respect of which the registered person is registered;

“Court” means the Royal Court;

“Directive 2011/61/EU” means Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC)

No. 1060/2009 and (EU) No. 1095/2010 (O.J. No. L174 1.7.2011, p.1), as amended from time to time;

“director” means a person occupying the position of director, by whatever name called, and includes a manager of a limited liability company;

“dispose” includes –

- (a) in the case of an investment consisting of rights under a contract or other arrangements, to assume the corresponding liabilities under the contract or arrangements;
- (b) in the case of any other investment, to issue or create the investment or to grant the rights or interests of which it consists;
- (c) in the case of an investment consisting of rights under a contract, to surrender, assign or convert those rights;

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

“ESAs” means the European Supervisory Authorities comprising –

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

“ESRB” means the European Systemic Risk Board established by Regulation (EU) No. 1092/2010 of the European Parliament and of the Council of 24 November 2010 (O.J. No. L 331, 15.12.2010, p.1);

“express trust” means a trust created by the express declaration of a settlor or a trustee made orally, by instrument in writing or by will;

“financial service advertisement” means an advertisement containing –

- (a) an invitation to transact financial service business; or
- (b) information which is intended or might reasonably be presumed to be intended to lead directly or indirectly to the transaction of financial service business,

and includes any means of bringing such an invitation or such information to the notice of any person, and a reference to an advertisement shall be construed accordingly;

“financial service business” has, subject to any Order under Article 4, the meaning given to that expression by Article 2(1);

“foundation” means a foundation incorporated under the [Foundations \(Jersey\) Law 2009](#);

“fund asset” means an asset of a collective investment fund or of an unregulated fund;

“fund services business” has, subject to any Order under Article 4, the meaning given to that expression by Article 2;

“general insurance” means, subject to any Order under Article 4, a type of insurance that falls within a paragraph specified in Schedule 4 and that is not excepted by virtue of a further provision contained in that paragraph;

“general insurance advice” means advice about a client’s general insurance requirements, including the merits of buying, selling, lapsing, switching, cancelling, altering or converting a policy of general insurance;

“general insurance mediation business” has, subject to any Order under Article 4, the meaning given to that expression by Article 2;

“group” means, in relation to a company or a limited liability company –

- (a) that company or limited liability company;
- (b) any other company or limited liability company which is its holding company or holding limited liability company, or its subsidiary; and
- (c) any other company or limited liability company which is a subsidiary of that holding company or holding limited liability company;

“holding company” has the meaning given to that expression by Article 2 of the [Companies \(Jersey\) Law 1991](#);

“holding limited liability company” has the meaning given to that expression under Regulation 2 of the Limited Liability Companies (General Provisions) (Jersey) Regulations 202-;

“industrial and provident society” means a society registered or deemed to be registered under the Industrial and Provident Societies Acts 1965 to 75 of the United Kingdom as applied to Jersey by the Industrial and Provident Societies (Channel Islands) Order 1965;

“investment” means, subject to any Order under Article 4, an asset, right or interest that falls within a paragraph of Schedule 1 and that is not excepted by virtue of a further provision contained in that paragraph;

“investment business” has, subject to any Order under Article 4, the meaning given to that expression by Article 2(2);

“Jersey AIF” has the meaning given to “AIF” by Regulation 3 of the [Alternative Investment Funds \(Jersey\) Regulations 2012](#);

“key person” means a person employed or otherwise engaged by a registered person as an officer of any one or more of the following classes in relation to the conduct of the business of the registered person –

- (a) compliance officer;
- (b) money laundering compliance officer;
- (c) money laundering reporting officer;

“limited liability company” means a limited liability company registered under either the LLC Law or a body established under an equivalent law of a jurisdiction outside Jersey;

“LLC controller” has the meaning given by sub-paragraph (ba)(i) of the definition “principal person”;

“LLC interest” has the same meaning as in the LLC Law;

“LLC Law” means the [Limited Liability Companies \(Jersey\) Law 2018](#);

“manager”, in relation to a limited liability company, includes a member of that limited liability company in whom the management of the limited liability company vests in accordance with Article 21 of the LLC Law;

“Minister” means the Minister for External Relations;

“money laundering compliance officer” means a person appointed as “compliance officer” under the [Money Laundering \(Jersey\) Order 2008](#);

“money laundering reporting officer” means a person appointed as “reporting officer” under the [Money Laundering \(Jersey\) Order 2008](#);

“money service business” has, subject to any Order under Article 4, the meaning given to that expression by Article 2(9);

“partner”, in respect of a partnership, means a partner or an equivalent position in the partnership howsoever called and includes a member of a limited liability company;

“partnership” includes a partnership constituted under the law of a country or territory outside Jersey;

“pension supervisor” means any entity (whether in Jersey or elsewhere) responsible in whole or in part for the supervision of pension funds, plans, schemes or arrangements;

“policy holder” means a person who is the holder of, or may receive a benefit under, a policy securing a contract of insurance;

“prescribed” means prescribed by an Order made by the Minister on the recommendation of the Commission;

“principal person” means –

in relation to a person –

(a) being a sole trader, the proprietor;

(b) being a company –

(i) a person who, either alone or with any associate or associates –

(A) directly or indirectly holds 10% or more of the share capital issued by the company,

(B) is entitled to exercise or control the exercise of not less than 10% of the voting power in general meeting of the company or of any other company of which it is a subsidiary, or

(C) has a holding in the company directly or indirectly which makes it possible to exercise significant influence over the management of the company,

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),

- (ii) a director,
  - (iii) a person in accordance with whose directions, whether given directly or indirectly, any director of the company, or director of any other company of which the company is a subsidiary, is accustomed to act (but disregarding advice given in a professional capacity),  
but not including, in relation to a company that is a Jersey AIF, any shareholder controller of that company;
- (ba) being a limited liability company means –
- (i) a person, other than a person holding LLC interests in the limited liability company only as a custodian or its nominee and able to exercise the voting rights attached to those LLC interests only under instructions given in writing (including by electronic means), who, either alone or with any associate or associates –
    - (A) directly or indirectly holds not less than 10% of the LLC interests in the limited liability company,
    - (B) is entitled to exercise or control the exercise of not less than 10% of the voting power in meetings of the limited liability company or of any other limited liability company of which it is a subsidiary, or
    - (C) has an LLC interest in the limited liability company directly or indirectly which makes it possible to exercise significant influence over the management of the limited liability company,
  - (ii) a manager, or equivalent by whatever name called,
  - (iii) a person in accordance with whose directions, whether given directly or indirectly –
    - (A) any manager, or where there is no appointed manager, the members of the limited liability company, or
    - (B) any manager or where there is no appointed manager, the members of any limited liability company of which the limited liability company is a subsidiary,is accustomed to act (but disregarding advice given in a professional capacity),  
but not including, in relation to limited liability company that is a Jersey AIF, any shareholder controller of that limited liability company;
- (c) being a partnership –
- (i) a partner,
  - (ii) where a partner is a company, any person who, in relation to that company, falls within sub-paragraph (b)(i), (ii) or (iii), and  
in relation to a person whose registered office and principal place of business is outside Jersey, includes a person who, either alone or jointly with one or more other persons, is responsible for the conduct of the person's financial service business in Jersey, and

includes a person who has been appointed a liquidator of the person (whether or not appointed under a bankruptcy) or an administrator of a bankrupt person's affairs;

“public statement” means a statement issued under Article 25;

“recognized fund” means a collective investment fund in relation to which there is a recognized fund certificate granted under the Collective Investment Funds (Recognized Funds) (General Provisions (Jersey) Order 1988 or the [Collective Investment Funds \(Recognized Funds\) \(Rules\) \(Jersey\) Order 2003](#);

“registered person” means a person registered by the Commission under Article 9, and “registered” shall be construed accordingly;

“registration” means registration by the Commission under this Law;

“relevant supervisory authority”, in relation to a country or territory outside Jersey, means an authority discharging in that country or territory any function that is the same as, or similar to, a function of the Commission;

“rules of a securities market” means rules written and published in a manner that will bring them to the attention of anyone affected by them (whether contained in a legislative instrument or otherwise), of the country or territory, or part of the country or territory, that hosts the securities market that regulate or are recognized as regulating the conduct of the securities market;

“secretary” means a person occupying the position of, and carrying out the duties of –

- (a) in respect of a service provided by a person carrying on trust company business, a company secretary, howsoever named;
- (b) the secretary of a limited liability partnership under the [Limited Liability Partnerships \(Jersey\) Law 2017](#);
- (c) the secretary or deputy secretary of a limited liability company under the LLC Law;

“securities market functions” means any of the following functions –

- (a) the listing or admittance to trading of securities on a securities market;
- (b) the authorization or registration (as the case may be) and supervision of any person that –
  - (i) deals in securities,
  - (ii) is a professional intermediary, or
  - (iii) is a professional advisor to an issuer,in accordance with the rules of a securities market and recognized as so doing under those rules; and
- (c) the monitoring of trading activity on a securities market for the purposes of deterring or detecting one or more of the following activities –
  - (i) market manipulation,
  - (ii) misleading information, and
  - (iii) insider dealing;

“sell” includes to dispose;

“shareholder controller” has the meaning given by sub-paragraph (b)(i) of the definition of “principal person”;

“subscription” for the purposes of Article 2(2)(c)(i) in relation to a pension scheme includes the application or arrangement to participate in or pay into the pension scheme;

“subsidiary” has the meaning given to it by –

- (a) in relation to a body corporate (other than a limited liability company registered as a body corporate under the LLC Law), Article 2 of the [Companies \(Jersey\) Law 1991](#); and
- (b) in relation to a limited liability company, Regulation 2 of the [Limited Liability Companies \(General Provisions\) \(Jersey\) Regulations 2022](#);

“supervisor of a securities market” means a person other than a relevant supervisory authority that is incorporated, constituted or otherwise established under a legislative instrument of a country or territory that hosts a securities market, and whose functions include (but are not limited to) securities market functions;

“trust” has the same meaning as in the [Trusts \(Jersey\) Law 1984](#);

“trust company business” has, subject to any Order under Article 4, the meaning given to that expression by Article 2(3);

“trust company business assets”, in respect of a registered person, means –

- (a) trust property; or
- (b) any other assets or property not beneficially owned by the registered person;

“trust property” has the meaning given to that expression by Article 1 of the [Trusts \(Jersey\) Law 1984](#);

“UK AIFM Regulations” means the Alternative Investment Fund Managers Regulations 2013 of the United Kingdom (S.I. 2013/1773) as amended from time to time;

“unclassified fund” means a collective investment fund that is not a recognized fund;

“unregulated fund” means an unregulated fund within the meaning of the [Collective Investment Funds \(Unregulated Funds\) \(Jersey\) Order 2008](#).<sup>5</sup>

- (2) In this Law a note contained in a paragraph of a Schedule forms part of that paragraph.

## **2 “Financial service business” defined<sup>6</sup>**

- (1) A person carries on financial service business if by way of business the person carries on investment business, trust company business, general insurance mediation business, money service business, fund services business or AIF services business.<sup>7</sup>
- (2) A person carries on investment business if the person –
  - (a) deals in investments, that is, the person –

- (i) buys, sells, subscribes for or underwrites investments, either as principal or agent, or
    - (ii) makes arrangements for another person (whether as principal or agent) to buy, sell, subscribe for or underwrite investments;
  - (b) undertakes discretionary investment management, that is, the person decides as agent to buy, sell, subscribe for or underwrite investments on behalf of a principal;
  - (c) gives investment advice, that is, the person gives to persons in their capacity as investors or potential investors advice on the merits of –
    - (i) the purchase, sale, subscription for or underwriting of a particular investment, or
    - (ii) the exercise of a right conferred by an investment to acquire, dispose of, underwrite or convert the investment.<sup>8</sup>
- (3) A person carries on trust company business if the person carries on a business that involves –
- (a) the provision of company administration services;
  - (b) the provision of trustee or fiduciary services;
  - (c) the provision of services to foundations;
  - (ca) the provision of services to limited liability companies; or
  - (d) the provision of services to partnerships not being services described in subparagraph (a), (b), (c) or (ca),
- and in the course of providing those services the person provides any of the services specified in paragraph (4).<sup>9</sup>
- (4) Those services are –
- (a) acting as a company formation agent, a limited liability company registration agent, a partnership formation agent or a foundation formation agent;
  - (b) acting as or fulfilling the function of or arranging for another person to act as or fulfil the function of director or alternate director of a company;
  - (c) acting as or fulfilling the function of or arranging for another person to act as or fulfil the function of a partner of a partnership;
  - (d) acting as or fulfilling the function of or arranging for another person to act as or fulfil the function of a member of the council of a foundation;
  - (da) acting as or fulfilling the function of or arranging for another person to act as or fulfil the function of a member or manager of a limited liability company;
  - (e) acting or arranging for another person to act as secretary, alternate, assistant or deputy secretary of a company, a limited liability company or a limited liability partnership;
  - (f) providing a registered office or business address for a company, a limited liability company, a partnership or a foundation;
  - (g) providing an accommodation, correspondence or administrative address for a company, a limited liability company, a partnership or a foundation or for any other person;

- (h) acting as or fulfilling or arranging for another person to act as or fulfil the function of trustee of an express trust;
  - (i) acting as or fulfilling or arranging for another person to act as shareholder or unitholder as a nominee for another person.<sup>10</sup>
- (5) In this Article a reference to a company, a limited liability company, trust, partnership or foundation is a reference –
  - (a) to a company, a limited liability company, trust, partnership or foundation wherever incorporated or otherwise established; and
  - (b) to any similar or equivalent structure or arrangement, howsoever named.<sup>11</sup>
- (6) For the purposes of this Article a person acts as a company formation agent, a partnership formation agent, a limited liability company registration agent or a foundation formation agent if the person arranges for the registration, formation or incorporation, or the sale, transfer or disposal, of companies, partnerships or foundations, as the case may be.<sup>12</sup>
- (7) A person carries on general insurance mediation business if the person, whether as a principal or an agent, does any of the following –
  - (a) promotes himself or herself or another person as able to give general insurance advice or as able to arrange for persons to enter into contracts of general insurance;
  - (b) gives general insurance advice to a person in relation to particular contracts of general insurance;
  - (c) arranges for the entry of persons into contracts of general insurance with other persons;
  - (d) assists in the administration and performance of contracts of general insurance;
  - (e) agrees to perform an activity referred to in sub-paragraph (a), (b), (c) or (d).<sup>13</sup>
- (8) In paragraph (7), “agent” means an agent of an insurance company, an agent of a policy holder or an agent of a prospective policy holder.<sup>14</sup>
- (9) A person carries on money service business if the person carries on the business of any of the following –
  - (a) a bureau de change;
  - (b) providing cheque cashing services;
  - (c) transmitting or receiving funds by wire or other electronic means;
  - (d) engaging in money transmission services.<sup>15</sup>
- (10) A person carries on fund services business if by way of business the person is –
  - (a) a manager, manager of a managed entity, administrator, registrar, investment manager or investment adviser;
  - (b) a distributor, subscription agent, redemption agent, premium receiving agent, policy proceeds paying agent, purchase agent or repurchase agent;
  - (c) a trustee, custodian or depositary; or

- (d) a member (except a limited partner) of a partnership, including a partnership constituted under the law of a country or territory outside Jersey, in relation to an unclassified fund or an unregulated fund.<sup>16</sup>
- (11) A person carries on AIF services business if the person is a legal person whose regular business is managing one or more AIFs (where “managing”, in relation to an AIF, has the same meaning as in Directive 2011/61/EU or in the UK AIFM Regulations, as the case may be).<sup>17</sup>

### **3 Exclusion from class of financial service business<sup>18</sup>**

An activity described in Schedule 2 that is within a class of financial service business specified in the Schedule shall not be treated as within the class of financial service business for the purposes of this Law to the extent specified in relation to the activity in the Schedule.

#### **3A Certain general insurance mediation business excluded from application of certain provisions of this Law<sup>19</sup>**

- (1) Articles 13 to 19 (inclusive) shall not apply to, or in relation to, incidental general insurance mediation business.<sup>20</sup>
- (2) In paragraph (1), incidental general insurance mediation business means general insurance mediation business that is carried on by a person where the person carries on such business only –
  - (a) incidentally to some other business;
  - (b) in relation to goods or services sold by him or her; or
  - (c) by way of the sale of a policy of general insurance as part of a contract to provide goods and services.
- (3) The Minister may, on the recommendation of the Commission, by Order amend paragraphs (1) or (2).

### **4 Power to vary definitions and exemptions**

- (1) The Minister may, on the recommendation of the Commission, by Order amend –
  - (a) the exemptions conferred by –
    - (i) Article 7(2)(a)(ii), and
    - (ii) Article 7(2)(b); and
  - (b) subject to paragraph (5), the Schedules.<sup>21</sup>
- (2) The States may by Regulations amend the definitions and ancillary provisions in Articles 1 and 2.
- (3) <sup>22</sup>
- (4) An Order or Regulations under this Article may exclude or modify the effect of the Order or the Regulations on any other enactment which is expressed to have effect in relation to financial service business within the meaning of this Law.<sup>23</sup>
- (5) An Order made under this Article may amend Schedule 5 –

- (a) by inserting into the Schedule transitional provisions made by the Order in accordance with paragraph (4); or
  - (b) by amending transitional provisions in the Schedule, other than provisions inserted by Regulations made under paragraph (6).<sup>24</sup>
- (6) Regulations made under this Article may amend Schedule 5 –
- (a) by inserting into the Schedule transitional provisions made by the Regulations in accordance with paragraph (4); or
  - (b) by amending transitional provisions inserted into the Schedule by Regulations made under this paragraph.<sup>25</sup>

## **5 Functions of the Commission**

The Commission shall have the powers conferred on it by this Law and the duty generally to supervise the persons registered by it in the exercise of those powers.

## **6 Limitation of liability**

- (1) No person or body to whom this Article applies shall be liable in damages for anything done or omitted in the discharge or purported discharge of any functions under this Law or any enactment made, or purportedly made, under this Law unless it is shown that the act or omission was in bad faith.
- (1A) Paragraph (1) does not apply so as to prevent an award of damages made in respect of an act on the ground that the act was unlawful as a result of Article 7(1) of the [Human Rights \(Jersey\) Law 2000](#).<sup>26</sup>
- (2) This Article applies to –
  - (a) the States;
  - (b) the Minister or any person who is, or is acting as, an officer, servant or agent in an administration of the States for which the Minister is assigned responsibility or who is performing any duty or exercising any power on behalf of the Minister; and
  - (c) the Commission, any Commissioner or any person who is, or is acting as, an officer, servant or agent of the Commission or who is a person appointed by the Commission to conduct an investigation under Article 33 or who is performing any duty or exercising any power on behalf of the Commission.

## **PART 2**

### **REGISTRATION OF FINANCIAL SERVICE BUSINESS<sup>27</sup>**

#### **DIVISION 1 – FINANCIAL SERVICE BUSINESS<sup>28</sup>**

## **7 Prohibition of carrying on unauthorised financial service business<sup>29</sup>**

- (1) Subject to paragraph (2) –

- (a) a person shall not carry on financial service business in or from within Jersey; and
  - (b) a person being a company incorporated in Jersey or a limited liability company registered in Jersey shall not carry on such business in any part of the world,
- unless the person is for the time being a registered person under this Law, and acting in accordance with the terms of his or her registration.<sup>30</sup>
- (2) This Law shall not apply to –
    - (a) the doing of anything by or on behalf of –
      - (i) the States, the Viscount, the Judicial Greffier or a Jurat of the Royal Court, or
      - (ii) subject to such conditions or restrictions as may be prescribed, any other prescribed person or institution;
    - (b) subject to such conditions or restrictions as may be prescribed, any prescribed transaction.<sup>31</sup>
  - (3) Any person who holds himself or herself out as carrying on financial service business in or from within Jersey, and any company incorporated in Jersey or limited liability company registered in Jersey which holds itself out as carrying on financial service business shall, for the purposes of this Article, be treated as carrying on such business.<sup>32</sup>
  - (4) A person who contravenes this Article shall be guilty of an offence and liable to imprisonment for a term not exceeding 7 years or a fine, or both.

## DIVISION 2 – REGISTRATION<sup>33</sup>

### 8 Application for registration

- (1) A person to whom this Law applies who intends to carry on financial service business (referred to in this Law as an “applicant”) shall make an application to the Commission to be registered under Article 9 for the purposes of this Law.<sup>34</sup>
- (2) The Minister may, on the recommendation of the Commission, prescribe classes of financial service business in respect of which application may be made.<sup>35</sup>
- (3) An application under paragraph (1) shall –
  - (a) be in such form as the Commission may from time to time determine;
  - (b) contain or be accompanied by such information and documents as the Commission may require, relating to the applicant and the applicant’s business, to persons who are principal persons in relation to the applicant and verified in such manner as the Commission may require; and
  - (c) be accompanied by such fees as may be published by the Commission in accordance with Article 15(5)<sup>36</sup> of the [Financial Services Commission \(Jersey\) Law 1998](#).<sup>37</sup>
- (4) At any time after receiving an application and before determining it the Commission may, at its discretion, by written notice order the applicant or any person who is or is to be a principal person in relation to the applicant to provide

such additional information or documents as the Commission reasonably requires for the determination of the application, verified in such manner as the Commission may require, and such requirements may differ as between different applications.

- (5) The Commission may 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 any information and documents required by or under paragraph (3) or (4) as the Commission may specify.
- (6) An applicant who, while his or her application is awaiting determination by the Commission under Article 9 –
  - (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.
- (7) An applicant may, by written notice to the Commission, withdraw the applicant's application under this Article at any time before it is granted or refused.<sup>38</sup>
- (8) <sup>39</sup>

## **9 Registration or refusal of application, or revocation of registration**

- (1) On an application under Article 8, the Commission may either register a person with or without attaching conditions under Article 10(2) or may refuse to register a person.
- (2) Whenever the Commission registers a person it shall issue to that person a registration certificate.
- (3) The Commission may refuse to register a person on one or more of the following grounds, namely that –
  - (a) having regard to the information before the Commission as to the –
    - (i) integrity, competence, financial standing, structure and organization of the applicant,
    - (ii) persons employed by or associated with the applicant for the purposes of the applicant's business or who are principal persons in relation to the applicant,
    - (iii) description of business which the applicant proposes to carry on,the Commission is not satisfied that the applicant is a fit and proper person to be registered;
  - (b) the applicant has at any time and whether or not in relation to the application, in any case where information was required under this Law in any connection –
    - (i) failed to provide any such information, or
    - (ii) provided to the Commission information which was untrue or misleading in any material particular;

- (c) the applicant has at any time failed to comply with any condition prescribed or attached under Article 10 to a current or previous registration held by the applicant in any material respect;
- (d) the applicant or any person employed by or associated with the applicant for the purposes of the applicant's business has been convicted of –
  - (i) an offence (whether under the law of Jersey or of a country or territory outside Jersey) involving fraud or other dishonesty,
  - (ii) an offence under –
    - (A) this Law,
    - (B) the [Banking Business \(Jersey\) Law 1991](#);
    - (C) the [Collective Investment Funds \(Jersey\) Law 1988](#),
    - (D) the [Insurance Business \(Jersey\) Law 1996](#),
    - (E) any Regulation or Order made under any of those Laws,
    - (F) the [Alternative Investment Funds \(Jersey\) Regulations 2012](#),
  - (iii) any offence similar to those listed in clause (ii) under the law of a country or territory outside Jersey,
  - (iv) where clause (ii) or (iii) does not apply, an offence under any enactment (whether of Jersey or of a country or territory outside Jersey) relating to building societies, companies, consumer credit, consumer protection, credit unions, friendly societies, industrial and provident societies, insider dealing, insolvency, insurance, money laundering or terrorist financing, or
  - (v) an offence (whether under the law of Jersey or of a country or territory outside Jersey) of perjury or conspiracy to pervert the course of justice;
- (e) it appears to the Commission, as a result of information provided in pursuance of requirements of or under Article 8, or information otherwise obtained, that –
  - (i) it is in the best interests of persons who may transact financial service business (other than trust company business) with the applicant that the applicant should not be registered,
  - (ii) it is in the best interests of persons who may enter into agreements for services provided by the applicant in carrying on trust company business that the applicant should not be registered,
  - (iia) it is in the best interests of persons who may receive the benefit of services provided, or arranged, by the applicant in carrying on trust company business that the applicant should not be registered,
  - (iii) in order to protect the reputation and integrity of Jersey in financial and commercial matters, the applicant should not be registered, or
  - (iv) in the best economic interests of Jersey, the applicant should not be registered;
- (f) the Commission has reason to believe that the applicant has at some time contravened a Code of Practice;

- (fa) the applicant has failed to pay any part of a penalty imposed by the Commission under Article 21A of the [Financial Services Commission \(Jersey\) Law 1998](#) (including any surcharge imposed under Article 21E(1) of that Law);
  - (g) the person who is the applicant has failed to comply with a direction given to the person at any time under Article 16 or 23.<sup>40</sup>
- (4) The Commission may revoke a registration under this Law at any time –
- (a) at the request of the registered person;
  - (b) if the registered person has not commenced a financial service business in or from within Jersey within one year of the date of the person's registration;
  - (c) if the registered person ceases to conduct a financial service business in or from within Jersey;
  - (d) if the registered person is a company incorporated in Jersey or a limited liability company registered in Jersey and ceases to conduct a financial service business;
  - (e) on one or more of the grounds set out in paragraph (3)(a), (b), (c), (d), (f) and (g) (where those sub-paragraphs are read as if references in them to the applicant were references to the registered person);
  - (ea) if it appears to the Commission that it is in the best interests of any of the following persons that the registered person's registration be revoked –
    - (i) persons who transacted or may transact financial service business (other than trust company business) with the registered person,
    - (ii) persons who entered or may enter into agreements for services provided by the registered person in carrying on trust company business,
    - (iii) persons who received or may receive the benefit of services provided, or arranged, by the registered person in carrying on trust company business;
  - (eb) if it appears to the Commission that, in order to protect the reputation and integrity of Jersey in financial and commercial matters, the registration should be revoked;
  - (ec) if it appears to the Commission that it is in the best economic interests of Jersey that the registration be revoked;
  - (f) if there is a failure to comply with a notice of objection served under Article 13; or
  - (g) if the registered person fails to pay any fee published under paragraph (6) that is payable.<sup>41</sup>
- (5) Where, under this Article, the Commission refuses to register a person or revokes a registration it shall give notice in writing to the applicant or registered person concerned.
- (6) The Commission may, in accordance with Article 15 of the [Financial Services Commission \(Jersey\) Law 1998](#), publish fees that shall be payable by registered persons at such intervals and upon the occurrence of such events as the Commission may determine.<sup>42</sup>

(7) <sup>43</sup>

(8) <sup>44</sup>

## 10 Conditions of registration

- (1) The Minister may, on the recommendation of the Commission –
- (a) prescribe conditions which shall apply to registered persons and to the carrying on of financial service business by registered persons; and
  - (b) in like manner, and from time to time, amend, vary, substitute or revoke any such condition, or prescribe new conditions,
- and such conditions may make different provision for different classes of persons, or for different classes of financial service business.<sup>45</sup>
- (2) The Commission may attach conditions to any particular grant of registration under Article 9, and may from time to time amend, vary, substitute or revoke any such condition or attach new conditions.<sup>46</sup>
- (3) Where, under paragraph (2), the Commission attaches a condition to a registration, amends, varies, substitutes or revokes a condition attached to a registration, or attaches a new condition, it shall give notice in writing to the registered person concerned.<sup>47</sup>
- (4) If any registered person fails to comply with any condition prescribed under paragraph (1) or attached under paragraph (2), the registered person shall for each such contravention be liable to imprisonment for a term not exceeding 2 years or a fine, or both.
- (5) The record of the conviction of any person for an offence under paragraph (4) shall be admissible in any civil proceedings as evidence of the fact of the breach of a condition prescribed or attached under this Article.
- (6) Conditions prescribed under paragraph (1) or attached under paragraph (2) may indicate that a Code of Practice issued under Article 19 is to be wholly or partly disregarded for the purposes of Article 19(4).

## 11 Procedure on refusal or revocation, or new or varied condition

- (1) Where the Commission, acting under Article 9, revokes a registration, or, acting under Article 10(2), attaches a new condition to the registration of a particular person or amends, varies, substitutes or revokes any condition so attached, subject to paragraph (4), such revocation, new condition or amendment, variation, substitution or revocation of a condition shall not take effect before the expiration of –
- (a) a period of one month from the date on which notice in writing was given to the registered person under Article 9(5), or, as the case may be, under Article 10(3);
  - (b) the date on which any appeal against the revocation, new condition or amendment, variation, substitution or revocation of a condition is determined by the Court or withdrawn,
- whichever is later, unless the registered person requests that it should take effect at an earlier date.<sup>48</sup>

- (2) Where the Commission –
- (a) acting under Article 9, refuses to register a person or revokes a registration; or
  - (b) acting under Article 10(2), attaches a condition (or a new condition) to the registration of a particular person or amends, varies, substitutes or revokes any condition so attached,
- the Commission shall at the same time give a statement in writing of its reasons for that decision.<sup>49</sup>
- (3) Any person aggrieved by such refusal or revocation, or by the conditions attached to the person's registration, or by any new condition so attached or by any amendment, variation, substitution or revocation of such conditions, may appeal to the Court, either in term or in vacation, within one month from the date on which notice in writing has been given to the person under Article 9(5) or, as the case may be, under Article 10(3) on the ground that the decision of the Commission was unreasonable having regard to all the circumstances of the case.<sup>50</sup>
- (4) If, on the application of the Commission, the Court is satisfied that it is desirable –
- (a) in the best interests of persons who transacted or may transact financial service business (other than trust company business) with the registered person;
  - (b) in the best interests of persons who entered or may enter into agreements for services provided by the registered person in carrying on trust company business; or
  - (c) in the best interests of persons who received or may receive the benefit of services provided, or arranged, by the registered person in carrying on trust company business,
- that paragraph (1) should not have effect, or should cease to have effect in a particular case, or that the period suggested in paragraph (1)(a) should be reduced, the Court may so order.<sup>51</sup>
- (5) An order under paragraph (4) may be made without prior notice to and without hearing the registered person concerned.
- (6) An order under paragraph (4) shall have immediate effect, but any person aggrieved by the order may apply to the Court to vary or set aside the order.<sup>52</sup>
- (7) In respect of an application under paragraph (4), the Court may make such order as it thinks fit, and in respect of an application under paragraph (6), the Court may make such order in respect of the relevant order under paragraph (4) as it thinks fit.<sup>53</sup>
- (8) Nothing in paragraph (1) or (2) derogates from or otherwise affects a condition prescribed under Article 10(1).

#### **11A Display of registration certificate and conditions<sup>54</sup>**

- (1) When the Commission registers a person under Article 9(1), it may give that person notice in writing with reasons of the manner in which that person shall display or otherwise make available to members of the public –

- (a) that person's registration certificate, or the information contained in the certificate, or both; and
  - (b) a record of such conditions as the Commission may specify –
    - (i) that are prescribed under Article 10(1) and apply to that person,
    - (ii) that are prescribed under Article 10(1) and apply to the carrying on of financial service business by that person, or
    - (iii) that are attached to the registration of that person under Article 10(2).
- (2) Where the Commission under Article 10(2) amends, varies or substitutes a condition or attaches any new condition to the registration of that person it may give that person notice in writing with reasons of the manner in which that person shall display or otherwise make available to members of the public a record of the condition as amended, varied or substituted or the new condition, as the case may be.
- (3) The Commission may at any time amend, vary, substitute or revoke any requirement in any notice it has given to a person under paragraph (1) or (2) by further notice in writing with reasons to the registered person.
- (4) Without prejudice to the generality of paragraphs (1), (2) and (3), a notice under any of those paragraphs may require the certificate, information or record of conditions, as the case may be, to be displayed at any address at which the registered person carries on financial service business or to be published on the internet, or both.
- (5) A notice given under paragraph (1), (2) or (3) shall give particulars of the rights of appeal conferred by paragraph (9).
- (6) A notice under paragraph (1) shall take effect on such date as is specified in the notice.
- (7) Subject to paragraph (8), a notice given under paragraph (2) or (3) shall not take effect before whichever is the latest of the following –
  - (a) one month after the notice is given;
  - (b) such date as is specified in the notice for it to take effect;
  - (c) if an appeal is lodged under paragraph (9), the date when the appeal is determined by the Court or withdrawn.
- (8) Paragraph (7) shall not have effect if the Commission and person entitled to the relevant notice agree that it will take effect at a time earlier than that which would apply under paragraph (7).
- (9) Within one month after a person is given notice under paragraph (1), (2) or (3) the person may appeal to the Court on the ground that any requirement contained in the notice is unreasonable having regard to all the circumstances of the case.
- (10) On an appeal under paragraph (9), the Court may make such interim or final order as it thinks fit.
- (11) A registered person who carries on financial service business in breach of requirements in a notice given under this Article which have effect in relation to that business shall be guilty of an offence and liable to a fine of level 2 on the standard scale.

**12 Commission may apply to Court for appointment of manager in prescribed circumstances<sup>55</sup>**

- (1) The Minister may, by Order, prescribe circumstances in which the Commission may apply to the Court for the appointment by the Court of a person to manage the affairs of persons in so far as those affairs relate to the carrying on of financial service business.
- (2) An Order made under paragraph (1) may contain such incidental or supplementary provisions as the Minister thinks necessary or expedient, and may contain different provisions for different classes of financial service business.
- (3) The Court may, on an application made to it by the Commission in circumstances prescribed in an Order made under paragraph (1), appoint, on such terms as it considers to be appropriate, a person to manage the affairs of a person in so far as those affairs relate to the carrying on of financial service business.

**PART 3<sup>56</sup>****SUPERVISION OF FINANCIAL SERVICE BUSINESS****DIVISION 1 – PRINCIPAL PERSONS, KEY PERSONS AND SHAREHOLDERS<sup>57</sup>****13 Objection to principal persons, key persons or share holdings<sup>58</sup>**

- (1) Where it appears to the Commission at any time that, on the information before it, and having regard to the matters set out in Article 9(3), a person who is a principal person, or key person of any class, in relation to a registered person or in respect of whom notice has been given that the person will become such a principal person, or key person of any class, is not a fit and proper person to be a principal person, or key person of that class or of any class, respectively in relation to a registered person, the Commission shall serve on that person and on the registered person concerned a written notice of objection, directing that the person shall not continue to be, or shall not become, a principal person or key person of the relevant class or of any class (as the case requires), respectively.
- (2) Following receipt of a notice under Article 14(2) or (3) that a person has increased his or her holding, or is about to do so, or that the person is about to reduce or dispose of his or her holding, the Commission may serve on that person and on the registered person concerned a written notice of objection, directing that he or she shall not continue to have such increased holding, or shall not increase, reduce, or dispose of the person's holding, as the case may be.
- (3) A notice of objection served on a person under this Article directing that the person shall not continue to be a principal person, or key person of a particular class or of any class, or shall not continue to have an increased holding shall, subject to paragraph (4), not take effect before –
  - (a) the expiration of one month after the notice is given to the person; or
  - (b) the date on which an appeal under paragraph (10) against the notice is determined by the Court or withdrawn,

whichever is the later, unless the person to whom the notice relates requests that it should take effect at an earlier date.

- (4) If, on the application of the Commission, the Court is satisfied that it is desirable –
- (a) in the best interests of persons who transacted or may transact financial service business (other than trust company business) with the registered person;
  - (b) in the best interests of persons who entered or may enter into agreements for services provided by the registered person in carrying on trust company business; or
  - (c) in the best interests of persons who received or may receive the benefit of services provided, or arranged, by the registered person in carrying on trust company business,

that paragraph (3) should not have effect, or should cease to have effect in a particular case, or that the period specified in paragraph (3)(a) should be reduced, the Court may so order.<sup>59</sup>

- (5) An order under paragraph (4) may be made without prior notice to, and without hearing, the registered person concerned.
- (6) An order under paragraph (4) shall have immediate effect, but any person aggrieved by the order may apply to the Court to vary or set aside the order.
- (7) In respect of an application under paragraph (4), the Court may make such order as it thinks fit, and in respect of an application under paragraph (6), the Court may make such order in respect of the relevant order under paragraph (4) as it thinks fit.
- (8) A notice of objection shall –
  - (a) if served under paragraph (1), specify the reasons for which it appears to the Commission that the person in question is not fit and proper;
  - (b) if served under paragraph (2), specify the reasons for the objection;
  - (c) draw the attention of the person in relation to whom, or to whose holding, objection is taken, and of the registered person, to the provisions of Article 9(3) and (4), if appropriate;
  - (d) give particulars of the rights of appeal conferred by paragraph (10).
- (9) Paragraph (8)(a) and (b) shall not require the Commission –
  - (a) to specify any reason that would in the Commission's opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party; or
  - (b) to specify the same reasons, or reasons in the same manner, in the case of notices to different persons about the same matter.
- (10) A person aggrieved by a notice of objection under this Article may appeal to the Court within one month from the date on which the notice was so served, on the ground that the decision of the Commission is unreasonable having regard to all the circumstances of the case.

**14 Notification of change of principal person, key person , shareholding or LLC interest <sup>60</sup>**

- (1) No person shall become a principal person, or key person of any class, in relation to a registered person unless –
  - (a) he or she has notified the Commission in writing of his or her intention to become a principal person, or key person of that class, in relation to the registered person; and
  - (b) the Commission has notified him or her in writing that there is no objection to his or her so becoming such a person in relation to the registered person.<sup>61</sup>
- (2) No person who is a shareholder controller shall increase, reduce or dispose of his or her holding in the company concerned so that the proportion of the share capital or voting rights held by the person in the company reaches, exceeds or falls below 20%, 33% or 50%, or so that the company becomes the subsidiary of such person or ceases to be such subsidiary, as the case may be, unless the person has notified the Commission in writing of his or her intention to increase, reduce or dispose of such holding, as the case may be, and the Commission has notified the person in writing that there is no objection to the person's so doing.
- (2A) A person who is an LLC controller must not increase, reduce or dispose of that person's holding in the limited liability company in respect of which that person is an LLC controller so that the proportion of the LLC interests or voting rights held by the person in the limited liability company reaches, exceeds or falls below 20%, 33% or 50%, or so that the limited liability company becomes the subsidiary of such person or ceases to be such subsidiary, as the case may be, unless –
  - (a) the person has notified the Commission in writing of that person's intention to increase, reduce or dispose of such holding, as the case may be; and
  - (b) the Commission has notified the person in writing that there is no objection to the person's so doing.<sup>62</sup>
- (3) Subject to paragraph (5), a registered person shall, before the end of one month beginning with the day on which the registered person becomes aware that any person has become or is about to become, or has ceased to be a principal person or key person in relation to the registered person, or has increased, reduced or disposed of his or her holding, as the case may be, or is about to do so for the purposes of paragraph (2) or (2A), give written notice to the Commission of that fact.<sup>63</sup>
- (4) For the purposes of paragraphs (1) and (3) a person shall be treated as –
  - (a) becoming a principal person, or key person, in relation to a registered person if, being respectively a principal person in one or more capacities, or a key person of any class, he or she becomes respectively a principal person in any other capacity, or a key person of any other class; and
  - (b) ceasing to be a principal person or key person in relation to a registered person if, being respectively a principal person in one or more capacities, or a key person of any class, he or she ceases to be respectively a principal person in one or more such capacities or a key person of that class.<sup>64</sup>
- (5) The obligations imposed by paragraph (3) shall not apply in any case where a registered person has complied with an equivalent obligation under another enactment under which the Commission exercises a supervisory function or where the Commission by notice in writing waives the obligations, wholly or in part.

- (6) A notice under paragraph (1), (2), (2A) or (3) that a person has become or is about to become a principal person or key person, or has increased, reduced or disposed of his or her holding or is about to do so, as the case may be, shall include such information regarding the person in question as may be required by the Commission.<sup>65</sup>
- (7) A notice under paragraph (2), (2A) or (3) that a person has ceased to be a principal person or key person or has reduced or disposed of his or her holding or is about to do so, as the case may be, shall include a statement of the reasons for the change.<sup>66</sup>
- (8) Following receipt of a notice under paragraph (1), (2), (2A) or (3), the Commission may, by giving written notice, require the person concerned or the registered person to provide such additional information or documents as the Commission may require in order to decide whether to serve a notice of objection under Article 13.<sup>67</sup>
- (8A) Notice under paragraph (8) may include a requirement that the person concerned or the registered person (as the case may be) provide verification, in accordance with the notice, of any information or documents referred to in that paragraph.<sup>68</sup>
- (9) A notice given by the Commission under paragraph (1), (2) or (2A) that there is no objection shall lapse if –
  - (a) the person concerned does not become a principal person, or key person of the relevant class, as the case requires; or
  - (b) the increase, reduction or disposal, does not take place,within one year following the giving of the notice by the Commission.<sup>69</sup>

## **15 Failure to notify change<sup>70</sup>**

- (1) A registered person who fails to give a notice required by Article 14(3) shall be guilty of an offence and liable to imprisonment for a term of 6 months and to a fine.
- (2) Any person who –
  - (a) fails to give a notice required by Article 14(1) or (2) or becomes a principal person, or key person of any class, or increases, reduces or disposes of his or her holding before having been served with a notice by the Commission under Article 14(1) or (2), as the case requires; or
  - (b) becomes or continues to be a principal person, or key person of any class, or continues to have an increased holding, or increases, reduces or disposes of, his or her holding, as the case may be, following service on the person of a notice of objection under Article 13 in that connection,shall be guilty of an offence.
- (3) A person shall not be guilty of an offence under paragraph (2) if he or she shows that he or she did not know of the acts or circumstances by which, as the case may be, he or she became a principal person, he or she became a key person of any class, or his or her holding was increased, reduced or disposed of.
- (4) Despite paragraph (3), if the person subsequently becomes aware of the relevant acts or circumstances, he or she shall be guilty of an offence unless he or she gives the Commission written notice of the fact that he or she, as the case may be, has become such a principal person, has become such a key person of any class or has

increased, reduced or disposed of his or her holding, within 14 days of becoming aware of that fact.

- (5) A person guilty of an offence under paragraph (2) or (4) shall be liable to imprisonment for a term of 2 years and to a fine.

## **16 Powers of Commission and Court in respect of shares or LLC interests<sup>71</sup>**

- (1) The powers conferred by this Article are exercisable where a person has contravened Article 15(2) and –
- (a) the registered person is a company and the person concerned is a shareholder controller of that company; or
  - (b) the registered person concerned is a limited liability company and the person concerned is an LLC controller of that limited liability company.<sup>72</sup>
- (2) The Commission may, by notice in writing served on the person concerned, direct that any specified shares or LLC interests to which this Article applies shall, until further notice, be subject to one or more of the following restrictions –
- (a) any transfer of, or agreement to transfer, those shares or LLC interests or, in the case of unissued shares or LLC interests, any transfer of or agreement to transfer the right to be issued with them, shall be void;
  - (b) no voting rights shall be exercisable in respect of the shares or LLC interests;
  - (c) no further shares or LLC interests shall be issued in right of them or in pursuance of any offer made to their holder;
  - (d) except in liquidation, no payment shall be made of any sum due from the registered person on the shares or LLC interests, whether in respect of capital or otherwise.<sup>73</sup>
- (2A) The power to give directions under this Article shall include the power by direction to vary a direction given under this Article.<sup>74</sup>
- (3) Subject to paragraph (4), the Court may, on the application of the Commission, order the sale of any specified shares or LLC interests to which this Article applies and, if they are for the time being subject to any restrictions under paragraph (2), that they shall cease to be subject to those restrictions.<sup>75</sup>
- (4) No order shall be made under paragraph (3) in a case where a notice of objection was served under Article 13 –
- (a) until the end of the period within which an appeal can be brought against the notice of objection; and
  - (b) if such an appeal is brought, until it has been determined or withdrawn.
- (5) Where an order has been made under paragraph (3) the Court may, on the application of the Commission, make such further order relating to the sale or transfer of the shares or LLC interests as it thinks fit.<sup>76</sup>
- (6) Where shares or LLC interests are sold in pursuance of an order under this Article the proceeds of sale, less the costs of the sale, shall be paid to the Viscount for the benefit of the persons beneficially interested in them; and any such person may apply to the Court for an order that the whole or part of the proceeds be paid to the person by the Viscount.<sup>77</sup>

- (7) This Article applies –
- (a) to all shares or LLC interests in the registered person referred to in paragraph (1) held by the person concerned, or by any associate of the person, which were not so held immediately before the person became a principal person, or increased his or her holding, or which were so held immediately before he or she reduced or disposed of his or her holding, as the case may be; and
  - (b) where the person concerned became a principal person, or increased his or her holding, or reduced, or disposed of his or her holding, as a result of the acquisition or disposal by the person or any associate of the person of shares or LLC interests in another company or limited liability company, to all the shares or LLC interests in that company or limited liability company which are held by the person or any associate of the person and were not so held before he or she became a principal person or increased his or her holding, or which were so held immediately before he or she reduced or disposed of his or her holding.<sup>78</sup>
- (8) A copy of the notice served on the person concerned under paragraph (2) shall be served on the registered person referred to in paragraph (1) and on any company referred to in paragraph (7)(b) and, if it relates to shares or LLC interests held by an associate of the principal person concerned, on that associate.<sup>79</sup>
- (9) Any person who fails to comply with a notice served on the person under paragraph (2) or an order made under paragraph (3) shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 2 years or a fine, or both.

## DIVISION 2 – ACCOUNTS AND AUDITORS<sup>80</sup>

### **17 Power to make Orders relating to accounts and auditors**

- (1) The Minister may, on the recommendation of the Commission, by Order provide for matters relating to the accounting and audit of registered persons.
- (2) Without prejudice to the generality of paragraph (1), an Order under paragraph (1) may provide for –
  - (a) the keeping of accounting records by registered persons;
  - (b) the duty of registered persons to prepare annual financial statements giving a true and fair view of the registered person's affairs;
  - (c) the qualification of auditors and their appointment by registered persons;
  - (d) the form and content of auditors' reports to be obtained by registered persons;
  - (e) the submission of annual financial statements and auditors' reports to the Commission and the time limits in which they should be submitted;
  - (f) the powers and duties of auditors including their right of access to the accounting and other records of registered persons;
  - (g) the form and content of financial statements.

- (3) An Order made under paragraph (1) may make a contravention of any of its provisions an offence for which a person is liable to imprisonment for a term not exceeding 2 years or a fine, or both.

## **18 Communication with Commission by auditors and approved professionals<sup>81</sup>**

- (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
  - (c) a company or limited liability company that is a holding company or subsidiary in relation to that registered person or former registered person.<sup>82</sup>
- (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 or limited liability 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.<sup>83</sup>
- (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.

### DIVISION 3 – POWERS, CONTROLS, FALSE INFORMATION, ETC.<sup>84</sup>

## 19 Codes of Practice

- (1) The Commission may, after consultation with such persons or bodies as appear to be representative of the interests concerned –
  - (a) prepare and issue a Code of Practice setting out the principles and detailed requirements that must be complied with in the conduct of financial service business;
  - (b) revise any such Code of Practice by revoking, varying, amending or adding to its provisions; and
  - (c) indicate in any such Code of Practice if and to what extent it is or is not to apply to any class of financial service business or particular financial service business.<sup>85</sup>
- (2) The Commission shall cause any Code of Practice issued under this Article to be printed and distributed, and may make such arrangements as it thinks fit for such distribution, including causing copies of the Code of Practice to be put on sale to the public at such price as the Commission considers to be reasonable.
- (3) The contravention of a Code of Practice –
  - (a) may lead the Commission to exercise its powers under this Law or any other enactment applicable to such contravention; but
  - (b) otherwise does not of itself render a person liable to proceedings of any kind or invalidate any transaction.<sup>86</sup>
- (4) Subject to Article 10(6), in any proceedings under this Law or otherwise, any Code of Practice issued under this Article shall be admissible in evidence if it appears to the court conducting the proceedings to be relevant to any question arising in the proceedings, and shall be taken into account in determining any such question.
- (5) A copy, certified in writing on behalf of the Commission to be an accurate copy –
  - (a) of a Code; or
  - (b) of any part of such a Code,shall be admissible in evidence in all legal proceedings as of equal validity with the original and as evidence of any fact stated in it of which direct oral evidence would be admissible.
- (6) Where a document purports on its face to be a copy of a Code or part of a Code, certified in accordance with paragraph (5), it shall be unnecessary for the purposes of paragraph (5) to prove the official position or handwriting of the person signing on behalf of the Commission.

**20 Client assets**

- (1) Where a registered person has control of or is otherwise responsible for client assets which he or she is required to safeguard, he or she shall arrange proper protection for them by way of segregation and identification of the assets or otherwise in accordance with the responsibilities he or she has accepted.
- (2) Without prejudice to the generality of paragraph (1), the Minister may, on the recommendation of the Commission, prescribe the manner in which any classes of client assets are to be protected.
- (3) Orders made under paragraph (2) may provide that certain client assets are held by a registered person on trust.
- (4) A person who fails to comply with an Order made under paragraph (2) is guilty of an offence and liable to imprisonment for a term not exceeding 6 months or a fine, or both.

**21 Trust company business assets<sup>87</sup>**

- (1) Where a registered person has control of or is otherwise responsible for trust company business assets which he or she is required to safeguard, he or she shall arrange proper protection for them by way of segregation and identification of the assets or otherwise in accordance with the responsibilities he or she has accepted.
- (2) Without prejudice to the generality of paragraph (1), the Minister may, on the recommendation of the Commission, prescribe the manner in which any classes of trust company business assets are to be protected.
- (3) A person who fails to comply with an Order made under paragraph (2) is guilty of an offence and liable to imprisonment for a term not exceeding 6 months or a fine, or both.

**22 Contracts made by or through unregistered persons**

- (1) This Article applies to any contract entered into by a person (referred to in this Article as the “provider”) in the course of carrying on financial service business (other than trust company business) which is in contravention of Article 7(1).<sup>88</sup>
- (2) Subject to paragraph (4), a contract to which this Article applies shall be unenforceable by the provider against other parties to it; and such other parties shall be entitled to recover any money or other property paid or transferred by them under the contract, together with compensation for any loss sustained by them as a result of having parted with it.
- (3) The compensation recoverable under paragraph (2) shall be such as the parties may agree or as the Court may, on the application of either party, determine.
- (4) The Court may make an order allowing a contract to which this Article applies to be enforced or money or property paid or transferred under it to be retained if it is satisfied that it is just and equitable to do so, having particular regard to whether the provider was, reasonably, unaware of the contravention.
- (5) Subject to any order made by the Court under paragraph (4), where a party elects not to perform a contract which is unenforceable against the party by virtue of paragraph (2), and by virtue of that paragraph recovers the money paid or other property transferred by the party under the contract together with any

compensation due under paragraph (2), the party shall repay any money and return any other property previously received by the party under the contract.

- (6) Where any property transferred under a contract to which this Article applies has passed to a third party the references to that property in paragraphs (2), (4) and (5) shall be construed as references to its value at the time of its transfer under the contract.
- (7) A contravention of a type referred to in paragraph (1) shall not make a contract illegal or invalid otherwise than as is provided in this Article.

## **23 Power to issue directions<sup>89</sup>**

- (1) If it appears to the Commission in relation to financial service business that –
  - (a) any requirements in relation to the registration of a registered person are no longer satisfied;
  - (b) it is in the best interests of –
    - (i) creditors of a registered person,
    - (ii) persons who transacted or may transact financial service business (other than trust company business) with a registered person,
    - (iii) persons who entered or may enter into agreements for services provided by the registered person in carrying on trust company business,
    - (iv) persons who received or may receive the benefit of services provided, or arranged, by the registered person in carrying on trust company business, or
    - (v) one or more registered persons;
  - (c) it is desirable in order to protect the reputation and integrity of Jersey in financial and commercial matters; or
  - (d) it is in the best economic interests of Jersey,the Commission may, whenever it considers it necessary, give, by notice in writing, such directions as it may consider appropriate in the circumstances.<sup>90</sup>
- (2) Without prejudice to the generality of paragraph (1), a direction under this Article may –
  - (a) require anything to be done or not done, or impose any prohibition, restriction or limitation, or any other requirement, and confer powers, with respect to any transaction or other act, or to any assets, or to any other thing whatsoever;
  - (b) require that any principal person, key person, or person having functions, in relation to a registered person be removed or removed and replaced by another person acceptable to the Commission;
  - (c) require that any individual –
    - (i) not perform a specified function (or any function at all) for,
    - (ii) not engage in specified employment (or any employment at all) by, or
    - (iii) not hold a specified position (or any position at all) in the business of,

- a specified registered person (or any registered person at all);
- (d) require a registered person or formerly registered person to cease operations and to wind up its affairs, in accordance with such procedures and directions as may be specified in the direction, which may provide for the appointment of a person to take possession and control of all documents, records, assets and property belonging to or in the possession or control of the registered person or formerly registered person;
  - (e) prohibit the issue, re-issue or continuance of a particular financial service advertisement;
  - (f) require that any particular financial service advertisement be modified in a specified manner;
  - (g) prohibit the issue, re-issue or continuance of financial service advertisements of any description; or
  - (h) require that financial service advertisements of any description be modified in a specified manner.
- (3) A direction under this Article may be of unlimited duration or of a duration specified in the notice of the direction.
  - (4) The power to give directions under this Article shall include the power by direction to vary or withdraw any direction, as well as the power to issue further directions.
  - (5) A notice of a direction under this Article shall –
    - (a) specify the reasons for the giving of the direction;
    - (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);
    - (c) give particulars of the provisions of paragraphs (6) and (7); and
    - (d) give particulars of the rights of appeal conferred by paragraph (8).<sup>91</sup>
  - (6) Any person to whom a direction is given under paragraph (1) may apply to the Commission to have it withdrawn or varied and the Commission shall withdraw or vary the direction in whole or in part if it considers that there are no longer any grounds under paragraph (1)(a) to (d) which justify the direction or part of the direction concerned.
  - (7) If the Commission refuses an application under paragraph (6), or grants such an application only in part, it shall give notice in writing of that fact to the applicant.
  - (8) Any person aggrieved by a direction given to the person under paragraph (1), or a refusal to grant an application under paragraph (6), or the granting of such an application only in part, may appeal to the Court.
  - (9) Such an appeal may be made only on the ground that the decision to give the direction, to make the refusal or to grant the application only in part (as the case requires) was unreasonable having regard to all the circumstances of the case.
  - (10) A person's appeal under paragraph (8) shall be lodged with the Court no later than the day that is one month after the day on which notice was served on the person of the direction, refusal or grant (as the case requires).
  - (11) On the appeal, the Court may make such interim or final order as it thinks fit.

- (12) If a direction makes a requirement referred to in paragraph (2)(c) or (d), the requirement shall not take effect until the latest of the following times –
- (a) when one month has passed since the notice of the direction was given;
  - (b) such date as is specified in the notice of the direction;
  - (c) if an appeal is lodged under paragraph (8) against the giving of the direction, when the appeal is determined by the Court or withdrawn.<sup>92</sup>
- (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).<sup>93</sup>
- (13A) If, on the application of the Commission, the Court is satisfied that it is in the best interests of –
- (a) persons who transacted or may transact financial service business (other than trust company business) with the relevant person;
  - (b) persons who entered or may enter into agreements for services provided by the relevant person in carrying on trust company business;
  - (c) persons who received or may receive the benefit of services provided, or arranged, by the relevant person in carrying on trust company business; or
  - (d) the public,
- that paragraph (12) should not have effect, or should cease to have effect in a particular case, or that the period specified in paragraph (12) should be reduced, the Court may so order.<sup>94</sup>
- (13AB) In paragraph (13A), “relevant person” means –
- (a) in the case of a direction under paragraph (2)(c) in respect of functions for, employment by, or the business of, a specified registered person, that registered person;
  - (b) in the case of a direction under paragraph (2)(c) in respect of functions for, employment by, or the business of, any registered person at all, any registered person at all;
  - (c) in the case of a direction under paragraph (2)(d) in respect of a registered person, the registered person; or
  - (d) in the case of a direction under paragraph (2)(d) in respect of a formerly registered person, the formerly registered person.<sup>95</sup>
- (13B) Except where paragraph (12)(c) has effect, an appeal made under paragraph (8) shall not suspend the operation of the direction.<sup>96</sup>
- (14) An appeal made under paragraph (8) in relation to an application under paragraph (6) shall not suspend the operation of the direction in connection with which the application was made.
- (15) A person who fails to comply with any of the provisions of a direction given under this Article shall be guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.

- (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.<sup>97</sup>
- (16) The record of the conviction of any person for an offence under paragraph (15) or (15A) shall be admissible in any civil proceedings as evidence of the facts constituting the offence.<sup>98</sup>

## 24 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 7(1);
  - (b) any condition prescribed or attached under Article 10;
  - (c) any provision of Article 28, 31, 39G or 39L;
  - (d) any direction given under Article 23; or
  - (e) any Regulation 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.<sup>99</sup>
- (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)(a) to (e), 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.

## 25 Public statements<sup>100</sup>

The Commission may issue –

- (a) a public statement with respect to, or setting out, any direction that the Commission has given under Article 16 or 23;
- (b) a public statement concerning a person if that person appears to the Commission to have contravened a Code of Practice;
- (ba) a public statement with respect to the serving of a final notice on a registered person, or a person who is or was a principal person of a registered person, under Article 21C(3) of the [Financial Services Commission \(Jersey\) Law 1998](#) imposing a penalty following the contravention of a Code of Practice by that registered person;
- (c) a public statement concerning a person if that person appears to the Commission to have committed a contravention of any of the provisions referred to in Article 24(1)(a) to (e); or
- (d) a public statement concerning a person if it appears to the Commission that the person carried on or is carrying on financial service business (whether or not the person is or was a registered person at the time of carrying on that

business and whether the business is or was carried on in Jersey or in a country or territory outside Jersey), and it appears to the Commission to be desirable to issue the statement in the best interests of –

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

## **25A Notice of public statement<sup>101</sup>**

- (1) If a public statement identifies any person who is registered, the Commission shall serve notice on the person.
- (2) If a public statement identifies any person who is not registered, and at any time before the Commission issues the public statement it is reasonably practicable for the Commission to serve notice on the person, the Commission shall do so.
- (3) A notice under paragraph (1) or (2) shall –
  - (a) give the reasons for issuing the statement;
  - (b) give the proposed or actual date of issue of the statement;
  - (c) contain a copy of the statement;
  - (d) give particulars of the right of appeal under Article 25C in respect of the statement; and
  - (e) if the statement is issued, in accordance with a decision under Article 25B(3), before the day specified in Article 25B(1) in relation to the statement, give the reasons for issuing it before that day.
- (4) Paragraph (3) shall not require the Commission –
  - (a) to specify any reason that would in the Commission's opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party; or
  - (b) to specify the same reasons, or reasons in the same manner, in the case of notices to different persons about the same matter.
- (5) In this Article and Articles 25B and 25C, a reference to the identification of a person in a public statement does not include the identification, in the statement, of the Commission or of any other person in their capacity of exercising functions under this Law.

## **25B Notice period<sup>102</sup>**

- (1) If service is required under Article 25A(1) or (2) in relation to a public statement, the Commission shall not issue the public statement earlier than the expiration of one month from the date of the last such service in relation to the public statement.
- (2) Paragraph (1) shall not apply if –

- (a) each of the persons identified (within the meaning of Article 25A) in the relevant public statement agrees with the Commission that the statement may be issued on a date earlier than the date that would apply under that paragraph; and
  - (b) the statement is in fact issued on or after the earlier date.
- (3) Paragraph (1) shall not apply if –
  - (a) the Commission decides on reasonable grounds that the interests of –
    - (i) persons who transacted or may transact financial service business (other than trust company business) with any person identified (within the meaning of Article 25A) in the relevant public statement,
    - (ii) persons who entered or may enter into agreements for services provided by any person (being a person so identified) in carrying on trust company business,
    - (iii) persons who received or may receive the benefit of services provided, or arranged, by any person (being a person so identified) in carrying on trust company business, or
    - (iv) the public,

in the issue of the relevant public statement on a date earlier than the date that would apply under that paragraph outweigh the detriment to the persons identified in the statement, being the detriment attributable to that earliness; and
  - (b) the statement is in fact issued on or after the earlier date.<sup>103</sup>
- (4) In making a decision under paragraph (3), the Commission is not prevented from choosing as the date of issue of a public statement the date of service (if any) of notice of the statement.
- (5) Despite this Article, if an appeal is made to the Court under Article 25C(1), and the Court orders that the statement not be issued before any specified date or event, the Commission shall not issue the statement before the date or event so specified.
- (6) In a case to which paragraph (1) applies, if an appeal is made under Article 25C(2) to the Court against a decision to issue a public statement, the Commission shall not issue the statement before the day on which that appeal is determined by the Court or withdrawn.

## **25C Appeals about public statements<sup>104</sup>**

- (1) A person aggrieved by a decision of the Commission under Article 25B(3) may appeal to the Court, in accordance with this Article, against the decision.
- (2) A person aggrieved by a decision of the Commission to issue a public statement that identifies the person may appeal to the Court, in accordance with this Article, against the decision.
- (3) An appeal under paragraph (2) may be made only on the ground that the decision of the Commission was unreasonable having regard to all the circumstances of the case.
- (4) A person's appeal under this Article shall be lodged with the Court no later than –

- (a) if notice is served on the person under Article 25A in relation to the public statement, the day that is one month after the date of the last such service on the person in relation to the public statement; or
  - (b) if no such notice is served on the person, the day that is one month after the issue of the public statement.
- (5) Nothing in paragraph (4) prevents the lodging of an appeal before a notice is served or a public statement is issued.
- (6) On an appeal under this Article, the Court may make such interim or final order as it thinks fit, including an order that the Commission not issue the relevant public statement or, if the public statement has been issued, that the Commission issue a further public statement to the effect set out in the order or stop making the statement available to the public.

## 26 Powers of intervention

- (1) Where, on the application of the Commission, the Court is satisfied that –
- (a) a registered person –
    - (i) is not in terms of Article 9(3)(a) a fit and proper person to carry on financial service business that the registered person is purporting to carry on,
    - (ii) is not fit to carry on financial service business to the extent to which the registered person is purporting to do, or
    - (iii) has committed or is likely to commit a contravention of a type referred to in Article 24(1); and
  - (b) it is desirable for the Court to act under this paragraph for the protection of –
    - (i) persons who transacted or may transact financial service business (other than trust company business) with the registered person,
    - (ii) persons who entered or may enter into agreements for services provided by the registered person in carrying on trust company business, or
    - (iii) persons who received or may receive the benefit of services provided, or arranged, by the registered person in carrying on trust company business,
- the Court may, as it thinks just, make an order making the registered person's business subject to such supervision, restraint or conditions from such time and for such periods as the Court may specify, and may also make such ancillary orders as the Court thinks desirable.<sup>105</sup>
- (2) If, on an application made under paragraph (1), the Court is satisfied that a registered person has –
- (a) by entering into any transaction with another person, contravened Article 7;
  - (b) by entering into any transaction with another person, contravened any condition applicable to the registered person (whether attached to the registered person's registration or prescribed by Order) or any direction given to the registered person under Article 23;

- (c) contravened Article 39G or 39L with the result that another person has been induced to enter into a transaction with the registered person or with a third person; or
- (d) entered into any transaction with another person who was induced to enter into the transaction as a result of the contravention of Article 39G or 39L by a third person,

the Court may order any one or more of those persons (and any other person who appears to the Court to have been knowingly concerned in the contravention) to take such steps as the Court may direct for restoring one or more of the persons to the position in which they were before the transaction was entered into.<sup>106</sup>

- (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 –
  - (a) where the registered person carries on financial service business –
    - (i) belong to the registered person concerned, or
    - (ii) belong to persons with whom the registered person is transacting financial service business and that are held by or to the registered person's order; or
  - (b) where the registered person carries on trust company business –
    - (i) belong to the registered person concerned,
    - (ii) are held on behalf of persons who have entered into an agreement for the provision of services to be provided by the registered person when carrying on trust company business, or
    - (iii) are held on behalf of persons who have received or may receive the benefit of services provided or arranged by the registered person when carrying on trust company business,

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”).<sup>107</sup>

- (4) Where a requirement of a type referred to in paragraph (3) is imposed under this Article, it shall be the duty of the registered person 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 the 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 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.

## **27 Compensation schemes**

- (1) The States may by Regulations establish in relation to any financial service business (other than trust company business), or to classes of such business (other than trust company business), schemes for compensation in cases where registered persons or formerly registered persons are unable, or are likely to be unable, to satisfy claims in respect of any description of civil liability incurred by them in connection with such business, and the provisions of such schemes may be different for different classes of person or for different classes of such business.<sup>108</sup>
- (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.<sup>109</sup>

## **28 False information and failure to supply information**

- (1) Any person who knowingly or recklessly provides the Commission or any other person entitled to information under this Law with information which is false or misleading in a material particular shall be guilty of an offence if the information is provided –
  - (a) in purported compliance with a requirement imposed under this Law or any Regulation or Order made thereunder;
  - (b) otherwise than as mentioned in sub-paragraph (a) but in circumstances in which the person providing the information intends, or could reasonably be expected to know, that the information would be used by the Commission for the purpose of exercising its functions under this Law.
- (2) Any person who knowingly or recklessly provides the Commission or any other person with information which is false or misleading in a material particular shall be guilty of an offence if the information is provided in connection with an application for registration under this Law.
- (3) A registered person or formerly registered person shall be guilty of an offence if he or she fails to provide the Commission with any information in his or her

possession, knowing or having reasonable cause to believe that or being reckless as to whether –

- (a) the information is relevant to the exercise by the Commission of its functions under this Law in relation to the registered person or formerly registered person; and
  - (b) the withholding of the information is likely to result in the Commission being misled as to any matter which is relevant to and of material significance for the exercise of those functions in relation to the registered person or formerly registered person.
- (4) Any person who knowingly or recklessly provides any person appointed under Article 33 with information which is false or misleading in a material particular shall be guilty of an offence.
- (5) A person guilty of an offence under paragraph (1), (2) or (4) shall be liable to imprisonment for a term not exceeding 5 years or a fine, or both.
- (6) A person guilty of an offence under paragraph (3) shall be liable to imprisonment for a term not exceeding 2 years or a fine, or both.

## **29 Regulations regarding rescission of agreements and withdrawal of offers<sup>110</sup>**

The States may by Regulations make provision for enabling a person who has entered, or offered to enter, into an agreement relating to financial service business (other than trust company business) with a registered person to rescind the agreement or withdraw the offer within such period and in such manner as may be provided for in the Regulations, and, in particular, but without prejudice to the generality of the foregoing, may make provision –

- (a) for requiring the service of notice with respect to the rights exercisable under the Regulations;
- (b) for the restitution of property and the making or recovery of payments where those rights are exercised;
- (c) for such other matters as are incidental to or connected with any of the above.<sup>111</sup>

## **30 <sup>112</sup>**

## **31 Control of advertising**

- (1) The Minister may, on the recommendation of the Commission, make Orders relating to the issue, form and content of financial service advertisements.<sup>113</sup>
- (2) Orders made under this Article may make different provision for different cases and, without prejudice to the generality of paragraph (1), may in particular –
- (a) prohibit the issue of financial service advertisements of any description (whether by reference to the matters set out in paragraph (b), to the persons by whom they are issued or otherwise);
  - (b) make provision regarding the presentation, content, accuracy, effect and implications of financial service advertisements, and ancillary matters, and

may include provision regarding matters which must be, as well as matters which may not be, included in financial service advertisements;

- (c) provide for exemptions from any prohibition or requirement imposed by the Orders, including exemptions by reference to a person's membership of a class whose membership is determined otherwise than by the Minister or the Commission.<sup>114</sup>
- (3) Any registered person who issues or causes to be issued in Jersey or elsewhere and, subject to paragraph (4), any other person who issues or causes to be issued in Jersey, a financial service advertisement –
- (a) the issue of which is prohibited by an Order made under this Article;
  - (b) which does not comply fully with, or contravenes in any material respect, any requirement imposed by such an Order; or
  - (c) in circumstances which do not comply in any respect with any requirement imposed by such an Order,
- shall be guilty of an offence and liable to imprisonment for a term not exceeding 2 years or a fine, or both.<sup>115</sup>
- (4) A person whose business it is to publish or arrange for publication of advertisements shall not be guilty of an offence under this Article if the person proves that he or she received the financial service advertisement in question for publication in the ordinary course of his or her business, that the matters contained in the financial service advertisement were not, wholly or in part, devised or selected by him or her or by any person under his or her direction or control and that the person did not know and had no reason for believing that publication of the financial service advertisement would constitute an offence.<sup>116</sup>
- (5) For the purposes of this Article –
- (a) a financial service advertisement issued or caused to be issued by any person by way of display or exhibition in a public place shall be treated as issued or caused to be issued by him or her on every day on which he or she causes or permits it to be displayed or exhibited;
  - (b) where a financial service advertisement invites the transaction of financial service business with, or the provision of services provided or arranged by a person carrying on trust company business by a person specified in the advertisement, its issue shall be presumed, unless the contrary is proved, to have been caused by that person.<sup>117</sup>
- (6) For the purposes of this Article a financial service advertisement issued outside Jersey shall be treated as issued in Jersey if it is directed to persons in Jersey or is made available to them otherwise than in a newspaper, journal, magazine or other publication published and circulating principally outside Jersey or in a sound or television broadcast transmitted principally for reception outside Jersey.<sup>118</sup>

#### DIVISION 4 – INFORMATION AND INVESTIGATIONS<sup>119</sup>

### 32 General power to require information and documents<sup>120</sup>

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

- (a) to provide the Commission, an officer or an agent, at such times and places as are specified in the notice, with such information or documents as are specified in the notice and as the Commission, an officer or an agent reasonably requires the person to provide for the purposes of the performance of the Commission's functions under this Law;
  - (b) to attend at such times and places as may be specified in the notice and answer such questions as the Commission, an officer or an agent reasonably requires the person to answer for the purposes of the performance of the Commission's functions under this Law.
- (2) If the Commission has reasonable grounds to suspect that a person has contravened Article 7, 39G or 39L, the Commission, an officer or an agent may, by notice in writing served on that person, require the person to do either or both of the following –
  - (a) to provide the Commission, an officer or an agent, at such times and places as are specified in the notice, with such information or documents as are specified in the notice and as the Commission, an officer or an agent reasonably requires for the purposes of investigating the suspected contravention;
  - (b) to attend at such times and places as are specified in the notice and answer such questions as the Commission, an officer or an agent reasonably requires the person to answer for the purpose of investigating the suspected contravention.
- (3) In a case where the Commission, an officer or an agent may, by notice in writing served on a person under paragraph (1) or (2), require the person to provide information or documents, the Commission, an officer or an agent may in addition or instead require any other person (by notice in writing served on the latter person) who appears to be in possession of some or all of the information or documents to do something that the Commission, an officer or an agent could have required the first-mentioned person to do under sub-paragraph (a) or (b) of that paragraph.
- (4) An officer or an agent may, on producing if required evidence of his or her authority, enter, at a reasonable time, any premises occupied by a person on whom a notice has been served under paragraph (1), (2) or (3), or any other premises where information or documents are kept by such person, for the purpose of obtaining there the information or documents required by that notice, putting the questions referred to in paragraph (1)(b) or (2)(b) or of exercising the power conferred by paragraph (8), as the case may be.
- (5) If the Commission, an officer or an agent serves notice on a person under paragraph (1) or (2), the Commission, officer or agent may, by the same or another notice served on the person, require the person to provide verification, in accordance with the latter notice, of any information, or documents, required from the person under paragraph (1) or (2) (as the case may be).
- (6) The Commission, an officer or an agent may by notice in writing served on a person specified in paragraph (15) require the person to provide a report, by an accountant, or other person with relevant professional skill, nominated or approved by the Commission and appointed by the person served with the notice under this paragraph, being a report –
  - (a) on, or on any aspect of, any information, documents, or questions, that the Commission, an officer or an agent could require the person, by notice under

paragraph (1) or (2), to provide or answer (whether or not notice has in fact been served on the person under paragraph (1) or (2)); and

- (b) in such form (if any) as the notice under this paragraph may specify.
- (7) If, under this Article, a person provides documents in the person's possession but claims a lien on the documents so provided, the provision of the documents shall be without prejudice to the lien.
- (8) The power under this Article to require documents to be provided includes power –
- (a) if the documents are provided, to retain them, to take copies of them or to take extracts from them, and to require the person providing the documents, or any person who appears to possess information relating to the documents, to provide an explanation of them; or
  - (b) if the documents are not provided, to require the person to whom the requirement was directed to state, to the best of the person's knowledge and belief, where they are.
- (9) If documents provided under this Article are retained under paragraph (8)(a) the documents may be so retained –
- (a) for a period of one year; or
  - (b) if within that period proceedings to which the documents are relevant are commenced against any person, until the conclusion of those proceedings, whichever is the later.<sup>121</sup>
- (10) If the person providing a document that is retained under paragraph (8)(a) requires the document for the purpose of the person's business and requests the document (or a copy of it) from the Commission, the Commission shall supply the person with a copy of the document as soon as practicable.
- (11) If a person fails without reasonable excuse to comply with a requirement imposed on the person under this Article or obstructs an officer, or an agent, exercising powers under paragraph (4), the person shall be guilty of an offence and liable to imprisonment for a term of 6 months and a fine.
- (12) Nothing in this Article shall require the disclosure or provision by a person to the Commission, an officer or an agent of information, or documents, that the person would, in proceedings in the Court, be entitled to refuse to disclose or to provide on the grounds of legal professional privilege, except, if the person is a lawyer, the name and address of his or her client.
- (13) A statement made by a person in compliance with a requirement imposed under this Article shall not be used by the prosecution in evidence against the person in any criminal proceedings except proceedings under paragraph (11) or Article 28.
- (14) In this Article –
- “agent” means an agent of the Commission, being an agent who has been authorized by the Commission to perform the functions set out or referred to in that provision;
  - “defined person” means any of the following persons –
- (a) a registered person;
  - (b) a person who was a registered person at any time;

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

“officer” means an officer of the Commission, being an officer who has been authorized by the Commission to perform the functions set out or referred to in that provision.<sup>122</sup>

- (15) For the purposes of paragraph (6), the following persons are specified –
  - (a) a person within sub-paragraph (a) or (b) of the definition of “defined person” in paragraph (14) or a person within sub-paragraph (c) or (d) of that definition (other than as a key person);
  - (b) a person who the Commission has reasonable grounds to suspect has contravened Article 7.
- (16) For the avoidance of doubt, in sub-paragraph (d), (g) or (i) of the definition of “defined person” in paragraph (14), the reference to a person who was a registered person includes such a person who is no longer in existence at the time when the relevant function is exercised under this Article.
- (17) For the avoidance of doubt –
  - (a) a time that is specified for the purposes of any provision of this Article may be, but is not required to be, expressed in terms of times, dates, intervals, periods or time limits; and
  - (b) a document, or information, that is specified for the purposes of any provision of this Article may be, but is not required to be, specified in terms of one or more classes or descriptions.

### **33 Investigations on behalf of the Commission**

- (1) If it appears to the Commission desirable to do so –
  - (a) in the interests of persons with whom a registered person has transacted or may transact, financial service business; or

- (b) if the registered person is carrying on trust company business, in the interests of persons who have entered into or may enter into, agreements for the provision of services to be provided by the registered person when carrying on trust company business, or in the interests of persons who have received or may receive the benefit of services provided or arranged by the registered person when carrying on trust company business,

the Commission may appoint one or more competent persons to investigate and report to the Commission on –

- (i) the nature, conduct or state of such registered person's financial service business or any particular aspect of it;
  - (ii) the registered person's integrity, competence, financial standing or organisation;
  - (iii) the integrity, competence and financial standing, so far as relevant in the opinion of the Commission, of persons who are principal persons in relation to the registered person, and of associates of such principal persons; or
  - (iv) the compliance by those persons with this Law and any Regulation, Order or Code of Practice made, or a condition of any grant of registration, or a direction given under this Law.<sup>123</sup>
- (2) The Commission shall give written notice of any such appointment to the registered person concerned.
- (3) It shall be the duty of every person who is or was at any material time a registered person under investigation under paragraph (1), a principal person in relation to, or officer, employee, banker, auditor or, subject to paragraph (8), legal adviser of such a registered person, and of any person appointed to make a report in respect of the registered person as referred to in Article 32(6) and of any other person who appears to be in possession of relevant information –
- (a) to provide to the persons appointed under paragraph (1), within such time and at such place as they may require, all documents relating to the registered person or formerly registered person which are in his or her custody or power;
  - (b) to attend before them at such time and place as they may require and to answer questions which they reasonably require the person to answer for the purposes of the investigation; and
  - (c) otherwise to give them all assistance in connection with the investigation which the person is reasonably able to give,
- and the persons appointed under paragraph (1) may retain or take copies of or extracts from any documents provided to them under sub-paragraph (a).<sup>124</sup>
- (4) This Article shall apply in respect of a formerly registered person as it applies to a registered person and to any person who appears to the Commission to be acting or to have acted in contravention of Article 7(1), 39G or 39L and references in this Article to a "registered person" shall be construed accordingly.<sup>125</sup>
- (5) For the purpose of exercising the person's power under this Article a person appointed under paragraph (1) may enter any premises occupied by a registered person or formerly registered person or a person who is or was a principal person in relation to him or her or any associate of such a principal person being investigated by the person under this Article or any other premises where

information is kept by such a person; but he or she shall not do so without prior notice in writing unless he or she has reasonable cause to believe that if such notice were given any documents whose provision might be required under this Article would be removed, tampered with or destroyed.

- (6) A person exercising powers by virtue of an appointment under this Article shall, if so required, produce evidence of his or her authority.
- (7) Any person who –
  - (a) without reasonable excuse fails to provide any document which it is his or her duty to provide under paragraph (3);
  - (b) without reasonable excuse fails to assist or attend before a person appointed under paragraph (1) when required to do so;
  - (c) without reasonable excuse fails to answer any question which is put to him or her by a person so appointed with respect to a person under investigation; or
  - (d) obstructs a person in the exercise of the powers conferred by paragraph (5),shall be guilty of an offence and liable to imprisonment for a term not exceeding 6 months or a fine, or both.
- (8) Nothing in this Article shall require the disclosure or production by a person of information or documents which the person would in any action in the Court be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in the Court except, if he or she is a lawyer, the name and address of his or her client.
- (9) Where any person by whom documents are required to be provided under paragraph (3) claims a lien on any such document, the provision shall be without prejudice to the lien.
- (10) A person who is convicted on a prosecution instituted following an investigation under this Article may in the same proceedings be ordered to pay the expenses of the investigation to such extent as may be specified by the Court.
- (11) For the purposes of paragraph (10) the expenses of the investigation shall include such sums as the Commission may determine in respect of the cost of staff and overheads.
- (12) A statement made by a person in compliance with a requirement imposed by virtue of this Article may not be used by the prosecution in evidence against the person in any criminal proceedings except proceedings under paragraph (7) or Article 28.

### **34 Entry and search of premises**

- (1) If the Bailiff is satisfied by information on oath that there is reasonable cause to suspect that –
  - (a) there has been a contravention of a type referred to in Article 32(2) and that either –
    - (i) a specified person has failed in any respect to comply with a notice served on him or her under that paragraph,

- (ii) there are reasonable grounds for suspecting the completeness of any information or documents provided by him or her in response to such a notice, or
    - (iii) if such a notice were served on a specified person on whom it might be served under that paragraph, it would not be complied with; or documents to which such a notice might relate would be likely to be removed, tampered with or destroyed;
  - (b) if a notice were served under Article 14(8) or 32, it would not be complied with;
  - (c) documents to which a notice might relate would be likely to be removed, tampered with or destroyed;
  - (d) a specified person has failed in any respect to comply with a notice served on the person under Article 14(8) or 32;
  - (e) a specified person has not provided complete information or documents in response to a notice served on the person under those paragraphs;
  - (f) a notice served under Article 13(1) or (2), 16(2) or 23(1) has not been complied with in any respect; or
  - (g) any officer or agent of the Commission or person appointed under Article 33(1) has been or may be obstructed in exercising a power of entry under Article 32(4) or 33(5), as the case may be,
- the Bailiff may grant a warrant under this paragraph.<sup>126</sup>
- (2) A warrant under paragraph (1) may authorize any police officer, together with any other person named in the warrant –
- (a) to enter any premises specified in the warrant, using such force as is reasonably necessary for the purpose;
  - (b) to search the premises and obtain information or take possession of any documents appearing to be information or documents of a type referred to in any of the Articles referred to in paragraph (1) or information in relation to matters referred to therein or which otherwise appear to be relevant to the investigation of an offence under this Law, or to take, in relation to any such information or documents, any other steps which may appear to be necessary to preserve them or prevent interference with them;
  - (c) to take copies of, or extracts from such documents and to require the person who had possession of them, or any person who appears to be in possession of relevant information, is or has been an officer, shareholder controller or auditor or employee of the registered person, or formerly registered person, or other person concerned, as the case may be, to provide an explanation of them;
  - (d) to require any person named in the warrant to answer questions relevant for determining any matter arising in connection with this Law; and
  - (e) if the information or documents are not provided, to require any person appearing to be in possession of relevant information, to state, to the best of the person's knowledge and belief, where they are and how they may be retrieved.

- (3) A warrant under paragraph (1) shall continue in force until the end of the period of one month beginning with the date on which it was issued.
- (4) Any documents of which possession is taken under paragraph (2) may be retained –
  - (a) for a period of one year; or
  - (b) if, within that period proceedings to which the documents are relevant are commenced against any person, until the conclusion of those proceedings.
- (5) A person who requires any documents of which possession is taken under paragraph (2) for the purpose of his or her business and who requests such documents shall be supplied with copies as soon as practicable.
- (6) Any person who obstructs the exercise of any power conferred by a warrant issued under this Article or fails to comply with a requirement imposed on him or her by virtue of paragraph (2)(c) to (e) shall be guilty of an offence and liable to imprisonment for a term not exceeding 2 years or a fine, or both.
- (7) Where any person from whose premises documents are taken under paragraph (2) claims a lien on any such documents, the possession of such documents by the officer or person concerned and by anyone to whom he or she passes them shall be without prejudice to the lien.
- (8) Nothing in this Article shall require the disclosure or production by a person of information or documents which the person would in an action in the Court be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in the Court except, if he or she is a lawyer, the name and address of his or her client.
- (9) A statement made by a person in compliance with a requirement imposed by virtue of this Article may not be used by the prosecution in evidence against the person in any criminal proceedings except proceedings under paragraph (6) or Article 28.

### **35 Obstruction of investigations**

- (1) A person who knows or suspects that an investigation is being or is likely to be carried out under Article 33 or that information or documents are being or are likely to be required under Article 14 or 32 shall be guilty of an offence if he or she falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction of or disposal of, information or documents which he or she knows or suspects are or would be relevant to such an investigation or are or would be required unless the person proves that he or she had no intention of concealing facts disclosed by the information or documents from persons carrying out such an investigation or requiring such information or documents.
- (2) A person guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding 2 years or a fine, or both.

### **36 Co-operation with relevant supervisory authority<sup>127</sup>**

- (1) The following powers may be exercised (by the officer or person specified in the relevant provision) in order to assist a relevant supervisory authority –
  - (a) the power to refuse or revoke a registration under Article 9(1);

- (b) the power to impose, revoke or vary conditions pursuant to Article 10(2);
  - (ba) the power to give a direction under Article 16 or 23;
  - (c) on the application of the Commission, the powers under Article 26;
  - (d) the powers relating to information and documents under Article 32;
  - (e) the powers under Article 33;
  - (f) the powers under Article 34;
  - (g) communication by the Commission to the relevant supervisory authority of information that is in the possession of the Commission, whether or not as a result of the exercise of any of the above powers.<sup>128</sup>
- (2) The Commission shall not exercise the power referred to in paragraph (1)(g) unless satisfied that the relevant supervisory authority will treat the information communicated with appropriate confidentiality and that –
  - (a) the power is exercised in order to assist the authority in the exercise of its supervisory functions; or
  - (b) the exercise of the power has been requested by the authority and requested only for the purposes of obtaining assistance for the authority in the exercise of one or more of its supervisory functions.
- (3) The other powers referred to in paragraph (1) shall not be exercised by virtue of this Article unless the Commission is satisfied that the exercise has been requested by the relevant supervisory authority and requested only for the purposes of obtaining assistance for the authority in the exercise of one or more of its supervisory functions.
- (4) In deciding whether to exercise a power by virtue of this Article, the following factors (among others) may be taken into account –
  - (a) whether corresponding assistance would be given in that country or territory to the Commission;
  - (b) whether the case concerns the possible breach of a law, or other requirement, which has no close parallel in Jersey or involves the assertion of a jurisdiction not recognized by Jersey;
  - (c) the seriousness of the case and its importance in Jersey and whether the assistance could be obtained by other means;
  - (d) whether it is otherwise appropriate in the public interest to give the assistance.
- (5) The exercise of powers by virtue of this Article may be refused unless the relevant supervisory authority undertakes to make such contribution towards the costs of its exercise as the Commission considers appropriate.
- (6) For the purposes of this Article –
  - (a) a reference –
    - (i) in Article 32(2) or 33(4) to a contravention of Article 7(1), 39G or 39L, or
    - (ii) in Article 34(1) to a contravention of a type referred to in Article 32(2),

shall include a reference to a contravention (committed at any time, including a time before the enactment of a provision of this Law) of a provision of a law of a country or territory outside Jersey, which provision the Commission reasonably considers to be similar to Article 7(1), 39G or 39L; and

- (b) a reference in Article 32(9) or 34(4) to proceedings shall include a reference to proceedings outside Jersey.<sup>129</sup>
- (7) For the purposes of this Article, a reference (however expressed or implied) in Article 7, 39G or 39L (or in any provision necessary for the interpretation of any of those Articles) to Jersey, or to any class of person, any qualification or any provision, shall be construed, in the application of that Article to a contravention of a law of a country or territory outside Jersey, as a reference to that country or territory, or to an equivalent class of person, qualification or provision, in terms of the law of that country or territory.<sup>130</sup>
- (8) The exercise of a power under any provision shall be no less an exercise of that power under that provision because it is exercised by virtue of this Article, and this Law (and any other law that applies when a power is exercised directly under that provision) applies also when that power is exercised by virtue of this Article.

## DIVISION 5 – RESTRICTIONS ON DISCLOSURE OF INFORMATION<sup>131</sup>

### 37 Restricted information

- (1) Subject to paragraph (2) and to Article 38, a person who receives information relating to the business or other affairs of any person –
  - (a) under or for the purposes of this Law; or
  - (b) directly or indirectly from a person who has so received it,shall be guilty of an offence and liable to imprisonment for a term not exceeding 2 years or a fine, or both, if he or she discloses the information without the consent of the person to whom it relates and (where sub-paragraph (b) applies) the person from whom it was received.
- (2) This Article does not apply to information which at the time of the disclosure is or has already been made available to the public from other sources, or to information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.

### 38 Permitted disclosures

- (1) Article 37 does not preclude the disclosure of information –
  - (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,

- (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 or had statutory functions, or
  - (iv) to any person for the purpose of enabling or assisting that person to exercise that person's statutory control functions in relation to any person or class of person in respect of whom the Commission does not have statutory functions;
- (aa) without prejudice to the generality of sub-paragraph (a)(iii), by the Commission to the Office of the Financial Services Ombudsman or to an Ombudsman, within the meaning of the [Financial Services Ombudsman \(Jersey\) Law 2014](#) –
  - (i) to comply with a duty of the Commission under Article 20 of that Law, or
  - (ii) for the purpose of enabling or assisting that Office or Ombudsman to exercise any function under that Law (including the raising of a levy);
- (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;
- (d) to a person by the Commission showing whether or not any person is registered or was formerly registered under this Law, including any conditions which are or were formerly attached to the registration of that person under Article 10(2);
- (da) by the Commission to the public of the name of –
  - (i) a director of a company that carries on investment business and is registered under this Law,
  - (ii) a director of a company that is a partner in a partnership that carries on investment business and is registered under this Law,
  - (iii) a person employed under a contract of service or a contract for services by a person that carries on investment business and is registered under this Law, such an employee being so employed as –
    - (A) a dealer,
    - (B) a discretionary investment manager,

- (C) an adviser, or
- (D) a supervisor,
- (iv) a manager of a limited liability company that carries on investment business and is registered under this Law;
- (e) with a view to the investigation of a suspected offence, or institution of, or otherwise for the purposes of, any criminal proceedings, whether under this Law or not;
- (f) in connection with any other proceedings arising out of this Law;
- (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;
- (i) by the Commission to any person or body responsible for a compensation scheme in relation to one or more financial services businesses, (whether in Jersey or elsewhere) if 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 but any such disclosure by the Commission may only be made if 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;
- (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 (whether in Jersey or elsewhere) responsible for setting standards of conduct for any profession and having powers to discipline persons who fail to meet those standards for the purpose of enabling or assisting that person or body to exercise any of its supervisory functions;
  - (m) subject to paragraphs (1B) to (1D), by the Commission to any of the following organizations or persons –
    - (i) the ESAs,
    - (ii) the ESRB, or
    - (iii) a supervisor of a securities market;
  - (n) by the Commission to a pension supervisor for the purpose of enabling or assisting a pension supervisor to exercise any of its supervisory functions;
  - (o) by the Commission to the Society of Lloyd's (being organs constituted by or under the Lloyd's Act 1982 of the United Kingdom) for the purpose of enabling or assisting that Society to exercise any of its supervisory functions.<sup>132</sup>
- (1A) In paragraph (1)(a)(iv), “statutory control functions” means functions conferred by or under an enactment on any person which requires or enables that person to issue a licence, register, or give consent or any other form of authorization or permission to or in respect of any person or class of persons, including any ancillary functions related thereto, for such purposes as may be prescribed or specified (as the case may be) under that enactment.<sup>133</sup>
- (1B) The Commission shall not disclose information under paragraph (1)(m) unless satisfied that –
- (a) the purpose of the disclosure is in order to assist the relevant organization or person to whom it is disclosed, in the exercise of any of its functions; and
  - (b) that organization or person will treat the disclosed information with appropriate confidentiality.<sup>134</sup>
- (1C) In deciding whether to disclose information under paragraph (1)(m), the Commission may take the following factors (among others) into account –
- (a) whether corresponding disclosure of information would be given by the relevant organization or person, if such information were requested by the Commission;
  - (b) whether the case concerns the possible breach of a law, or other requirement, which has no close parallel in Jersey;

- (c) the seriousness of the case and its importance in Jersey;
  - (d) whether the information could be obtained by other means; and
  - (e) whether it is otherwise appropriate in the public interest to disclose the information.<sup>135</sup>
- (1D) The Commission may refuse to disclose information under paragraph (1)(m) unless the relevant organization or person undertakes to make such contribution towards the costs of the disclosure as the Commission considers appropriate.<sup>136</sup>
- (2) No information shall be disclosed under or by virtue of paragraph (1)(a)(ii), (iii) or (iv), or (b)(i) or (c), or (k), (l), (m), (n) or (o), 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.<sup>137</sup>
- (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.<sup>138</sup>

### 39 Information supplied to Commission by relevant overseas authority

Articles 37 and 38 apply also to information supplied to the Commission for the purposes of its functions under this Law by a relevant supervisory authority, any of the ESAs, the ESRB or a supervisor of a securities market.<sup>139</sup>

## PART 3A<sup>140</sup>

### MARKET MANIPULATION, MISLEADING INFORMATION AND INSIDER DEALING

#### DIVISION 1 – INTERPRETATIVE PROVISIONS<sup>141</sup>

### 39A Interpretation

- (1) In this Part, in Schedule 6 and for the purposes of the definition “supervisor of a securities market” –
- “company” means any body (whether or not incorporated, wherever incorporated or constituted, and including limited liability companies registered under the LLC Law) which is not a public sector body;
- “issuer”, in relation to any securities, means any company, public sector body or person by which or by whom the securities have been or are to be issued;
- “market maker” means a person who –

- (a) holds himself or herself out at all normal times in compliance with the rules of a securities market as willing to acquire or dispose of securities; and
- (b) is recognized as doing so under those rules;

“public sector body” means –

- (a) the States or the government of any country or territory outside Jersey;
- (b) a parish in Jersey or the local government of any country or territory outside Jersey;
- (c) any international organization the members of which include Jersey, the United Kingdom, or a member state of the EU; and
- (d) the central bank of any sovereign State, the European System of Central Banks or any other system of central banks;

“relevant market rules”, in relation to a securities market, means the rules, regulating the activities of the securities market in relation to the use and dissemination of information, that are –

- (a) specified in a legislative instrument of the country or territory, or the part of a country or territory, that hosts the securities market; or
- (b) made by the securities market, if the securities market is authorized to make such rules by a legislative instrument of the country or territory, or the part of a country or territory, that hosts the securities market;

“securities” has the meaning set out in Schedule 6;

“securities market” means any securities market that is established by or under, or is regulated by or under, a legislative instrument made by the country or territory, or the part of a country or territory, that hosts the securities market.<sup>142</sup>

- (2) The States may by Regulations amend the meaning of “securities” set out in Schedule 6.

### **39B “Dealing” in securities**

- (1) For the purposes of this Part, a person deals in securities if –
  - (a) he or she acquires or disposes of the securities (whether as principal or agent); or
  - (b) he or she procures, directly or indirectly, an acquisition or disposal of the securities by any other person.
- (2) For the purposes of this Part and Schedule 6, “acquire”, in relation to a security, includes –
  - (a) agreeing to acquire the security; and
  - (b) entering into a contract which creates the security.
- (3) For the purposes of this Part and Schedule 6, “dispose”, in relation to a security, includes –
  - (a) agreeing to dispose of the security; and
  - (b) bringing to an end a contract which created the security.

- (4) For the purposes of paragraph (1), a person procures an acquisition or disposal of a security if the security is acquired or disposed of by a person who is –
  - (a) his or her agent;
  - (b) his or her nominee; or
  - (c) a person who is acting at his or her direction, in relation to the acquisition or disposal.
- (5) Paragraph (4) is not exhaustive as to the circumstances in which one person may be regarded as procuring an acquisition or disposal of securities by another.

### **39C Meaning of “inside information”, etc.**

- (1) For the purposes of this Part, “inside information” means information which –
  - (a) relates to particular securities or to a particular issuer of securities or to particular issuers of securities and not to securities generally or to issuers of securities generally;
  - (b) is specific or precise;
  - (c) has not been made public; and
  - (d) if it were made public would be likely to have a significant effect on the price of any securities.
- (2) For the purposes of this Part, securities are “price-affected securities” in relation to inside information, and inside information is “price-sensitive information” in relation to securities, if and only if the information would, if made public, be likely to have a significant effect on the price of the securities.
- (3) For the purposes of this Part, information shall be treated as relating to an issuer of securities which is a company or limited liability company not only where it is about the company or limited liability company but also where it may affect the company’s or limited liability company’s business prospects.<sup>143</sup>
- (4) For the purposes of this Article “price” includes value.

### **39D Meaning of “having information as an insider”**

- (1) For the purposes of this Part, a person has information as an insider if and only if –
  - (a) it is, and he or she knows that it is, inside information; and
  - (b) he or she has it, and knows that he or she has it, from an inside source.
- (2) For the purposes of paragraph (1), a person has information from an inside source if and only if –
  - (a) he or she has it through –
    - (i) being a director, employee or shareholder of a body corporate (other than a limited liability company registered as a body corporate under the LLC Law) that is an issuer of securities,
    - (ia) being a manager or a member of a limited liability company that is an issuer of securities,

- (ii) having access to the information by virtue of his or her employment, office or profession; or
- (b) the direct or indirect source of his or her information is a person within sub-paragraph (a).<sup>144</sup>

### **39E Meaning of “made public”**

- (1) For the purposes of this Part, “made public”, in relation to information, shall be construed in accordance with this Article but the provisions of this Article are not exhaustive as to the meaning of that expression.
- (2) Information is made public if –
  - (a) it is published in accordance with the rules of a securities market for the purpose of informing investors and their professional advisers;
  - (b) it is contained in records which by virtue of any legislation of the country or territory, or a part of a country or territory, that hosts the securities market are open to inspection by the public;
  - (c) it can be readily acquired by those likely to deal in any securities –
    - (i) to which the information relates, or
    - (ii) of an issuer to which the information relates; or
  - (d) it is derived from information which has been made public.
- (3) Information may be treated as made public even though –
  - (a) it can be acquired only by persons exercising diligence or expertise;
  - (b) it is communicated to a section of the public and not to the public at large;
  - (c) it can be acquired only by observation;
  - (d) it is communicated only on payment of a fee; or
  - (e) it is published only outside the country or territory, or the part of the country or territory, in which is situated the securities market to which the information relates.

### **39F Meaning of “professional intermediary”**

- (1) For the purposes of this Part, a “professional intermediary” is a person –
  - (a) who carries on a business consisting of an activity mentioned in paragraph (2) and who holds himself or herself out to the public or any section of the public (including a section of the public constituted by persons such as himself or herself) as willing to engage in any such business; or
  - (b) who is employed, by a person falling within sub-paragraph (a), to carry out any such activity.
- (2) The activities referred to in paragraph (1) are –
  - (a) acquiring or disposing of securities (whether as principal or agent); or
  - (b) acting as an intermediary between persons taking part in any dealing in securities.

- (3) A person is not to be treated as carrying on a business consisting of an activity mentioned in paragraph (2) –
  - (a) if the activity in question is merely incidental to some other activity not falling within paragraph (2); or
  - (b) merely because he or she occasionally conducts one of those activities.
- (4) For the purposes of this Part, a person dealing in securities relies on a professional intermediary if and only if a person who is acting as a professional intermediary carries on an activity mentioned in paragraph (2) in relation to that dealing.

## DIVISION 2 – INSIDER DEALING<sup>145</sup>

### **39G Insider dealing**

- (1) A person who has information as an insider is guilty of an offence if, in the circumstances mentioned in paragraph (3), he or she deals in securities that are price-affected securities in relation to the information.
- (2) A person who has information as an insider is guilty of an offence if –
  - (a) he or she encourages another person to deal in securities that are (whether or not that other person knows it) price-affected securities in relation to the information, knowing or having reasonable cause to believe that the dealing would take place in the circumstances mentioned in paragraph (3); or
  - (b) he or she discloses the information, otherwise than in the proper performance of the functions of his or her employment, office or profession, to another person.
- (3) The circumstances referred to in paragraph (1) and (2) are that –
  - (a) the acquisition or disposal in question occurs on a securities market; or
  - (b) the person dealing relies on a professional intermediary or is himself or herself acting as a professional intermediary.
- (4) A person guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding 10 years or a fine.

### **39H Monetary policy activity, validity of contracts not affected**

- (1) Article 39G does not apply to anything done by a person acting on behalf of a public sector body in pursuit of monetary policies or policies with respect to exchange rates or the management of public debt or foreign exchange reserves.
- (2) No contract shall be void or unenforceable by reason only of Article 39G.

### **39I Territorial scope of offence of insider dealing**

- (1) A person is only guilty of an offence under Article 39G(1) if –
  - (a) he or she was within Jersey at the time when he or she is alleged to have done any act constituting or forming part of the alleged dealing; or

- (b) the professional intermediary referred to in Article 39G was within Jersey at the time when he or she is alleged to have done anything by means of which the offence is alleged to have been committed.
- (2) A person is only guilty of an offence under Article 39G(2) if –
  - (a) he or she was within Jersey at the time when he or she is alleged to have encouraged the dealing or disclosed the information; or
  - (b) the alleged recipient of the encouragement or information was within Jersey at the time when he or she is alleged to have received the encouragement or information.

### 39J General defences

- (1) A person is not guilty of an offence under Article 39G(1) by virtue of dealing in securities if he or she proves –
  - (a) that at the time he or she did not expect the dealing to result in a profit attributable to the fact that the information in question was price-sensitive information in relation to the securities;
  - (b) that at the time he or she believed on reasonable grounds that the information had been disclosed widely enough to ensure that none of those taking part in the dealing would be prejudiced by not having the information; or
  - (c) that he or she would have done what he or she did even if he or she had not had the information.
- (2) A person is not guilty of an offence under Article 39G(2) by virtue of encouraging another person to deal in securities if he or she proves –
  - (a) that at the time he or she did not expect the dealing to result in a profit attributable to the fact that the information in question was price-sensitive information in relation to the securities;
  - (b) that at the time he or she believed on reasonable grounds that the information had been or would be disclosed widely enough to ensure that none of those taking part in the dealing would be prejudiced by not having the information; or
  - (c) that he or she would have done what he or she did even if he or she had not had the information.
- (3) A person is not guilty of an offence under Article 39G(2) by virtue of a disclosure of information if he or she proves –
  - (a) that he or she did not at the time expect any person, because of the disclosure, to deal in securities in the circumstances mentioned in Article 39G(3); or
  - (b) that, although he or she had such an expectation at the time, he or she did not expect the dealing to result in a profit attributable to the fact that the information was price-sensitive information in relation to the securities.
- (4) A person is not guilty of an offence under Article 39G(1) or (2) by virtue of dealing in securities or encouraging another person to deal if he or she proves that he or she acted in good faith in the course of –
  - (a) his or her business as a market maker; or

- (b) his or her employment in the business of a market maker.
- (5) A person is not guilty of an offence under Article 39G(1) or (2) by virtue of dealing in securities in a securities market or encouraging another person to deal in a securities market if he or she proves that he or she acted in conformity with the relevant market rules.
- (6) In this Article references to a profit include references to the avoidance of a loss.

### **39K Defence if information was market information**

- (1) A person is not guilty of an offence under Article 39G(1) or (2) by virtue of dealing in securities or encouraging another person to deal if he or she proves that –
  - (a) the information which he or she had as an insider was market information; and
  - (b) it was reasonable for a person in his or her position to have acted as he or she did despite having that information as an insider at the time.
- (2) In determining for the purposes of paragraph (1) whether it is reasonable for a person to do any act despite having market information at the time, there shall, in particular, be taken into account –
  - (a) the content of the information;
  - (b) the circumstances in which he or she first had the information and in what capacity; and
  - (c) the capacity in which he or she acts at the time the determination is made.
- (3) A person is not guilty of an offence under Article 39G(1) or (2) by virtue of dealing in securities or encouraging another person to deal if he or she proves –
  - (a) that he or she acted –
    - (i) in connection with an acquisition or disposal which was under consideration or the subject of negotiation, or in the course of a series of such acquisitions or disposals, and
    - (ii) with a view to facilitating the accomplishment of the acquisition or disposal or the series of acquisitions or disposals; and
  - (b) that the information which he or she had as an insider was market information arising directly out of his or her involvement in the acquisition or disposal or series of acquisitions or disposals.
- (4) For the purposes of this Article, market information is information consisting of one or more of the following facts –
  - (a) that securities of a particular kind have been or are to be acquired or disposed of, or that their acquisition or disposal is under consideration or the subject of negotiation;
  - (b) that securities of a particular kind have not been or are not to be acquired or disposed of;
  - (c) the number of securities acquired or disposed of or to be acquired or disposed of or whose acquisition or disposal is under consideration or the subject of negotiation;

- (d) the price (or range of prices) at which securities have been or are to be acquired or disposed of or the price (or range of prices) at which securities whose acquisition or disposal is under consideration or the subject of negotiation may be acquired or disposed of;
- (e) the identity of the persons involved or likely to be involved in any capacity in an acquisition or disposal.

### DIVISION 3 – MARKET MANIPULATION AND MISLEADING INFORMATION<sup>146</sup>

#### **39L Market manipulation and misleading information**

- (1) Any person who –
  - (a) makes a statement, promise or forecast which the person knows to be misleading, false or deceptive;
  - (b) dishonestly conceals any material facts; or
  - (c) recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive,is guilty of an offence if he or she makes the statement, promise or forecast or conceals the facts for the purpose of inducing, or is reckless as to whether it may induce, another person (whether or not the other person is the person to whom the statement, promise or forecast is made or from whom the facts are concealed) –
  - (i) to enter or offer to enter into, or refrain from entering or offering to enter into, an agreement or arrangement the making of which or performing of which constitutes financial service business or would do so but for Schedule 2; or
  - (ii) to exercise, or refrain from exercising, any rights conferred by an investment or contract of general insurance.
- (2) Any person who does any act or engages in any course of conduct which creates a false or misleading impression as to the market in or the price or value of any investment or a contract of general insurance is guilty of an offence if the person does so for the purpose of creating that impression and of thereby inducing another person –
  - (a) to acquire, dispose of, subscribe for or underwrite that investment or contract of general insurance; or
  - (b) to refrain from doing so or to exercise, or refrain from exercising, any rights conferred by that investment or contract of general insurance.
- (3) A person does not commit an offence under this Article unless –
  - (a) the statement, promise or forecast is made in or from, or the facts are concealed in or from, Jersey, or arrangements are made in or from the Jersey for the statement, promise or forecast to be made or the facts to be concealed;
  - (b) the person on whom the inducement is intended to or may have effect is in Jersey; or

- (c) the agreement or arrangement is or would be entered into or the rights are or would be exercised in Jersey.
- (4) A person guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding 10 years or a fine.
- (5) In paragraphs (1) and (2), “contract of general insurance” means a contract of general insurance, general insurance product or general insurance service.

### **39M Application**

Article 39L does not apply to anything done by a person acting on behalf of a public sector body in pursuit of monetary policies or policies with respect to exchange rates or the management of public debt or foreign exchange reserves.

### **39N Defences**

- (1) A person is not guilty of an offence under Article 39L(1) in relation to a statement, promise or forecast if the statement, promise or forecast was made in respect of a securities market and he or she proves that he or she acted in conformity with the relevant market rules.
- (2) A person is not guilty of an offence under Article 39L(2) in relation to an act or a course of conduct if he or she engaged in the act or course of conduct in respect of a securities market and he or she proves that –
  - (a) he or she reasonably believed that the act or conduct would not create an impression that was false or misleading as to the matters contained in Article 39L(2); or
  - (b) he or she acted in conformity with the relevant market rules.

## **PART 4**

### **SUPPLEMENTARY**

### **40 Service of notices<sup>147</sup>**

- (1) No notice or other document required by this Law to be given to the Commission shall be regarded as so given until it is received.
- (2) Subject to paragraph (1), any notice or other document required or authorized by or under this Law to be given to the Commission may be given by facsimile, electronic transmission or by any similar means that produces a document containing the text of the communication in legible form or is capable of doing so.
- (3) Any notice, direction or other document required or authorized by or under this Law to be given to or served on any person other than the Commission may be given or served on the person in question –
  - (a) by delivering it to the person;
  - (b) by leaving it at the person’s proper address;
  - (c) by sending it by post to the person at that address; or

- (d) by sending it to the person at that address by facsimile, electronic transmission or other similar means that produces a document containing the text of the communication in legible form or is capable of doing so.
- (4) Any such notice, direction or other document may –
  - (a) in the case of a company incorporated in Jersey, be served by being delivered to its registered or principal office;
  - (aa) in the case of a limited liability company registered in Jersey, be served by being delivered to its registered office;
  - (b) in the case of a partnership, company incorporated outside Jersey or unincorporated association, be given to or served on a person who is a principal person in relation to it, or on the secretary or other similar officer of the partnership, company or association or any person who purports to act in any such capacity, by whatever name called, or on the person having the control or management of the partnership business, as the case may be, or by being served on the person or delivered to the person's registered or administrative office.<sup>148</sup>
- (5) For the purposes of this Article and of Article 7 of the [Interpretation \(Jersey\) Law 1954](#) in its application to this Article, the proper address of any person to or on whom a notice, direction or other document is to be given or served by post shall be the person's last known address, except that –
  - (a) in the case of a company incorporated in Jersey, or its secretary, clerk or other similar officer or person, it shall be the address of the registered or principal office of the company in Jersey; and
  - (b) in the case of a partnership, or a person who is a principal person in relation to a partnership, it shall be that of its principal office in Jersey.
- (6) If the person to or on whom any notice, direction or other document referred to in paragraph (3) is to be given or served has notified the Commission of an address within Jersey other than the person's proper address within the meaning of paragraph (5), as the one at which the person or someone on the person's behalf will accept documents of the same description as that notice, direction or other document, that address shall also be treated for the purposes of this Article and Article 7 of the [Interpretation \(Jersey\) Law 1954](#) as the person's proper address.

#### 41 Legal proceedings<sup>149</sup>

- (1) In any proceedings, a certificate purporting to be signed on behalf of the Commission and certifying any of the following –
  - (a) that a particular person is or is not an applicant or registered person or was or was not an applicant or registered person at a particular time;
  - (b) the date on which a particular applicant or registered person or formerly registered person made application or became a registered person or ceased to be a registered person, as the case may be;
  - (c) the scope of a particular person's application or registration;
  - (d) that conditions set out in the certificate were, at the relevant time, prescribed under Article 10 in relation to registered persons, or attached under Article 10 to a particular person's registration,

shall be admissible in evidence in all legal proceedings as evidence of any fact stated in it of which direct oral evidence would be admissible.<sup>150</sup>

- (2) A certificate purporting to be signed in accordance with paragraph (1) shall be deemed to have been duly signed unless the contrary is shown.
- (3) Where an offence under this Law committed by a registered person or formerly registered person is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of a person who is or was, a principal person in relation to that registered person or formerly registered person, the person shall be guilty of the offence and liable in the same manner as the registered person or formerly registered person to the penalty provided for that offence.
- (4) Where an offence under this Law committed by a limited liability partnership or company is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –
  - (a) a person who is a partner or secretary of the partnership, or director, manager, secretary or other similar officer of the company; or
  - (b) any person purporting to act in any such capacity,
 the person shall also be guilty of the offence and liable in the same manner as the partnership or company to the penalty provided for that offence.<sup>151</sup>
- (5) Where the affairs of a company are managed by its members, paragraph (4) shall apply in relation to acts and defaults of a member in connection with the member's functions of management as if the member were a director of the company.<sup>152</sup>
- (6) Any person who aids, abets, counsels or procures the commission of an offence under this Law shall also be guilty of the offence and liable in the same manner as a principal offender to the penalty provided for that offence.<sup>153</sup>
- (7) Nothing in paragraph (6) affects the operation of paragraph (3), (4) or (5).<sup>154</sup>
- (8) No proceedings for an offence under this Law shall be instituted except by or with the consent of the Attorney General.

## 42 Orders

- (1) The Minister may, on the recommendation of the Commission, make Orders for the purposes of carrying this Law into effect and in particular, without prejudice to the generality of the foregoing power, for prescribing any matter which is to be prescribed by any provision of this Law.
- (2) <sup>155</sup>
- (3) An Order or Regulations made under this Law may contain such transitional, consequential, incidental or supplementary provisions as appear to the Minister or States (respectively) to be necessary or expedient for the purposes of the Order or Regulations.<sup>156</sup>
- (4) The power to make Orders, or the power to make Regulations, under this Law may be exercised –
  - (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of case; and

- (b) so as to make, as respects the cases in relation to which it is exercised –
  - (i) the full provision to which the power extends or any lesser provision (whether by way of exception or otherwise),
  - (ii) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or classes of case, or different provision as respects the same case or class of case for different purposes of the Order or Regulations,
  - (iii) any such provision either unconditionally or subject to any specified condition.<sup>157</sup>

#### **43 Transitional provisions<sup>158</sup>**

- (1) Subject to paragraphs (2) to (6), a person who makes an application in compliance with this Law under Article 8(1) before such day as is appointed by the Committee, on the recommendation of the Commission, by Order for the purposes of this paragraph may, during the period between the date of the person's application and its being granted or refused by the Commission under Article 9, carry on investment business in the same manner as he or she was doing at the date of his or her application provided that such business is in accordance with the terms of his or her application.
- (2) The Committee may, on the recommendation of the Commission prescribe, or the Commission may impose by notice in writing, conditions which shall apply to applicants during the period specified in paragraph (1) in addition to or in substitution for conditions prescribed under Article 10(1) and may make different provision for different applicants or for different classes of applicants or for different classes of investment businesses and may, in such circumstances as the Commission thinks fit, exclude applicants from carrying on investment business.
- (3) Paragraphs (3) to (5) of Article 10 shall apply in respect of conditions imposed under paragraph (2) as they apply in respect of conditions attached (to a registration) under Article 10(2).
- (4) The provisions of this Law shall apply (with the necessary modifications) to an applicant to whom paragraph (1) for the time being applies, as they apply to a registered person.
- (5) Without prejudice to the generality of paragraph (4), the following modifications shall apply in relation to applicants to whom paragraph (1) for the time being applies –
  - (a) for any reference to the period during which a person is registered there shall be substituted a reference to the period between the date of the application and the date of its being granted or refused by the Commission;
  - (b) for any reference to the terms of a registration there shall be substituted a reference to the terms of the application.
- (6) Paragraph (1) shall not apply to a person who, immediately before the day referred to in that paragraph, was carrying on the business to which the application relates in contravention of the Regulation of Undertakings and Development (Jersey) Law 1973 or the [Control of Borrowing \(Jersey\) Law 1947](#).

**43A Further transitional provisions<sup>159</sup>**

Schedule 5 shall have effect to make transitional provisions.

**44 Citation<sup>160</sup>**

This Law may be cited as the Financial Services (Jersey) Law 1998.

**SCHEDULE 1<sup>161</sup>**

(Article 1)

**INVESTMENTS****1 Shares, etc.**

Shares and stock in the share capital of a company.

**Note:** For the purposes of this paragraph “company” includes any body corporate and any unincorporated body constituted under the law of any country or territory but does not include a company which is a collective investment fund within the meaning of the [Collective Investment Funds \(Jersey\) Law 1988](#) or a limited liability company registered as a body corporate under the LLC Law).

**2 Debentures**

Debentures, including debenture stock, loan stock, bonds, certificates of deposit and other instruments of the same kind creating or acknowledging indebtedness.

**Notes:**

- (1) This paragraph shall not apply to –
  - (a) any instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services;
  - (b) a cheque or other bill of exchange, a banker’s draft or a letter of credit;
  - (c) a banknote, a statement showing a balance in a current, deposit or savings account or (by reason of any financial obligation contained in it) a lease or other disposition of property, a hypothec, security interest, mortgage or other charge, or an insurance policy; or
  - (d) any instrument creating or acknowledging indebtedness in respect of money received by the Director of Savings as deposits or otherwise in connection with the business of the National Savings Bank or in respect of money raised under the National Loans Act 1968 of the United Kingdom under the auspices of the Director of Savings or in respect of money treated as having been so raised by virtue of section 11(3) of the National Debt Act 1972 of the United Kingdom.
- (2) For the purposes of this paragraph references to an instrument include references to any record whether or not in the form of a document.

**3 Instruments entitling to shares, LLC interests or securities**

Warrants or other instruments entitling the holder to subscribe for investments falling within paragraph 1, 2 or 9B.

**Notes:**

- (1) It is immaterial whether the investments are for the time being in existence or identifiable.
- (2) An investment falling within this paragraph shall not be regarded as falling within paragraph 6, 7 or 8.

**4 Certificates representing securities**

Certificates or other instruments which confer –

- (a) property rights in respect of any investment falling within paragraph 1, 2, 3 or 9B;
- (b) any right to acquire, dispose of, underwrite or convert an investment, being a right to which the holder would be entitled if the holder held any such investment to which the certificate or instrument relates; or
- (c) a contractual right (other than an option) to acquire any such investment otherwise than by subscription.

**Note:** This paragraph does not apply to any instrument which confers rights in respect of 2 or more investments issued by different persons.

**5 Units in a collective investment fund**

Units in a collective investment fund within the meaning of the [Collective Investment Funds \(Jersey\) Law 1988](#) or in a fund which would be a collective investment fund but for the fact that it does not acquire capital by means of an offer to the public of units for subscription, sale or exchange, as described in that Law.

**6 Options**

Options to acquire or dispose of –

- (a) an investment falling within any other paragraph of this Schedule;
- (b) currency of Jersey or of any other country or territory;
- (c) gold, palladium, platinum or silver; or
- (d) an option to acquire or dispose of an investment falling within this paragraph by virtue of sub-paragraph (a), (b) or (c).

**7 Futures**

Rights under a contract for the sale of a commodity, or property of any other description which is entered into for investment, not commercial purposes, and under which delivery is to be made at a future date and at a price agreed upon when the contract is made.

**Notes:**

- (1) A contract shall be regarded as made for investment purposes if it is made or traded on an investment exchange, or made otherwise but expressed to be as traded on such an exchange or on the same terms as those on which an equivalent contract would be made on such an exchange.

- (2) A contract not falling within Note (1) is to be regarded as made for commercial purposes if –
- (a) under the terms of the contract delivery is to be made within 7 days of the contract being made, unless it can be shown that there existed an understanding that (despite the terms of the contract) delivery would not be made within 7 days;
  - (b) it is a commodities future and the parties intend that the profit is to be obtained or the loss avoided by taking delivery of any property to which the contract relates; or
  - (c) it is a foreign exchange future, and –
    - (i) the parties intend that the profit is to be obtained or the loss avoided by taking delivery of the currencies to which the contract relates, and
    - (ii) the purpose of the trade is to facilitate a means of payment for identifiable goods and services.

## 8 Contracts for differences

Rights under a contract for differences.

**Note:** This paragraph shall not apply to rights under any contract under which money is received by the Director of Savings as deposits or otherwise in connection with the business of the National Savings Bank or in respect of money raised under the National Loans Act 1968 of the United Kingdom under the auspices of the Director of Savings or under which money raised is treated as having been so raised by virtue of section 11(3) of the National Debt Act 1972 of the United Kingdom.

### 8A Financial derivatives

Rights under any contract, except an option, future or contract for differences, the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the value or price of property of any description or in an index or other factor designated for that purpose in the contract.

**Notes:**

- (1) This paragraph includes any contract made or traded on an investment exchange, or made otherwise but expressed to be as traded on such an exchange or on the same terms as those on which an equivalent contract would be made on such an exchange.
- (2) This paragraph does not apply to a contract not falling within Note (1) where the parties intend that the profit is to be obtained or the loss avoided by taking delivery of any property to which the contract relates.
- (3) This paragraph does not apply to rights under any contract under which money is received by the Director of Savings as deposits or otherwise in connection with the business of the National Savings Bank or in respect of money raised under the National Loans Act 1968 of the United Kingdom under the auspices of the Director of Savings or under which money raised is

treated as having been so raised by virtue of section 11(3) of the National Debt Act 1972 of the United Kingdom.

## 9 Long-term insurance contracts

Rights under a contract the effecting and carrying out of which constitutes long-term business within the meaning of the [Insurance Business \(Jersey\) Law 1996](#) or would do so but for the fact that for the purposes of class 6 or 7 set out in Schedule 1 to that Law it is effected and carried out by a person carrying on a banking business or by a person who does not carry on long-term business of class 1, 2, 3, 4 or 5 or general business of any class.

### Notes:

- (1) Where the provisions of a contract of insurance are such that the effecting and carrying out of the contract –
  - (a) constitutes both long-term business within the meaning of the [Insurance Business \(Jersey\) Law 1996](#) and general business within the meaning of that Law; or
  - (b) by virtue of paragraph 3(2) of Part 4 of Schedule 1 to the [Insurance Business \(Jersey\) Law 1996](#) constitutes long-term business notwithstanding the inclusion of subsidiary general business provisions,references in this paragraph to rights and benefits under the contract are references only to such rights and benefits as are attributable to the provisions of the contract relating to long-term business.
- (2) This paragraph does not apply to rights under a reinsurance contract.
- (3) Rights falling within this paragraph shall not be regarded as falling within paragraph 8.

## 9A Pension schemes

Approved Jersey schemes or approved drawdown contracts (as those terms are defined in Article 130(1) of the [Income Tax \(Jersey\) Law 1961](#)).

**Note:** This paragraph applies only to the giving of investment advice in respect of a pension scheme.

## 9B LLC interests

Interests in a limited liability company (LLC interests).

## 10 Rights and interests in investments

Rights to and interests in anything which is an investment falling within any other paragraph of this Schedule.

## SCHEDULE 2

(Article 3)

### EXEMPTIONS

#### PART 1 – INVESTMENT BUSINESS<sup>162</sup>

##### 1 Newspapers, broadcasting and information services

The giving of investment advice in any newspaper, journal, magazine, television broadcast, teletext service, sound broadcast or electronic information service, or in any other periodical publication, broadcast or electronic information service if –

- (a) the principal purpose of the periodical publication, broadcast or service, taken as a whole and including any advertisements contained in it, is not to induce persons to buy, sell, subscribe for or underwrite a particular investment; or
- (b) the publisher, broadcaster, service provider or producer of the periodical publication, broadcast or service does not derive any direct benefit from any investment business resulting from the investment advice given therein.

##### 2 Executors and administrators, *tuteurs* and guardians

The carrying out by executors or administrators of estates of deceased persons, or by *tuteurs* and guardians, *curateurs*, *administrateurs*, general and special attorneys and *fideicommissaires* in their capacity as such, of any of the activities described in Article 2.

##### 3 Certain persons regulated under the [Collective Investment Funds \(Jersey\) Law 1988](#)

1. The carrying on, by a company issuing units that is a recognized fund, of the activities of a functionary, within the meaning of the Schedule to the [Collective Investment Funds \(Jersey\) Law 1988](#), under the functionary's permit granted under that Law.
2. The carrying on by a person (other than a company issuing units within the meaning of the [Collective Investment Funds \(Jersey\) Law 1988](#)), in relation to a recognized fund, of the activities of a functionary, within the meaning of the Schedule to that Law, under the functionary's permit granted under that Law.
3. The carrying on of the activities of a certified fund, within the meaning of the [Collective Investment Funds \(Jersey\) Law 1988](#), by a company issuing units.

**3A Persons registered to carry on fund services business**

The carrying on of fund services business by a person who is registered under this Law to do so.

**3A1 Persons registered to carry on AIF services business**

The carrying on of AIF services business by a person who is registered under this Law to do so.

**3B Certain overseas distributors**

- (1) The following activities –
  - (a) a specified transaction when carried out by an overseas person;
  - (b) a specified transaction when carried out with an overseas person; or
  - (c) the publication in Jersey by an overseas person of an advertisement that –
    - (i) complies with an Order made under Article 31 of this Law, and
    - (ii) solicits a person in Jersey to enter into a specified transaction.
- (2) In this paragraph “overseas person” means a person who –
  - (a) has no place of business in Jersey from which he or she carries on fund services business in or from Jersey; and
  - (b) is not –
    - (i) a company incorporated in Jersey, or
    - (ii) a limited liability company registered in Jersey.
- (3) Except as otherwise provided, in this paragraph ‘specified transaction’ means a transaction amounting to fund services business by virtue of which an overseas person –
  - (a) deals with a person in Jersey;
  - (b) acts as an agent for a person in Jersey;
  - (c) carries out discretionary management activities for a person in Jersey; or
  - (d) provides advice to a person in Jersey.
- (4) A transaction is only a “specified transaction” for the purposes of this paragraph if the transaction came about by virtue of –
  - (a) an approach made by or on behalf of the person in Jersey to the overseas person that –
    - (i) was not solicited by the overseas person, or
    - (ii) was solicited by the overseas person by an advertisement that complied with any Order made under Article 31 of this Law; or
  - (b) an approach made by the overseas person by an advertisement that complied with any Order made under Article 31 of this Law.
- (5) A transaction is only a “specified transaction” for the purposes of this paragraph if –

- (a) the overseas person has his or her head office in a country where he or she is supervised in respect of fund services business by a relevant supervisory authority in that country; and
  - (b) the overseas person when dealing with the person in Jersey does so in accordance with the relevant standards expected of registered persons as specified in any Code of Practice in relation to fund services business that is issued by the Commission.
- (6) A transaction is only a “specified transaction” for the purposes of this paragraph if it relates to any of the following –
  - (a) a collective investment scheme that –
    - (i) is an undertaking for collective investment in transferable securities within the meaning of Council Directive No. 85/611/EEC of 20 December 1985 on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (O.J. No. L375 31.12.1985) as amended by Directive 88/220/EEC of 22nd March 1988 (O.J. L100, 19.4.1988), Directive 95/26/EC of 29th June 1995 (O.J. L168, 18.7.1995), Directive 2000/64/EC of 7th November 2000 (O.J. L290 17.11.2000), Directive 2001/107/EC of 21st January 2002 (O.J. L41, 13.2.2002), Directive 2001/108/EC of 21st January 2002 (O.J. L41, 13.2.2002), Directive 2004/39/EC of 21st April 2004 (O.J. L145 30.4.2004), Directive 2005/1/EC of 9th March 2005 (O.J. L79, 24.3.2005) and Directive 2008/18/EC of 11th March 2008 (O.J. L76 19.3.2008), and
    - (ii) is authorized in accordance with that Directive;
  - (b) an authorized unit trust, or authorized open-ended investment company, within the meaning of the Financial Services and Markets Act 2000 of the United Kingdom;
  - (c) a collective investment fund classified as a Class A Scheme under the Protection of Investors (Bailiwick of Guernsey) Law, 1987 of the Bailiwick of Guernsey;
  - (d) a collective investment fund that is authorized under the Financial Supervision Act 1988 of the Isle of Man.
- (7) A transaction that requires the overseas person to act as an agent for the person in Jersey in respect of an agreement with another person is only a “specified transaction” for the purposes of this paragraph if –
  - (a) that other person is outside Jersey; or
  - (b) if that other person is in Jersey, if the agreement came about by virtue of –
    - (i) an approach made by or on behalf of the first person to that other person in Jersey that –
      - (A) was not solicited by that other person in Jersey, or
      - (B) was solicited by that other person in Jersey by an advertisement that complied with any Order made under Article 31 of this Law; or

- (ii) an approach made by that other person in Jersey by an advertisement that complied with any Order made under Article 31 of this Law.

### **3C Company that is general partner or trustee of unregulated fund**

- (1) The activities of a company in respect of which the following requirements are met –
  - (a) the only activities of the company are for one of the following purposes –
    - (i) the purpose of acting as a general partner of one limited partnership, where the partnership is an unregulated fund,
    - (ii) the purpose of acting as a trustee of one unit trust, where the trust is an unregulated fund,
    - (iii) the purpose of acting as one or both of the following –
      - (A) a general partner of one or more limited partnerships, where each partnership is an unregulated fund that, together with one or more other unregulated funds that are limited partnerships or unit trusts and each have the company as a general partner or a trustee, constitute a part, or the whole, of a single scheme or arrangement,
      - (B) a trustee of one or more unit trusts, where each trust is an unregulated fund that, together with one or more other unregulated funds that are limited partnerships or unit trusts and each have the company as a general partner or a trustee, constitute a part, or the whole, of a single scheme or arrangement;
  - (b) a person registered to carry on one or more classes of fund services business, including at least the class of manager of a managed entity, provides the registered office of the company;
  - (c) the name of the company is notified to the Commission.
- (2) A company does not fail to meet the requirements set out in sub-paragraph (1)(a) in relation to an unregulated fund only because it –
  - (a) invests in the unregulated fund (or in another component of a scheme or arrangement of which the unregulated fund is part); or
  - (b) holds any interest in the unregulated fund (or in another component of a scheme or arrangement of which the unregulated fund is part) other than an interest referred to, or implicit in, sub-paragraph (1)(a).

## **4 Dealing as principal**

Dealing in investments as principal, unless –

- (a) the person concerned holds himself or herself out as willing to enter into transactions of that kind at prices determined by the person generally, rather than being determined in respect of each particular transaction;

- (b) the person holds himself or herself out as engaging in the business of buying investments of the type to which the transaction concerned relates with a view to selling them; or
- (c) the person regularly solicits members of the public for the purpose of inducing them to deal in investments as principals or as agents and the transaction concerned is or is to be entered into as a result of the person having solicited members of the public in that manner.

**Notes:**

- (1) For the purposes of this paragraph –
  - (a) “joint enterprise” shall have the meaning given to it for the purposes of paragraph 8;
  - (b) “members of the public” in relation to the person soliciting them (the “relevant person”) means any other persons except –
    - (i) companies or limited liability companies with which the relevant person is connected,
    - (ii) persons who are, or propose to become, participators with the relevant person in a joint enterprise;
  - (c) a company or limited liability company is connected with another company or limited liability company if any of the requirements in Note (2) to paragraph 9 are met in relation to them.
- (2) For the purposes of this paragraph an investment is of the same type as another if they both fall within the same paragraph of Schedule 1.

## **5 Dealing as agent by professionals and non-investment businesses**

Dealing in investments as agent if –

- (a) the dealing consists of making arrangements with a view to another person buying, selling, subscribing for or underwriting investments;
- (b) the arrangements are made in the course of carrying on any business or profession which does not otherwise constitute investment business;
- (c) the agent does not receive any commission or other remuneration, directly or indirectly, from the agent’s principal which is calculated by reference to the value of the transaction concerned or to any premiums or other sums payable with respect to those investments; and
- (d) the agent does not hold himself or herself out generally as providing a service of dealing in investments.

**Note:** For the purposes of this paragraph “making arrangements” includes –

- (a) the communication of instructions to effect a transaction to a person dealing in investments;
- (b) the communication of offers and acceptances in relation to transactions to a person dealing in investments;
- (c) the execution and delivery of documentation concerning the title to investments.

**5A Arranging: professional investment clients**

Making arrangements for another person (person A) (whether as principal or agent) to buy, sell, subscribe for or underwrite investments, if –

- (a) person A –
  - (i) is a person whose ordinary activities involve the carrying on of investment business, or who it is reasonable to expect will carry on investment business for the purposes of the person's business,
  - (ii) is an employee, director or partner of a person referred to in sub-clause (i),
  - (iii) is a body corporate that is wholly owned by a person referred to in sub-clause (i),
  - (iv) is a limited partnership whose limited partners are all persons referred to in sub-clause (i), or
  - (v) is a trust established for the benefit of a person referred to in sub-clause (i); or
- (b) person A's buying, selling, subscription or underwriting of the investments in question could reasonably occur without the involvement of the person arranging that buying, selling, subscription or underwriting.

**5B Arranging: sophisticated and high net worth investors**

Making arrangements for another person (person A) (whether as principal or agent) to buy, sell, subscribe for or underwrite investments, if –

- (a) person A is buying, selling, subscribing for or underwriting –
  - (i) investments valued at no less than £250,000 in aggregate,
  - (ii) units in a collective investment fund in relation to which a certificate has been granted under Article 8B of the [Collective Investment Funds \(Jersey\) Law 1988](#), or
  - (iii) units in a collective investment fund in relation to which a recognized fund certificate has been granted under the Collective Investment Funds (Recognized Funds) (General Provisions) (Jersey) Order 1988 or the [Collective Investment Funds \(Recognized Funds\) \(Rules\) \(Jersey\) Order 2003](#); or
- (b) person A has an individual wealth or market value of no less than US\$10,000,000 or the equivalent in another currency.

**5C Arranging: other exemptions**

Making arrangements for another person (person A) (whether as principal or agent) to buy, sell, subscribe for or underwrite investments, if –

- (a) the person arranging that buying, selling, subscription or underwriting (person B) is not remunerated for doing so;
- (b) person B's activities are limited to introducing person A to another person;

- (c) person B is acting in relation to a professional investor regulated scheme (as defined in the [Financial Services \(Investment Business \(Restricted Investment Business – Exemption\)\) \(Jersey\) Order 2001](#)) or a special purpose regulated scheme (as defined in the [Financial Services \(Investment Business \(Special Purpose Investment Business – Exemption\)\) \(Jersey\) Order 2001](#)); or
- (d) advice in relation to person A's buying, selling, subscription for or underwriting of the investments is provided by a person who is registered to carry on investment business under this Law.

## 6 Giving advice in the course of a non-investment business

- (1) Giving investment advice other than in the course of carrying on any business which otherwise constitutes investment business, unless the advice consists of, includes or amounts to –
  - (a) a recommendation to a person to buy, sell, subscribe for or underwrite a particular investment or to exercise or refrain from exercising rights conferred by it;
  - (b) advice on the suitability of the investment concerned for the person to whom or in relation to whom the advice is given; or
  - (c) advice on the characteristics or performance of the investment concerned.
- (2) Advice given in the course of carrying on the profession of a lawyer by an advocate or practising solicitor or of an accountant by a practising accountant in connection with an investment identified specifically by the client and in relation to which the client approached the lawyer or accountant for legal or accountancy advice, as the case may be.

**Note:** For the purposes of this paragraph –

“practising accountant” means a person qualified under Article 113 of the [Companies \(Jersey\) Law 1991](#) for appointment as auditor of a company under Article 109 of that Law;

“practising solicitor” means –

- (a) a solicitor of the Court; or
- (b) a person who is qualified to act as a solicitor under any of section 1 of the Solicitors Act 1974 of the United Kingdom, Article 4 of the Solicitors (Northern Ireland) Order 1976 or section 4 of the Solicitors (Scotland) Act 1980 and who is, for the time being, practising as such from or within Jersey.

## 7 Instruments creating or acknowledging indebtedness

Accepting (whether as principal or as agent) or becoming party to (otherwise than as a debtor or surety) an instrument creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation or assurance which the person or the person's principal has made, granted, or provided.

## 8 Connected companies and joint enterprises

- (1) Dealing in investments by a person as principal with another person if –
- (a) they are connected companies or limited liability companies;
  - (b) they participate together in a joint enterprise and the dealing is undertaken for the purposes of, or in connection with, that enterprise; or
  - (c) one of them is a director, manager, other officer or employee of a company or limited liability company acting in the person's capacity as trustee and the other is that company or limited liability company or a connected company of a company or limited liability company in relation to that company or limited liability company.
- (2) Dealing in investments by a person as agent for another person if –
- (a) they are connected companies or limited liability companies;
  - (b) they participate together in a joint enterprise and the dealing is undertaken for the purposes of, or in connection with, that enterprise; or
  - (c) the other person is acting in the person's capacity as a trustee and is a director, manager, other officer or employee of, the company or limited liability company which is the agent, or of a company or limited liability company which is a connected company or limited liability company in relation to the agent,
- unless –
- (i) the agent holds himself or herself out (other than to such companies, limited liability companies, participants or persons); or
  - (ii) solicits,
- in a manner contemplated by paragraph 4(b) or 4(c).
- (3) Discretionary investment management by one person for another and investment advice given by one person to another if –
- (a) they are connected companies or limited liability companies;
  - (b) they participate together in a joint enterprise and the activity is undertaken for the purposes of, or in connection with, that enterprise; or
  - (c) the other person is acting in the person's capacity as a trustee and is a director, manager, other officer or employee of the company or limited liability company which is carrying on such management or giving such advice or of a company or limited liability company which is a connected company or limited liability in relation to it,

unless the first mentioned person otherwise carries on the business of discretionary investment management or of giving investment advice or holds himself or herself out as carrying on either of those businesses.

### Notes:

- (1) For the purposes of this paragraph, "joint enterprise" means an enterprise into which the persons participating enter for commercial purposes related to a business other than investment business carried on by such persons; and where a person participating is a company or limited liability company, each

company or limited liability company with which it is connected shall also be regarded as a person participating in the enterprise.

- (2) For the purposes of this paragraph a company or limited liability company is connected with another company or limited liability company if any of the requirements in Note (2) to paragraph 9 are met in relation to them.

## 9 Employees' share schemes

- (1) Dealing by a company or limited liability company, a company or limited liability company with which it is connected or a relevant trustee for the purpose of enabling or facilitating transactions in shares or LLC interests in or debentures of the first-mentioned company or limited liability company for the benefit of any of the persons mentioned in sub-paragraph (2) or the holding of such shares or LLC interests or debentures by or for the benefit of any such persons.
- (2) The persons referred to in sub-paragraph (1) are –
- (a) the *bona fide* employees or former employees of the company or limited liability company first mentioned in sub-paragraph (1) above or of another company or limited liability company with which it is connected; or
  - (b) the wives, husbands, civil partners, widows, widowers, surviving civil partners or children or step-children under the age of 20 years of such employees or former employees.

### Notes:

- (1) For the purposes of this paragraph –
- “joint enterprise” shall have the meaning given to it for the purposes of paragraph 8;
- “a relevant trustee” means a person holding shares or LLC interests in or debentures of the company or limited liability company first mentioned in sub-paragraph (1) above as trustee in pursuance of arrangements made for the purpose mentioned in sub-paragraph (1) by, or by a company or limited liability company connected with, that company or limited liability company.
- “shares”, “LLC interests” and “debentures” include any investment falling within paragraph 1, 2 or 9B of Schedule 1 and also include any investment falling within paragraph 3, 4 or 9B of Schedule 1 so far as relating to those paragraphs or any investment falling within paragraph 10 of Schedule 1 so far as relating to paragraph 1, 2, 3, 4 or 9B of Schedule 1;
- “trustee” includes a duly appointed delegate of the trustee who is participating in a joint enterprise with the trustee.
- (2) For the purposes of this paragraph a company or limited liability company is connected with another company or limited liability company if –
- (a) they are in the same group;
  - (b) one is entitled, either alone or with any other company or limited liability company in the same group, to exercise or control the exercise of a majority of the voting rights, (other than as nominee shareholder or nominee LLC interest holder) which are attributable to the share capital or LLC interests in issue and are exercisable in all

circumstances at any general meeting or members meeting of the other company or limited liability company or of its holding company or holding limited liability company; or

- (c) the first mentioned company or limited liability company holds, or a company or limited liability company in the same group as the first-mentioned company or limited liability company holds, an interest in the equity share capital or equity LLC interests of the other company or limited liability company carrying rights to vote in all circumstances at general meetings or members meetings for the purpose of securing a contribution to the activities of the first-mentioned company or limited liability company or the company or limited liability company in the same group as that company or limited liability company respectively by the exercise of control arising from that interest.

## 10 Issuing of shares, LLC interests, debentures, etc.

- (1) The issuing of a company or limited liability company of its own shares or LLC interests or of share warrants or LLC interest warrants in respect of any shares or LLC interests, or by any person of the person's own debentures or debenture warrants.
- (2) The issuing of its own units by a company, unit trust or limited partnership which would be a collective investment fund within the meaning of the [Collective Investment Funds \(Jersey\) Law 1988](#) but for the fact that it does not acquire capital by means of an offer to the public of units for subscription, sale or exchange, as described in that Law.

**Note:** For the purposes of this paragraph, “shares”, “LLC interests” and “debentures” include any investments falling within paragraph 1, 2 or 9B of Schedule 1 and “share warrants”, “LLC interest warrants” and “debenture warrants” means any investment which falls within paragraph 3 of Schedule 1 and, in the case of debenture warrants relates to debentures issued by the person concerned.

## 11 Sale of company or limited liability company

Dealing in the shares of a company or LLC interests of a limited liability company and giving advice in relation to such dealing, where –

- (a) the shares or LLC interests comprise shares or LLC interests carrying at least 75% of the voting rights attributable to share capital or all LLC interests in issue which are exercisable in all circumstances at a general meeting or members meeting of the company or limited liability company;
- (b) the shares or LLC interests, together with any already held by the person acquiring them, carry not less than that percentage of those voting rights; and
- (c) the dealing is between parties each of whom is a single person or a group of connected persons.

**Note:** For the purposes of this paragraph –

“close relative” means a person’s spouse or civil partner, children and step-children, parents and step-parents, brothers and sisters and step-brothers and step-sisters;

“connected persons”, in relation to the seller of the shares or LLC interests, means persons each of whom is, or is a close relative of, a director or manager of the company or limited liability company and, in relation to the buyer or underwriter of or the subscriber for the shares or LLC interests, means persons each of whom is, or is a close relative of, a person who is to be a director or manager of the company or limited liability company.

## 12 Dealing as bare trustee

Dealing in investments which are or are to be held by the person concerned as bare trustee, for another person, on that person’s instructions if –

- (a) the dealing takes place in the course of carrying on any business or profession which does not otherwise constitute investment business;
- (b) the person concerned does not receive any commission or other remuneration, directly or indirectly, from the beneficiary which is calculated by reference to the value of the transaction concerned or to any premiums or other sums payable with respect to those investments; and
- (c) the person concerned does not hold himself or herself out generally as providing a service of dealing in investments.

## 13 Investment advice given by trustees

Investment advice given by a person as trustee to –

- (a) a co-trustee for the purposes of the trust; or
- (b) a beneficiary under the trust concerning the person’s interest in the trust fund,

unless –

- (i) that person otherwise carries on the business of giving investment advice or of discretionary investment management or holds himself or herself out as carrying on either of those businesses; or
- (ii) the person was appointed as a trustee as a result of his or her soliciting for business for the purposes of inducing any person to enter into investment business transactions with him or her.

**Note:** For the purposes of this paragraph –

“joint enterprise” shall have the meaning given to it for the purposes of paragraph 8;

“trustee” includes a duly appointed delegate of the trustee who is participating in a joint enterprise with the trustee.

**14 Discretionary investment management by directors or managers**

Deciding as the director of a company or the manager of a limited liability company on the purchase, sale, subscription for or underwriting of investments by that company or limited liability company or another company or limited liability company in the same group as that company or limited liability company, unless –

- (a) the director or manager concerned carries on the business of giving investment advice or otherwise carries on the business of discretionary investment management or holds himself or herself out as carrying on either of those businesses;
- (b) the person was appointed as a director or manager as a result of his or her soliciting for business for the purposes of inducing any person to enter into investment business transactions with him or her; or
- (c) the person receives, directly or indirectly, any commissions or other remuneration for discharging his or her duties as a director or manager calculated by reference to the value of the transaction concerned or to any premiums or other sums payable with respect to those investments.

**Note:** For the purposes of this paragraph “director” includes a duly appointed alternate and “manager” includes a duly appointed proxy manager.

**15 Investment advice between directors or managers**

Investment advice given by a person as director to a co-director or as manager to a “co-manager” for the purposes of the company or limited liability company unless –

- (a) that person otherwise carries on the business of giving investment advice or of discretionary investment management or holds himself or herself out as carrying on either of those businesses; or
- (b) the person was appointed as a director or manager, as a result of his or her soliciting for business for the purposes of inducing any person to enter into investment business transactions with him or her.

**Note:** For the purposes of this paragraph “director” includes a duly appointed alternate and “manager” includes a duly appointed proxy manager.

**16 Investment advice given by protectors**

Investment advice given by a person as protector of a trust to a trustee of that trust, unless –

- (a) that person otherwise carries on the business of giving investment advice or of discretionary investment management or holds himself or herself out as carrying on either of those businesses;
- (b) the person was appointed as a protector as a result of his or her soliciting for business for the purposes of inducing any person to enter into investment business transactions with him or her; or
- (c) the person receives, directly or indirectly, any commissions or other remuneration for discharging the person’s duties as a protector calculated by reference to the value of the transaction concerned or to any premiums or other sums payable with respect to those investments.

**Note:** For the purposes of this paragraph –

“protector” means a person named in or appointed under the terms of a trust as the person whose consent is required before the trustee may exercise a power or a discretion;

“terms of a trust” shall have the meaning given to it by Article 1 of the [Trusts \(Jersey\) Law 1984](#).

## **17 Long-term insurance business by insurance companies**

Dealing in investments within paragraph 9 of Schedule 1 or rights in them, in so far as it constitutes the carrying on of long-term insurance business within the meaning of the [Insurance Business \(Jersey\) Law 1996](#) by a person authorized to carry on that business in or from Jersey by a permit granted under Article 7 of that Law.

## **18** <sup>163</sup>

### **PART 2 – TRUST COMPANY BUSINESS<sup>164</sup>**

## **18 Special purpose vehicle**

An activity specified in Article 2(3) and (4) carried on by a special purpose vehicle.

**Note:** In this paragraph –

“1958 Order” means the [Control of Borrowing \(Jersey\) Order 1958](#);

“partnership interest” has the same meaning as in Article 10(3) of the 1958 Order;

“relevant consent” means the consent of the Commission given under Article 1, 2, 3, 4, 4A, 9(1), 10 or 11A of the 1958 Order;

“securities” includes trust interests, shares, LLC interests, units, any partnership interest, bonds, notes, commercial paper, debentures, debenture stock and instruments creating or acknowledging indebtedness;

“special purpose vehicle” means a person who has obtained a relevant consent and whose sole or principal activity is to participate in a scheme or arrangement that involves –

- (a) the making of a loan, the giving of a guarantee, or the entering into of a derivatives transaction;
- (b) the issuing of securities;
- (c) the securitisation, acquisition or repackaging of assets;
- (d) a capital markets transaction;
- (e) any other transaction the Commission may approve for the purposes of this paragraph; or
- (f) any transaction in connection with any of the foregoing;

“unit” has the same meaning as in Article 13 of the 1958 Order.

**18A Company that is general partner or trustee of unregulated fund**

- (1) The activities of a company in respect of which the following requirements are met –
- (a) the only activities of the company are for one of the following purposes –
    - (i) the purpose of acting as a general partner of one limited partnership, where the partnership is an unregulated fund,
    - (ii) the purpose of acting as a trustee of one unit trust, where the trust is an unregulated fund,
    - (iii) the purpose of acting as one or both of the following –
      - (A) a general partner of one or more limited partnerships, where each partnership is an unregulated fund that, together with one or more other unregulated funds that are limited partnerships or unit trusts and each have the company as a general partner or a trustee, constitute a part, or the whole, of a single scheme or arrangement,
      - (B) a trustee of one or more unit trusts, where each trust is an unregulated fund that, together with one or more other unregulated funds that are limited partnerships or unit trusts and each have the company as a general partner or a trustee, constitute a part, or the whole, of a single scheme or arrangement;
  - (b) a person registered to carry on one or more classes of fund services business, including at least the class of manager of a managed entity, provides the registered office of the company;
  - (c) the name of the company is notified to the Commission.
- (2) A company does not fail to meet the requirements set out in sub-paragraph (1)(a) in relation to an unregulated fund only because it –
- (a) invests in the unregulated fund (or in another component of a scheme or arrangement of which the unregulated fund is part); or
  - (b) holds any interest in the unregulated fund (or in another component of a scheme or arrangement of which the unregulated fund is part) other than an interest referred to, or implicit in, sub-paragraph (1)(a).

**18B Certain managers of managed entity**

The activities –

- (a) of a person registered to carry on a class of fund services business, being a class that is or includes that of manager of a managed entity; and
- (b) to the extent that they are carried on for a company whose activities are, by virtue of paragraph 3C, 18A or 21, not to be treated as one or more classes of financial service business.

**18C Persons registered to carry on AIF services business**

The carrying on of AIF services business by a person who is registered under this Law to do so.

**PART 3 – GENERAL INSURANCE MEDIATION BUSINESS<sup>165</sup>****19 Newspapers, broadcasting and information services**

The giving of general insurance advice in any newspaper, journal, magazine, television broadcast, teletext service, sound broadcast or electronic information service, or in any other periodical publication, broadcast or electronic information service, if –

- (a) the principal purpose of the periodical publication, broadcast or service, taken as a whole and including any advertisements contained in it, is not to induce persons to buy, sell, subscribe for or underwrite a general insurance contract; or
- (b) the publisher, broadcaster, service provider or producer of the periodical publication, broadcast or service does not derive any direct benefit from any general insurance business resulting from the advice given in the publication, broadcast or service.

**20 Non-mainstream general insurance businesses**

- (1) General insurance mediation business undertaken in the course of carrying on –

- (a) the practice of accountancy by a practising accountant; or
  - (b) the profession of a lawyer by a practising lawyer.

- (2) For the purposes of this paragraph –

“practising accountant” means a person qualified under Article 113 of the [Companies \(Jersey\) Law 1991](#) for appointment as auditor of a company under Article 109 of that Law;

“practising lawyer” means –

- (a) an *écrivain* or advocate of the Royal Court; or
  - (b) a person who is qualified to act as a solicitor under section 1 of the Solicitors Act 1974 of the United Kingdom, Article 4 of the Solicitors (Northern Ireland) Order 1976 or section 4 of the Solicitors (Scotland) Act 1980,

and who is, for the time being, practising as an *écrivain*, advocate or solicitor from or within Jersey.

**PART 4 – FUND SERVICES BUSINESS<sup>166</sup>****21 Company that is general partner or trustee of unregulated fund**

- (1) The activities of a company in respect of which the following requirements are met –

- (a) the only activities of the company are for one of the following purposes –
    - (i) the purpose of acting as a general partner of one limited partnership, where the partnership is an unregulated fund,
    - (ii) the purpose of acting as a trustee of one unit trust, where the trust is an unregulated fund,
    - (iii) the purpose of acting as one or both of the following –
      - (A) a general partner of one or more limited partnerships, where each partnership is an unregulated fund that, together with one or more other unregulated funds that are limited partnerships or unit trusts and each have the company as a general partner or a trustee, constitute a part, or the whole, of a single scheme or arrangement,
      - (B) a trustee of one or more unit trusts, where each trust is an unregulated fund that, together with one or more other unregulated funds that are limited partnerships or unit trusts and each have the company as a general partner or a trustee, constitute a part, or the whole, of a single scheme or arrangement;
  - (b) a person registered to carry on one or more classes of fund services business, including at least the class of manager of a managed entity, provides the registered office of the company;
  - (c) the name of the company is notified to the Commission.
- (2) A company does not fail to meet the requirements set out in sub-paragraph (1)(a) in relation to an unregulated fund only because it –
- (a) invests in the unregulated fund (or in another component of a scheme or arrangement of which the unregulated fund is part); or
  - (b) holds any interest in the unregulated fund (or in another component of a scheme or arrangement of which the unregulated fund is part) other than an interest referred to, or implicit in, sub-paragraph (1)(a).

## 22 Certain overseas distributors

The activities described in paragraph 3B.

## PART 5 – AIF SERVICES BUSINESS<sup>167</sup>

## 23 Carrying on AIF services business

- (1) Subject to sub-paragraph (2), the carrying on of AIF services business in relation to an AIF by a person who –
- (a) is registered to carry on any one or more classes of fund services business in relation to an unclassified fund or an unregulated fund where that fund services business includes the same functions as the AIF services business;

- (b) holds a permit as a functionary of a recognized fund under the [Collective Investment Funds \(Jersey\) Law 1988](#) where the functions of the person as that functionary include the same functions as the AIF services business;
  - (c) is a person in respect of which Article 3(2) of Directive 2011/61/EU applies; or
  - (ca) is a small third country AIFM within the meaning of the UK AIFM Regulations; or
  - (d) has been granted a certificate, that is in force, under Article 8B of the [Collective Investment Funds \(Jersey\) Law 1988](#), in relation to that AIF.
- (2) Sub-paragraphs (1)(a), (b) and (d) shall not apply in relation to a person carrying on AIF services business that markets an AIF in the United Kingdom, in a member State of the European Union, or in any other EEA State to which Directive 2011/61/EU applies, unless the Commission has granted permission in writing for that AIF to be so marketed.
- (3) The carrying on of AIF services business if –
- (a) that business is carried on in relation to the marketing or management of an AIF in the United Kingdom or in an EEA State; and
  - (b) the laws of that country do not require compliance by that business with the UK AIFM Regulations or with Directive 2011/61/EU,
- to the extent that such business is otherwise required to be registered under Article 7(1).
- (4) In this paragraph –
- (a) “EEA State” means a State which is a member State of the European Union or any other State which is a contracting party to the agreement on the European Economic Area signed at Oporto on the 2nd May 1992 as adjusted by the Protocol signed at Brussels on the 17th March 1993; and
  - (b) “marketing” has the meaning given in the UK AIFM Regulations or in Directive 2011/61/EU, as the case may be.

**SCHEDULE 4<sup>168</sup>**

(Article 1(1))

**CLASSES OF GENERAL INSURANCE BUSINESS**

<i>Number</i>	<i>Description</i>	<i>Nature of business</i>
1	Accident	<p>Effecting and/or carrying out contracts of insurance providing fixed pecuniary benefits or benefits in the nature of indemnity (or a combination of both) against risks of the persons insured –</p> <ul style="list-style-type: none"> <li>(a) sustaining injury as the result of an accident or of an accident of a specified class;</li> <li>(b) dying as the result of an accident or of an accident of a specified class; or</li> <li>(c) becoming incapacitated in consequence of disease or of disease of a specified class,</li> </ul> <p>including contracts relating to industrial injury and occupational disease but excluding contracts falling within paragraph 2 of this Schedule or within class IV in Part I (permanent health) of the <a href="#">Insurance Business (Jersey) Law 1996</a>.</p>
2	Sickness	<p>Effecting and/or carrying out contracts of insurance providing fixed pecuniary benefits or benefits in the nature of indemnity (or a combination of the two) against risks of loss to the persons insured attributable to sickness or infirmity, but excluding contracts falling within class IV in Part I of the <a href="#">Insurance Business (Jersey) Law 1996</a>.</p>
3	Land vehicles	<p>Effecting and/or carrying out contracts of insurance against loss of or damage to vehicles used on land, including motor vehicles, but excluding railway rolling stock.</p>
4	Railway rolling stock	<p>Effecting and/or carrying out contracts of insurance against loss of or damage to railway rolling stock.</p>
5	Aircraft	<p>Effecting and/or carrying out contracts of insurance upon aircraft or upon the machinery, tackle, furniture or equipment of aircraft.</p>
6	Ships	<p>Effecting and/or carrying out contracts of insurance upon vessels used on the sea or on inland water, or upon the machinery, tackle, furniture or equipment of such vessels.</p>
7	Goods in transit	<p>Effecting and/or carrying out contracts of insurance against loss of or damage to merchandise, baggage</p>

		and all other goods in transit, irrespective of the form of transport.
8	Fire and natural forces	Effecting and/or carrying out contracts of insurance against loss of or damage to property (other than property to which any of paragraphs 3 to 7 relate) due to fire, explosion, storm, natural forces other than storm, nuclear energy or land subsidence.
9	Damage to property	Effecting and/or carrying out contracts of insurance against loss of or damage to property (other than property to which any of paragraphs 3 to 7 relate) due to hail or frost or to any event (such as theft) other than an event mentioned in paragraph 8.
10	Motor vehicle liability	Effecting and/or carrying out contracts of insurance against damage arising out of or in connection with the use of motor vehicles on land, including third-party risks and carrier's liability.
11	Aircraft liability	Effecting and/or carrying out contracts of insurance against damage arising out of or in connection with the use of aircraft, including third-party risks and carrier's liability.
12	Liability for ships	Effecting and/or carrying out contracts of insurance against damage arising out of or in connection with the use of vessels on the sea or on inland water, including third-party risks and carrier's liability.
13	General liability	Effecting and/or carrying out contracts of insurance against risks of the persons insured incurring liabilities to third parties, other than risks to which one of paragraphs 10, 11 or 12 relates.
14	Credit	Effecting and/or carrying out contracts of insurance against risks of loss to the persons insured arising from their debtor's insolvency or from the failure (otherwise than through insolvency) of their debtors to pay the debtor's debts when due.
15	Suretyship	<p>Effecting and/or carrying out –</p> <ul style="list-style-type: none"> <li>(a) contracts of insurance against risks of loss to the persons insured arising from their having to perform contracts of guarantee entered into by them;</li> <li>(b) contracts for fidelity bonds, performance bonds, administration bonds, bail bonds or customs bonds or similar contracts of guarantee,</li> </ul> <p>if, in the case of contracts referred to in paragraph (b), the contracts are effected and carried out by a person not carrying on a banking business and the contracts are effected by way of business (and not merely incidentally to some other business</p>

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|    |                              | carried out by the person effecting them) in return for the payment of one or more premiums.  |
| 16 | Miscellaneous financial loss | <p>Effecting and/or carrying out contracts of insurance against any of the following risks –</p> <ul style="list-style-type: none"><li>(a) risks of loss to the persons insured attributable to interruptions of the carrying on of business carried on by them or to reduction of the scope of business so carried on;</li><li>(b) risks of loss to the persons insured attributable to their incurring unforeseen expense (other than such loss covered by contracts within paragraph 18);</li><li>(c) risks neither falling within paragraph (a) or (b) nor being of a kind such that the carrying on of the business of effecting and carrying out contracts of insurance against them constitutes the carrying on of insurance business of some other class.</li></ul> |
| 17 | Legal expenses               | <p>Effecting and/or carrying out contracts of insurance against risks of loss to the persons insured attributable to their incurring legal expenses (including costs of litigation).</p>  |
| 18 | Assistance                   | <p>Effecting and/or carrying out contracts of insurance providing either or both of the following benefits –</p> <ul style="list-style-type: none"><li>(a) assistance (whether in cash or kind) for persons who get into difficulties while travelling, while away from home or while away from their permanent residence; or</li><li>(b) assistance (whether in cash or kind) for persons who get into difficulties otherwise than as mentioned in paragraph (a).</li></ul>  |

**SCHEDULE 5<sup>169</sup>**

(Article 43A)

**TRANSITIONAL PROVISIONS****1 General insurance mediation business**

Notwithstanding anything in this Law, a person who carried on general insurance mediation business at any time during the 3 months immediately before 21st January 2005 (“the commencement day”) shall not be taken to have committed any offence against this Law by virtue of any action that is taken, or not taken, by the person in the course of carrying on that business during the period –

- (a) on and from the commencement day until the day 3 months after the commencement day; or
- (b) if the person applies, before 3 months after the commencement day, for registration under this Law as a person entitled to carry on general insurance mediation business – on and from the commencement day until the day the application is finally determined (including as a result of an appeal to the Court under Article 11) or is withdrawn.

**2 Money service business**

- (1) Despite anything in this Law, a person who carried on money service business at any time during the 6 months immediately before the commencement day shall not be taken to have committed an offence under Article 7(4) by virtue of any action that is taken, or not taken, by the person in the course of carrying on that business during the period –
  - (a) on and from the commencement day until the day 6 months after the commencement day, or, if a day is prescribed under sub-paragraph (4) in relation to the person, until that day; or
  - (b) if the person applies, before 6 months after the commencement day, for registration under this Law as a person entitled to carry on money service business, on and from the commencement day until the day the application is finally determined (including as a result of an appeal to the Court under Article 11) or is withdrawn.
- (2) In relation to the period for which, in accordance with sub-paragraph (1), a person is to be taken not to have committed an offence under Article 7(4), the provisions of this Law shall apply (with the necessary modifications) to and in relation to the person as they apply to and in relation to a person registered under the Law to carry on money service business.
- (3) Without prejudice to the generality of sub-paragraph (2), the following modifications to the provisions of this Law shall apply to and in relation to a person to whom sub-paragraph (1) for the time being applies and who has applied

for registration under this Law as a person entitled to carry on money service business –

- (a) a reference in this Law to the period during which a person is registered shall be taken to be a reference to the period between –
    - (i) the date of the application, and
    - (ii) the date on which the application is granted or refused by the Commission, is finally determined (including as a result of an appeal to the Court under Article 11) or is withdrawn;
  - (b) a reference in this Law to the terms of a registration shall be taken to be a reference to the terms of the application; and
  - (c) a reference in Article 11 to the Commission, acting under Article 9, revoking a registration shall be taken as a reference to the Commission refusing an application under Article 9.
- (4) The Commission may, on the application of a person, by notice in writing to the person, prescribe in relation to the person a day for the purposes of sub-paragraph (1)(a).
- (5) The Commission may only prescribe a day under sub-paragraph (4) if –
- (a) the Commission is satisfied that there are exceptional circumstances that justify the extension of the period during which the person shall not be taken to have committed an offence under Article 7(4) by reason only of carrying on money service business; and
  - (b) the day is not more than 12 months after the commencement day.
- (6) In this paragraph, “commencement day” means the day on which the Financial Services (Amendment of Law) (Jersey) Regulations 2007 came into force.

### **3 Certain fund services business**

- (1) Sub-paragraph (2) applies to a person (other than a company issuing units within the meaning of the [Collective Investment Funds \(Jersey\) Law 1988](#)) who, immediately before the commencement day, holds a permit under that Law authorizing the person to carry on fund services business in relation to an unclassified fund.
- (2) On and from the commencement day –
- (a) a person to whom this sub-paragraph applies shall be taken to have applied for registration under this Law to carry on fund services business in relation to an unclassified fund;
  - (b) the Commission shall be taken to have registered the person to carry on, in relation to the unclassified fund in respect of which the permit referred to in paragraph (1) was issued, fund services business of a class specified in the permit; and
  - (c) the Commission shall, as soon as practicable, issue to the person a registration certificate under Article 9.
- (3) Sub-paragraph (4) applies to a person who, immediately before the commencement day, was a manager of a person –

- (a) who was a functionary in relation to an unclassified fund; and
  - (b) to whom a permit that was in force immediately before the commencement day was issued under the [Collective Investment Funds \(Jersey\) Law 1988](#).
- (4) On and from the commencement day –
  - (a) a person to whom this sub-paragraph applies shall be taken to have applied for registration under this Law to carry on, as a manager of a managed entity, fund services business in relation to an unclassified fund;
  - (b) the Commission shall be taken to have, on the commencement day, registered the person to carry on, in relation to the unclassified fund in respect of which the permit referred to in sub-paragraph (3) was issued, fund services business of a class specified in the permit; and
  - (c) the Commission shall, as soon as practicable, issue to the person a registration certificate under Article 9.
- (5) Nothing in sub-paragraph (2) or (4) shall be taken to prevent the Commission amending, varying or revoking the registration of a person that is taken by virtue of that sub-paragraph to have occurred.
- (6) In this item, “commencement day” means the day on which the Financial Services (Amendment of Law) (No. 2) (Jersey) Regulations 2007 come into force.

#### **4 Certain types of investment business**

- (1) Despite anything in this Law, a person who carried on investment business in relation to the matters in sub-paragraph (2) at any time during the 6 months immediately before the commencement day is not to be taken to have committed an offence under Article 7(4) by virtue of any action that is taken, or not taken, by the person in the course of carrying on that business during the period –
  - (a) on and from the commencement day until the day 6 months after the commencement day or, if a later day is specified under sub-paragraph (5) in relation to the person, until that day; or
  - (b) if the person applies, before 6 months after the commencement day, for registration under this Law as a person entitled to carry on investment business, on and from the commencement day until the day the application is finally determined (including as a result of an appeal to the Court under Article 11) or is withdrawn.
- (2) The matters are –
  - (a) making arrangements for another person (whether as principal or agent) to buy, sell, subscribe for or underwrite investments; or
  - (b) operating an investment exchange.
- (3) In relation to the period for which, in accordance with sub-paragraph (1), a person is taken not to have committed an offence under Article 7(4), the provisions of this Law apply (with the necessary modifications) to and in relation to the person as they apply to and in relation to a person registered under the Law to carry on investment business.
- (4) Without prejudice to the generality of sub-paragraph (3), the following modifications to the provisions of this Law apply to and in relation to a person to

whom sub-paragraph (1) applies and who has applied for registration under this Law as a person entitled to carry on investment business –

- (a) a reference in this Law to the period during which a person is registered is taken to be a reference to the period between –
    - (i) the date of the application, and
    - (ii) the date on which the application is granted or refused by the Commission is finally determined (including as a result of an appeal to the Court under Article 11) or is withdrawn;
  - (b) a reference in this Law to the terms of a registration is taken to be a reference to the terms of the application; and
  - (c) a reference in Article 11 to the Commission, acting under Article 9, revoking a registration is taken to be a reference to the Commission refusing an application under Article 9.
- (5) On the application of a person, the Commission may, by notice in writing, specify a day in relation to the person for the purposes of sub-paragraph (1)(a).
- (6) The Commission must not specify a day under paragraph (5) unless –
- (a) the Commission is satisfied that there are exceptional circumstances that justify the extension of the period during which the person will not be taken to have committed an offence under Article 7(4) by reason only of carrying on investment business; and
  - (b) the day is not later than 12 months after the commencement day.
- (7) In this paragraph, “commencement day” means –
- (a) for making arrangements for another person (whether as principal or agent) to buy, sell, subscribe for or underwrite investments, the day on which Regulation 2 of the Financial Services (Amendment of Law) (No. 6) (Jersey) Regulations 2023 comes into force; and
  - (b) for operating an investment exchange, the day on which Regulation 3 of the Financial Services (Amendment of Law) (No. 6) (Jersey) Regulations 2023 comes into force.

**SCHEDULE 6<sup>170</sup>**

## Article 39A

**SECURITIES**

For the purposes of Part 3A, “securities” means any of the following –

**1 Shares**

Shares and stock in the share capital of a company (“shares”).

**2 Debt securities**

Any instrument creating or acknowledging indebtedness which is issued by a company or limited liability company or public sector body including, in particular, debentures, debenture stock, loan stock, bonds and certificates of deposit (“debt securities”).

**3 Warrants**

Any right, (whether conferred by warrant or otherwise) to subscribe for shares or LLC interests or debt securities.

**4 Depositary receipts**

- (1) The rights under any depositary receipt.
- (2) For the purpose of sub-paragraph (1) a “depositary receipt” means a certificate or other record (whether or not in the form of a document) –
  - (a) which is issued by or on behalf of a person who holds any relevant securities of a particular issuer; and
  - (b) which acknowledges that another person is entitled to rights in relation to the relevant securities or relevant securities of the same kind.
- (3) In sub-paragraph (2) “relevant securities” means shares or LLC interests, debt securities and warrants.

**5 Options**

Any option to acquire or dispose of any security falling within any other paragraph of this Schedule.

**6 Futures**

- (1) Rights under a contract for the acquisition or disposal of relevant securities under which delivery is to be made at a future date and at a price agreed when the contract is made.

(2) In sub-paragraph (1) –

- (a) the references to a future date and to a price agreed when the contract is made include references to a date and a price determined in accordance with terms of the contract; and
- (b) “relevant securities” means any security within the meaning of any other paragraph of this Schedule.

## **7 Contracts for differences**

Rights under a contract which does not provide for the delivery of securities.

## **8 LLC interests**

LLC interests.

## **8A Financial derivatives**

Rights under any contract, except an option, future or contract for differences, the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the value or price of property of any description or in an index or other factor designated for that purpose in the contract.

## ENDNOTES

### Table of Legislation History

Legislation	Year and Number	Commencement	Project No (where applicable)
Investment Business (Jersey) Law 1998 (name of Law amended by <a href="#">L.25/2000</a> )	<a href="#">L.32/1998</a>	1 March 1999, (1 July 1999 for Art. 6) ( <a href="#">R&amp;O.9356</a> )	<a href="#">P.59/1998</a>
Investment Business (Amendment) (Jersey) Order 1999	<a href="#">R&amp;O.9402</a>	1 July 1999	
Investment Business (Amendment) (Jersey) Law 1999	<a href="#">L.22/1999</a>	1 November 1999 ( <a href="#">R&amp;O.9459</a> )	<a href="#">P.8/1999</a>
Criminal Procedure (Prescription of Offences) (Jersey) Law 1999	<a href="#">L.23/1999</a>	23 July 1999	<a href="#">P.34/1999</a>
Fees (Miscellaneous Amendments and Validation) (Jersey) Law 1999	<a href="#">L.30/1999</a>	5 November 1999	<a href="#">P.88/1999</a>
Investment Business (Amendment No. 2) (Jersey) Law 2000	<a href="#">L.23/2000</a>	20 October 2000 ( <a href="#">R&amp;O.90/2000</a> )	<a href="#">P.8/2000</a>
Financial Services (Extension) (Jersey) Law 2000	<a href="#">L.25/2000</a>	27 November 2000 (2 February 2001 for Art. 3) ( <a href="#">R&amp;O.119/2000</a> )	<a href="#">P.55/2000</a>
Financial Services (Amendment) (Jersey) Order 2000	<a href="#">R&amp;O.127/2000</a>	27 November 2000	
Financial Services (Amendment) (Jersey) Law 2002	<a href="#">L.5/2002</a>	1 March 2002 ( <a href="#">R&amp;O.11/2002</a> )	<a href="#">P.158/2001</a>
Transfer of Functions (Economic Development Committee) (Jersey) Act 2003	<a href="#">R&amp;O.101/2003</a>	14 October 2003	<a href="#">P.122/2003</a>
Financial Services (Amendment No. 2) (Jersey) Law 2005	<a href="#">L.1/2005</a>	21 January 2005	<a href="#">P.111/2004</a> (re-issue)
States of Jersey (Amendments and Construction Provisions No. 4) (Jersey) Regulations 2005	<a href="#">R&amp;O.44/2005</a>	9 December 2005	<a href="#">P.58/2005</a>
States of Jersey (Amendments and Construction Provisions No. 12) (Jersey) Regulations 2005	<a href="#">R&amp;O.133/2005</a>	9 December 2005	<a href="#">P.217/2005</a>
Financial Services (Amendment of Law) (Jersey) Regulations 2007	<a href="#">R&amp;O.93/2007</a>	26 July 2007	<a href="#">P.79/2007</a>
Financial Services (Amendment of Law) (No. 2) (Jersey) Regulations 2007	<a href="#">R&amp;O.147/2007</a>	14 November 2007	<a href="#">P.114/2007</a>

Legislation	Year and Number	Commencement	Project No (where applicable)
Financial Services (Investment Business (Fund Services Business Exemption)) (Jersey) Order 2007	<a href="#">R&amp;O.157/2007</a>	14 November 2007	
Financial Services Commission (Amendment No. 4) (Jersey) Law 2007	<a href="#">L.33/2007</a>	24 January 2008	<a href="#">P.35/2007</a>
Financial Services (Amendment of Schedule 2 to Law) (Jersey) Order 2008	<a href="#">R&amp;O.52/2008</a>	4 April 2008	
Financial Services (Amendment No. 3) (Jersey) Law 2008	<a href="#">L.6/2008</a>	9 April 2008 ( <a href="#">R&amp;O.47/2008</a> )	<a href="#">P.100/2007</a>
Financial Services (Amendment of Law) (No. 3) (Jersey) Regulations 2008	<a href="#">R&amp;O.62/2008</a>	6 May 2008	<a href="#">P.45/2008</a>
Financial Services (Amendment No. 4) (Jersey) Law 2008	<a href="#">L.26/2008</a>	23 May 2008	<a href="#">P.138/2007</a>
Financial Services (Amendment of Schedule 2 to Law) (No. 2) (Jersey) Order 2008	<a href="#">R&amp;O.100/2008</a>	22 August 2008	
Financial Regulation (Miscellaneous Provisions) (Jersey) Law 2009	<a href="#">L.4/2009</a>	9 January 2009	<a href="#">P.123/2008</a>
Financial Services (Amendment of Schedule 2 to the Law) (No. 3) (Jersey) Order 2009	<a href="#">R&amp;O.9/2009</a>	28 January 2009	
Foundations (Jersey) Law 2009	<a href="#">L.23/2009</a>	17 July 2009	<a href="#">P.143/2008</a>
Civil Partnership (Jersey) Law 2012	<a href="#">L.4/2012</a>	2 April 2012	<a href="#">P.85/2011</a>
Alternative Investment Funds (Jersey) Regulations 2012	<a href="#">R&amp;O.142/2012</a>	2 April 2013	<a href="#">P.109/2012</a>
Financial Services (Amendment of Law) (No. 4) (Jersey) Regulations 2012	<a href="#">R&amp;O.143/2012</a>	2 April 2013	<a href="#">P.110/2012</a>
Financial Regulation (Disclosure of Information) (Amendments) (Jersey) Regulations 2013	<a href="#">R&amp;O.31/2013</a>	13 March 2013	<a href="#">P.7/2013</a>
Financial Services (Amendment of Schedule 2 to Law) (No. 4) (Jersey) Order 2013	<a href="#">R&amp;O.97/2013</a>	22 July 2013	
States of Jersey (Transfer of Functions No. 6) (Economic Development and Treasury and Resources to Chief Minister) (Jersey) Regulations 2013	<a href="#">R&amp;O.107/2013</a>	19 July 2013	<a href="#">P.75/2013</a>
Financial Services Ombudsman (Jersey) Law 2014	<a href="#">L.14/2014</a>	25 July 2014	<a href="#">P.9/2014</a>

Legislation	Year and Number	Commencement	Project No (where applicable)
European Union Legislation (Implementation) (Jersey) Law 2014	<a href="#">L.28/2014</a>	31 October 2014	<a href="#">P.164/2013</a>
Financial Regulation (Miscellaneous Provisions No. 2) (Jersey) Law 2014	<a href="#">L.40/2014</a>	21 November 2014	<a href="#">P.47/2014</a>
Financial Services Commission (Amendment No. 6) (Jersey) Law 2015	<a href="#">L.1/2015</a>	20 March 2015	<a href="#">P.151/2014</a>
Financial Services (Amendment of Schedule 2 to Law) (No. 5) (Jersey) Order 2015	<a href="#">R&amp;O.41/2015</a>	27 March 2015	
Financial Regulation (Miscellaneous Provisions No. 3) (Jersey) Law 2016	<a href="#">L.8/2016</a>	22 April 2016	<a href="#">P.162/2015</a>
Financial Regulation (Miscellaneous Provisions No. 4) (Jersey) Law 2016	<a href="#">L.14/2016</a>	22 August 2016	<a href="#">P.30/2016</a>
Financial Services (Amendment of Law) (No. 5) (Jersey) Regulations 2018	<a href="#">R&amp;O.25/2018</a>	29 March 2018	<a href="#">P.19/2018</a>
Financial Services (Amendment of Schedules to Law) (Jersey) Order 2018	<a href="#">R&amp;O.57/2018</a>	23 July 2018	
Limited Liability Partnerships (Jersey) Law 2017	<a href="#">L.2/2017</a>	1 August 2018 ( <a href="#">R&amp;O.74/2018</a> )	<a href="#">P.95/2016</a>
Financial Services Commission (Amendment No. 7) (Jersey) Law 2018	<a href="#">L.28/2018</a>	26 October 2018	<a href="#">P.74/2018</a>
Financial Regulation (Miscellaneous Provisions) (Amendment of Laws) (Jersey) Regulations 2019	<a href="#">R&amp;O.3/2019</a>	22 January 2019	<a href="#">P.139/2018</a>
Financial Regulation (Miscellaneous Provisions No. 5) (Jersey) Law 2019	<a href="#">L.7/2019</a>	26 May 2019	<a href="#">P.138/2018</a>
States of Jersey (Transfer of Responsibilities and Functions) (Chief Minister to External Relations) Order 2019	<a href="#">R&amp;O.40/2019</a>	31 May 2019	
European Union (Financial Services – Miscellaneous Amendments) (Jersey) Regulations 2019	<a href="#">R&amp;O.21/2019</a>	11pm on 31 January 2020 ( <a href="#">R&amp;O.3/2020</a> )	<a href="#">P.11/2019</a>

Legislation	Year and Number	Commencement	°Projet No (where applicable)
European Union (United Kingdom Exit – Alternative Investment Funds) (Jersey) Regulations 2019	<a href="#">R&amp;O.26/2019</a>	11 p.m. on 31 December 2020 ( <a href="#">R&amp;O.189/2020</a> )	<a href="#">P.15/2019</a>
States of Jersey (Minister for Children and Education, Minister for Housing and Communities and Minister for External Relations and Financial Services) (Jersey) Order 2021	<a href="#">R&amp;O.29/2021</a>	2 March 2021	
Financial Services (Amendment of Law No. 6) (Investment Business) (Jersey) Regulations 2022	<a href="#">R&amp;O.14/2022</a>	15 February 2022	<a href="#">P.112/2021</a>
Financial Services (Amendment of Schedules to Law) (No. 2) (Jersey) Order 2022	<a href="#">R&amp;O.27/2022</a>	10 March 2022	
Limited Liability Companies (Consequential Amendments) (Jersey) Regulations 2022	<a href="#">R&amp;O.38/2022</a>	1 September 2022	<a href="#">P.33/2022</a>
Limited Liability Companies (Amendment) (Jersey) Regulations 2023	<a href="#">R&amp;O.12/2023</a>	14 February 2023	<a href="#">P.118/2022</a>
States of Jersey (Transfer of Financial Services Functions – External Relations to Chief Minister) Order 2023	<a href="#">R&amp;O.28/2023</a>	12 April 2023	
Financial Services (Amendment of Law) (No. 6) (Jersey) Regulations 2023	<a href="#">R&amp;O.74/2023</a>	31 October 2023 – except Regulation 3 ( <a href="#">R&amp;O.91/2023</a> )	<a href="#">P.54/2023</a>
Financial Services (Amendment of Schedules to Law) (No. 3) (Jersey) Order 2023	<a href="#">R&amp;O.92/2023</a>	31 October 2023	
Changes to Ministerial Offices (Jersey) Amendment Order 2024	<a href="#">R&amp;O.10/2024</a>	9.30 a.m. on 27 February 2024	

°Projets available at [statesassembly.gov.je](https://statesassembly.gov.je)

### Table of Renumbered Provisions

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(7)	repealed by <a href="#">L.23/1999</a>
(8)	repealed by <a href="#">L.23/1999</a>

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(2)	(3)
(3)	(4)
40	43
41	spent, omitted from this revised edition
42	44
FIRST SCHEDULE	SCHEDULE 1
SECOND SCHEDULE	SCHEDULE 2
PART I	PART 1
PART II	PART 2
THIRD SCHEDULE	has had its effect and is omitted from this revised edition

### Table of Endnote References

<sup>1</sup> This Law has been amended by the States of Jersey (Amendments and Construction Provisions No. 4) (Jersey) Regulations 2005 and by the States of Jersey (Amendments and Construction Provisions No. 12) (Jersey) Regulations 2005. The amendments replace all references to a Committee of the States of Jersey with a reference to a Minister of the States of Jersey, and remove and add defined terms appropriately, consequentially upon the move from a committee system of government to a ministerial system of government

<sup>2</sup> Long title substituted by L.6/2008

<sup>3</sup> Part 1 division heading deleted on 11 December 2024 by Law Revision Board item [2024/9](#)

<sup>4</sup> Article 1 substituted by L.25/2000

<sup>5</sup> Article 1(1) amended by L.1/2005, R&O.93/2007, R&O.147/2007, L.6/2008, R&O.62/2008, L.26/2008, L.4/2009, L.23/2009, L.4/2012, R&O.143/2012, R&O.31/2013, R&O.107/2013, L.8/2016, R&O.25/2018, L.2/2017, R&O.3/2019, L.7/2019, R&O.40/2019, R&O.26/2019, R&O.29/2021, R&O.14/2022, R&O.38/2022, R&O.12/2023, R&O.28/2023, R&O.10/2024

<sup>6</sup> Article 2 substituted by L.25/2000

<sup>7</sup> Article 2(1) substituted by L.1/2005, amended by R&O.93/2007, R&O.147/2007, R&O.143/2012

<sup>8</sup> Article 2(2) amended by R&O.74/2023

<sup>9</sup> Article 2(3) substituted by L.23/2009, amended by L.2/2017, R&O.38/2022

<sup>10</sup> Article 2(4) substituted by L.23/2009, amended by L.2/2017, R&O.38/2022, R&O.12/2023

<sup>11</sup> Article 2(5) substituted by L.23/2009, amended by R&O.38/2022

<sup>12</sup> Article 2(6) substituted by L.23/2009, amended by R&O.38/2022, R&O.12/2023

<sup>13</sup> Article 2(7) added by L.1/2005

<sup>14</sup> Article 2(8) added by L.1/2005

<sup>15</sup> Article 2(9) inserted by R&O.93/2007

<sup>16</sup> Article 2(10) inserted by R&O.147/2007, amended by R&O.62/2008

<sup>17</sup> Article 2(11) added by R&O.143/2012, amended by R&O.26/2019

<sup>18</sup> Article 3 substituted by L.1/2005

<sup>19</sup> Article 3A inserted by L.1/2005

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- <sup>20</sup> Article 3A(1) *correction published March 2007: substitute “Articles 13 to 19” for “Articles 11 to 17”*
- <sup>21</sup> Article 4(1) *amended by L.1/2005*
- <sup>22</sup> Article 4(3) *deleted by L.26/2008*
- <sup>23</sup> Article 4(4) *substituted by L.26/2008*
- <sup>24</sup> Article 4(5) *added by L.1/2005*
- <sup>25</sup> Article 4(6) *added by L.1/2005*
- <sup>26</sup> Article 6(1A) *inserted by L.7/2019*
- <sup>27</sup> Part 2 *heading amended by L.25/2000*
- <sup>28</sup> Division heading *amended by L.25/2000, revised on 11 December 2024 by Law Revision Board item [2024/9](#)*
- <sup>29</sup> Article 7 *heading amended by L.25/2000*
- <sup>30</sup> Article 7(1) *substituted by L.25/2000, amended by R&O.38/2022*
- <sup>31</sup> Article 7(2) *amended by L.25/2000*
- <sup>32</sup> Article 7(3) *amended by L.25/2000, R&O.38/2022*
- <sup>33</sup> Division heading *revised on 11 December 2024 by Law Revision Board item [2024/9](#)*
- <sup>34</sup> Article 8(1) *amended by L.25/2000*
- <sup>35</sup> Article 8(2) *amended by L.25/2000*
- <sup>36</sup> *Article 8 of the Financial Services Commission (Amendment No. 4) (Jersey) Law 2007, which came into force on 2nd November 2007, states-*
- “8 Initial publication of fees**
- (1) *The Commission must, before [24th January 2008], publish fees for the purpose of the Laws specified in the Schedule to this Law.*
- (2) *The fees so published –*
- (a) *shall be the same fees as those prescribed under those Laws; and*
- (b) *shall have effect when this Law comes fully into force.*
- (3) *On this Law coming fully into force, the fees published under this Article shall be taken to have been published under Article 15(5) of the [Financial Services Commission (Jersey) Law 1998].*
- (4) *In this Article –*
- “Commission” means the Jersey Financial Services Commission established by the principal Law;*
- “published”, in respect of fees published in accordance with this Article, means published in a manner likely to bring them to the attention of those affected by the fees.”*
- <sup>37</sup> Article 8(3) *amended by L.33/2007*
- <sup>38</sup> Article 8(7) *amended by L.25/2000*
- <sup>39</sup> Article 8(8) *repealed by L.33/2007*
- <sup>40</sup> Article 9(3) *amended by L.25/2000, L.1/2005, L.26/2008, R&O.142/2012, L.40/2014, L.1/2015*
- <sup>41</sup> Article 9(4) *amended by L.25/2000, L.40/2014, L.7/2019, R&O.38/2022*
- <sup>42</sup> Article 9(6) *substituted by L.14/2016*
- <sup>43</sup> Article 9(7) *repealed by L.33/2007*
- <sup>44</sup> Article 9(8) *repealed by L.33/2007*
- <sup>45</sup> Article 10(1) *amended by L.25/2000, L.1/2005*
- <sup>46</sup> Article 10(2) *amended by L.1/2005*
- <sup>47</sup> Article 10(3) *amended by L.1/2005*
- <sup>48</sup> Article 11(1) *amended by L.1/2005, L.26/2008*
- <sup>49</sup> Article 11(2) *amended by L.1/2005, L.4/2009*

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- <sup>50</sup> Article 11(3) *amended by L.1/2005*
- <sup>51</sup> Article 11(4) *substituted by L.25/2000, amended by L.1/2005, L.26/2008, L.40/2014*
- <sup>52</sup> Article 11(6) *substituted by L.26/2008*
- <sup>53</sup> Article 11(7) *substituted by L.26/2008*
- <sup>54</sup> Article 11A *inserted by L.26/2008*
- <sup>55</sup> Article 12 *inserted by L.25/2000*
- <sup>56</sup> Part 3 *headings substituted by L.26/2008*
- <sup>57</sup> Division heading *former cross heading revised as division heading on 11 December 2024 by Law Revision Board item [2024/9](#)*
- <sup>58</sup> Article 13 *substituted by L.26/2008*
- <sup>59</sup> Article 13(4) *amended by L.40/2014*
- <sup>60</sup> Article 14 *heading substituted by L.26/2008, amended by R&O.38/2022*
- <sup>61</sup> Article 14(1) *substituted by L.26/2008*
- <sup>62</sup> Article 14(2A) *inserted by R&O.38/2022*
- <sup>63</sup> Article 14(3) *amended by L.26/2008, R&O.38/2022*
- <sup>64</sup> Article 14(4) *substituted by L.26/2008*
- <sup>65</sup> Article 14(6) *amended by L.26/2008, R&O.38/2022*
- <sup>66</sup> Article 14(7) *amended by L.26/2008, R&O.38/2022*
- <sup>67</sup> Article 14(8) *amended by R&O.38/2022*
- <sup>68</sup> Article 14(8A) *inserted by L.40/2014*
- <sup>69</sup> Article 14(9) *substituted by L.26/2008, amended by R&O.38/2022*
- <sup>70</sup> Article 15 *substituted by L.26/2008*
- <sup>71</sup> Article 16 *heading amended by R&O.38/2022*
- <sup>72</sup> Article 16(1) *substituted by R&O.38/2022*
- <sup>73</sup> Article 16(2) *amended by R&O.38/2022*
- <sup>74</sup> Article 16(2A) *inserted by L.26/2008*
- <sup>75</sup> Article 16(3) *amended by R&O.38/2022*
- <sup>76</sup> Article 16(5) *amended by R&O.38/2022*
- <sup>77</sup> Article 16(6) *amended by R&O.38/2022*
- <sup>78</sup> Article 16(7) *amended by R&O.38/2022*
- <sup>79</sup> Article 16(8) *amended by R&O.38/2022*
- <sup>80</sup> Division heading *former cross heading revised as division heading on 11 December 2024 by Law Revision Board item [2024/9](#)*
- <sup>81</sup> Article 18 *substituted by L.8/2016*
- <sup>82</sup> Article 18(2) *amended by R&O.38/2022*
- <sup>83</sup> Article 18(3) *amended by R&O.38/2022*
- <sup>84</sup> Division heading *substituted by L.6/2008 (as cross heading), revised as division heading on 11 December 2024 by Law Revision Board item [2024/9](#)*
- <sup>85</sup> Article 19(1) *amended by L.25/2000, L.1/2015*
- <sup>86</sup> Article 19(3) *substituted by L.1/2015*
- <sup>87</sup> Article 21 *inserted by L.25/2000*
- <sup>88</sup> Article 22(1) *amended by L.1/2005*
- <sup>89</sup> Article 23 *substituted by L.26/2008*
- <sup>90</sup> Article 23(1) *amended by L.40/2014*
- <sup>91</sup> Article 23(5) *amended by L.4/2009*
- <sup>92</sup> Article 23(12) *substituted by L.40/2014*
- <sup>93</sup> Article 23(13) *substituted by L.4/2009*
- <sup>94</sup> Article 23(13A) *substituted by L.40/2014*
- <sup>95</sup> Article 23(13AB) *inserted by L.40/2014*
- <sup>96</sup> Article 23(13B) *inserted by L.4/2009*
- <sup>97</sup> Article 23(15A) *inserted by L.4/2009*
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- <sup>98</sup> Article 23(16) amended by L.4/2009
- <sup>99</sup> Article 24(1) amended by L.25/2000, L.6/2008
- <sup>100</sup> Article 25 substituted by L.26/2008, amended by L.4/2009, L.40/2014, L.1/2015, L.28/2018
- <sup>101</sup> Article 25A inserted by L.26/2008
- <sup>102</sup> Article 25B inserted by L.26/2008
- <sup>103</sup> Article 25B(3) amended by L.4/2009, L.40/2014
- <sup>104</sup> Article 25C inserted by L.26/2008
- <sup>105</sup> Article 26(1) substituted by L.40/2014
- <sup>106</sup> Article 26(2) substituted by L.40/2014
- <sup>107</sup> Article 26(3) substituted by L.25/2000, amended by L.1/2005
- <sup>108</sup> Article 27 amended by L.1/2005, renumbered as paragraph (1) by L.4/2009
- <sup>109</sup> Article 27(2) inserted by L.4/2009
- <sup>110</sup> Article 29 heading amended by L.25/2000
- <sup>111</sup> Article 29 amended by L.1/2005
- <sup>112</sup> Article 30 repealed by L.6/2008
- <sup>113</sup> Article 31(1) amended by L.25/2000
- <sup>114</sup> Article 31(2) amended by L.25/2000
- <sup>115</sup> Article 31(3) amended by L.25/2000
- <sup>116</sup> Article 31(4) amended by L.25/2000
- <sup>117</sup> Article 31(5) amended by L.25/2000, L.1/2005
- <sup>118</sup> Article 31(6) amended by L.25/2000
- <sup>119</sup> Division heading former cross heading revised as division heading on 11 December 2024 by Law Revision Board item [2024/9](#)
- <sup>120</sup> Article 32 substituted by L.40/2014
- <sup>121</sup> Article 32(9) amended by L.7/2019
- <sup>122</sup> Article 32(14) amended by L.7/2019
- <sup>123</sup> Article 33(1) substituted by L.25/2000, amended by L.1/2005, L.6/2008
- <sup>124</sup> Article 33(3) amended by L.40/2014
- <sup>125</sup> Article 33(4) amended by L.25/2000, L.6/2008
- <sup>126</sup> Article 34(1) amended by L.40/2014
- <sup>127</sup> Article 36 substituted by L.5/2002
- <sup>128</sup> Article 36(1) amended by L.40/2014
- <sup>129</sup> Article 36(6) amended by L.6/2008, L.40/2014
- <sup>130</sup> Article 36(7) amended by L.6/2008
- <sup>131</sup> Division heading former cross heading revised as division heading on 11 December 2024 by Law Revision Board item [2024/9](#)
- <sup>132</sup> Article 38(1) amended by L.25/2000, L.5/2002, L.1/2005, L.6/2008, L.26/2008, L.4/2009, R&O.31/2013, L.14/2014, L.40/2014, R&O.3/2019, R&O.38/2022
- <sup>133</sup> Article 38(1A) added by R&O.31/2013
- <sup>134</sup> Article 38(1B) added by R&O.31/2013
- <sup>135</sup> Article 38(1C) added by R&O.31/2013
- <sup>136</sup> Article 38(1D) added by R&O.31/2013
- <sup>137</sup> Article 38(2) substituted by L.4/2009, amended by R&O.31/2013, R&O.3/2019
- <sup>138</sup> Article 38(3) inserted by L.4/2009
- <sup>139</sup> Article 39 amended by L.4/2009, R&O.31/2013
- <sup>140</sup> Part 3A inserted by L.6/2008
- <sup>141</sup> Division heading former cross heading revised as division heading on 11 December 2024 by Law Revision Board item [2024/9](#)
- <sup>142</sup> Article 39A(1) amended by R&O.31/2013, L.28/2014, R&O.21/2019, R&O.38/2022

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- <sup>143</sup> Article 39C(3) amended by R&O.38/2022
- <sup>144</sup> Article 39D(2) amended by R&O.38/2022, R&O.12/2023
- <sup>145</sup> Division heading former cross heading revised as division heading on 11 December 2024 by Law Revision Board item [2024/9](#)
- <sup>146</sup> Division heading former cross heading revised as division heading on 11 December 2024 by Law Revision Board item [2024/9](#)
- <sup>147</sup> Article 40 substituted by L.26/2008
- <sup>148</sup> Article 40(4) amended by R&O.38/2022
- <sup>149</sup> Article 41 original paragraph (5) repealed by L.25/2000
- <sup>150</sup> Article 41(1) amended by L.25/2000
- <sup>151</sup> Article 41(4) substituted by L.23/2000, amended by L.2/2017
- <sup>152</sup> Article 41(5) inserted by L.23/2000
- <sup>153</sup> Article 41(6) inserted by L.23/2000
- <sup>154</sup> Article 41(7) inserted by L.23/2000, amended by L.5/2002
- <sup>155</sup> Article 42(2) repealed by L.33/2007
- <sup>156</sup> Article 42(3) substituted by L.26/2008
- <sup>157</sup> Article 42(4) substituted by L.26/2008
- <sup>158</sup> Article 43 this Article was repealed by L.25/2000 but continues to apply in the transitional circumstances specified in Article 14(2) thereof
- <sup>159</sup> Article 43A inserted by L.1/2005
- <sup>160</sup> Article 44 amended by L. 25/2000
- <sup>161</sup> Schedule 1 amended by R&O.27/2022, R&O.38/2022, R&O.12/2023, R&O.92/2023
- <sup>162</sup> Schedule 2 Part 1 heading amended by L.25/2000; Part 1 amended by R&O.9402, R&O.157/2007, R&O.52/2008, R&O.100/2008, R&O.9/2009, L.4/2012, R&O.97/2013, R&O.38/2022, R&O.92/2023
- <sup>163</sup> Schedule 2 Part 1, paragraph 18 inserted by R&O.57/2018, deleted by R&O.27/2022
- <sup>164</sup> Schedule 2 Part 2 heading inserted by L.25/2000; Part 2 amended by R&O.127/2000, R&O.100/2008, R&O.97/2013, R&O.38/2022
- <sup>165</sup> Schedule 2 Part 3 inserted by L.1/2005
- <sup>166</sup> Schedule 2 Part 4 inserted by R&O.100/2008, amended by R&O.9/2009
- <sup>167</sup> Schedule 2 Part 5 added by R&O.97/2013, amended by R&O.41/2015, R&O.26/2019, editorial change made to paragraph 23(1)(c), “or” deleted from the end
- <sup>168</sup> Schedule 4 inserted by L.1/2005
- <sup>169</sup> Schedule 5 inserted by L.1/2005, amended by R&O.93/2007, R&O.147/2007, R&O.92/2023
- <sup>170</sup> Schedule 6 inserted by L.6/2008, amended by R&O.38/2022, R&O.92/2023