



Jersey

L.1/2005

## FINANCIAL SERVICES (AMENDMENT No. 2) (JERSEY) LAW 2005

### Arrangement

---

#### Article

1	Interpretation.....	3
2	Article 1 amended.....	3
3	Article 2 amended.....	4
4	Article 3 substituted.....	4
5	Article 4 amended.....	5
6	Article 8 amended.....	5
7	Article 9 amended.....	6
8	Article 10 amended.....	6
9	Article 11 amended.....	7
10	Article 19 amended.....	7
11	Article 20 amended.....	7
12	Article 23 amended.....	7
13	Article 24 amended.....	8
14	Article 26 amended.....	8
15	Article 27 amended.....	8
16	Article 28 amended.....	8
17	Article 30 amended.....	8
18	Article 35 amended.....	9
19	New Article inserted.....	9
20	Second Schedule amended.....	9
21	New Schedules added.....	9
22	Citation and commencement.....	9

<b>SCHEDULE 1</b>	<b>10</b>
<b>SCHEDULE 2</b>	<b>11</b>

---





Jersey

## **FINANCIAL SERVICES (AMENDMENT No. 2) (JERSEY) LAW 2005**

**A LAW** to further amend the Financial Services (Jersey) Law 1998.<sup>1</sup>

*Adopted by the States*

*30th June 2004*

*Sanctioned by Order of Her Majesty in Council*

*16th December 2004*

*Registered by the Royal Court*

*14th January 2005*

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

### **1 Interpretation**

In this Law, the “principal Law” means the Financial Services (Jersey) Law 1998.<sup>2</sup>

### **2 Article 1 amended**

In Article 1(1) of the principal Law<sup>3</sup> –

- (a) for the definitions “client” and “client asset” there shall be substituted the following definitions –

“ ‘client’, in relation to a registered person, means a person, whether resident on or off the Island, 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 property belonging to a client and includes money, investments and insurance policies;”;

- (b) there shall be inserted after the definition “financial service business” the following definitions –

“ ‘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;”;

- (c) there shall be inserted after the definition “partnership” the following definition –

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

### 3 Article 2 amended

In Article 2 of the principal Law<sup>4</sup> –

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

“(1) A person carries on financial service business if by way of business the person carries on investment business, trust company business or general insurance mediation business.”;

- (b) at the end of the Article there shall be added the following paragraphs –

“(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 subparagraph (a), (b), (c) or (d).

- (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.”.

### 4 Article 3 substituted

For Article 3 of the principal Law<sup>5</sup> there shall be substituted the following Articles –

---

**“3 Exclusion from class of financial service business**

An activity described in the Second Schedule 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**

- (1) Articles 11 to 17 (inclusive) shall not apply to, or in relation to, incidental general insurance mediation business.
- (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 Committee may, on the recommendation of the Commission, by Order amend paragraphs (1) or (2).”.

**5 Article 4 amended**

In Article 4 of the principal Law<sup>6</sup> –

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

“(b) subject to paragraph (5), the Schedules.”;
- (b) at the end there shall be added the following paragraphs –
  - “(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).
  - (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.”.

**6 Article 8 amended**

For Article 8(3)(e) of the principal Law<sup>7</sup> there shall be substituted the following sub-paragraph –

- “(e) it appears to the Commission, as a result of information provided in pursuance of requirements of or under Article 7, or information otherwise obtained, that –
  - (i) if the applicant intends to carry on financial service business (other than trust company business) – 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) if the applicant intends to carry on trust company business – it is in the best interests of –
    - (A) persons who may enter into agreements for the provision of services to be provided by the applicant when carrying on trust company business, or
    - (B) persons who may receive the benefit of services to be provided or arranged by the applicant when carrying on trust company business,that the applicant should not be registered,
  - (iii) in order to protect the reputation and integrity of the Island in financial and commercial matters, the applicant should not be registered, or
  - (iv) in the best economic interests of the Island, the applicant should not be registered; or”.

## **7 Article 9 amended**

In Article 9 of the principal Law<sup>8</sup> –

- (a) in paragraphs (1)(b) and (2) for the word “vary” there shall be substituted the words “amend, vary, substitute or revoke”;
- (b) in paragraph (3) for the word “varies” there shall be substituted the words “amends, varies, substitutes or revokes”.

## **8 Article 10 amended**

In Article 10 of the principal Law<sup>9</sup> –

- (a) in paragraph (1) –
  - (i) for the word “varies” there shall be substituted the words “amends, varies, substitutes or revokes”,
  - (ii) for the word “variation” (twice occurring) there shall be substituted the words “amendment, variation, substitution or revocation of a condition”;
- (b) in paragraph (2)(b) for the word “varies” there shall be substituted the words “amends, varies, substitutes or revokes”;
- (c) in paragraph (3) for the word “variation” there shall be substituted the words “amendment, variation, substitution or revocation”;

(d) for paragraph (4)(a) there shall be substituted the following sub-paragraph –

“(a) in the best interests of persons with whom a registered person has transacted or may transact financial service business; or”.

#### **9 Article 11 amended**

For Article 11(4)(a) of the principal Law<sup>10</sup> there shall be substituted the following sub-paragraph –

“(a) in the best interests of persons with whom a registered person has transacted or may transact financial service business; or”.

#### **10 Article 19 amended**

In Article 19(1) of the principal Law<sup>11</sup> for the words “investment business” there shall be substituted the words “financial service business (other than trust company business)”.

#### **11 Article 20 amended**

In Article 20(1) of the principal Law<sup>12</sup> for sub-paragraph (b)(i) there shall be substituted the following clause –

“(i) persons with whom a registered person may transact financial service business (other than trust company business) or of creditors of the registered person; or”.

#### **12 Article 23 amended**

In Article 23 of the principal Law<sup>13</sup> –

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

“(c) it is desirable –

(i) for the protection of persons with whom a registered person has transacted or may transact financial service business; or

(ii) if the registered person is carrying on trust company business – for the protection of –

(A) 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

(B) persons who have received or may receive the benefit of services to be provided or arranged

by the registered person when carrying on trust company business,”;

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

“(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”.

### **13 Article 24 amended**

In Article 24 of the principal Law<sup>14</sup> for the words “investment business, or to classes of such business,” there shall be substituted the words “financial service business (other than trust company business), or to classes of such business (other than trust company business)”.

### **14 Article 26 amended**

In Article 26 of the principal Law<sup>15</sup> for the words “investment business” there shall be substituted the words “financial service business (other than trust company business)”.

### **15 Article 27 amended**

In Article 27 of the principal Law<sup>16</sup> –

- (a) in paragraph (1)(ii) there shall be inserted after the word “investment” the words “or contract of general insurance”;
- (b) in paragraph (2) there shall be inserted after the word “investment” (twice occurring) and the word “investments” the words “or a contract of general insurance” and “or contracts of general insurance” respectively;
- (c) after paragraph (2) there shall be inserted the following paragraph –

“(2A) In paragraph (2), ‘contract of general insurance’ means a contract of general insurance, general insurance product or general insurance service.”.

### **16 Article 28 amended**

In Article 28(5)(b) of the principal Law<sup>17</sup> for the words “investment business” there shall be substituted the words “financial service business”.

### **17 Article 30 amended**

In Article 30 of the principal Law<sup>18</sup> for paragraph (1)(a) there shall be substituted the following sub-paragraph –



“(a) in the interests of persons with whom a registered person has transacted, or may transact, financial service business; or”.

**18 Article 35 amended**

In Article 35(1) of the principal Law<sup>19</sup> –

- (a) in sub-paragraph (i) after the word “investors” there shall be inserted the words “, or insurance policy holders,”;
- (b) in sub-paragraph (j)(i) for the words “investment business” there shall be substituted the words “financial service business”.

**19 New Article inserted**

After Article 39 of the principal Law<sup>20</sup> there shall be inserted the following Article –

**“40 Transitional provisions**

Schedule 5 shall have effect to make transitional provisions.”.

**20 Second Schedule amended**

In the Second Schedule to the principal Law<sup>21</sup> there shall be inserted after Part II the Part set out in Schedule 1 to this Law.

**21 New Schedules added**

After the Third Schedule to the principal Law<sup>22</sup> there shall be added the Schedules set out in Schedule 2 to this Law.

**22 Citation and commencement**

This Law may be cited as the Financial Services (Amendment No. 2) (Jersey) Law 2005 and shall come into force on the seventh day following its registration.

**D.C.G. FILIPPONI**

*Assistant Greffier of the States.*

**SCHEDULE 1**

(Article 20)

**“PART 3: GENERAL INSURANCE MEDIATION BUSINESS****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<sup>23</sup> for appointment as auditor of a company under Article 109 of that Law;<sup>24</sup>

‘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 the Island.”

**SCHEDULE 2**

(Article 21)

**“SCHEDULE 4**

(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> <p>(a) sustaining injury as the result of an accident or of an accident of a specified class;</p> <p>(b) dying as the result of an accident or of an accident of a specified class; or</p> <p>(c) becoming incapacitated in consequence of disease or of disease of a specified class,</p> <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 Insurance Business (Jersey) Law 1996.<sup>25</sup></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 Insurance Business (Jersey) Law 1996.<sup>26</sup></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	Effecting and/or carrying out contracts of insurance upon aircraft or upon the machinery, tackle, furniture or equipment of aircraft.
6	Ships	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.
7	Goods in transit	Effecting and/or carrying out contracts of insurance against loss of or damage to merchandise, baggage 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	Effecting and/or carrying out –  (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;
		(b) contracts for fidelity bonds, performance bonds, administration bonds, bail bonds or customs bonds or similar contracts of guarantee,
		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 carried out by the person effecting them) in return for the payment of one or more premiums.
16	Miscellaneous financial loss	Effecting and/or carrying out contracts of insurance against any of the following risks –
		(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;
		(b) risks of loss to the persons insured attributable to their incurring unforeseen expense (other than such loss covered by contracts within paragraph 18);
		(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.
17	Legal expenses	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).
18	Assistance	Effecting and/or carrying out contracts of insurance providing either or both of the following benefits –
		(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
		(b) assistance (whether in cash or kind) for persons who get into difficulties otherwise than as mentioned in paragraph (a).

**SCHEDULE 5**

(Article 40)

**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 the day on which the Financial Services (Amendment No. 2) (Jersey) Law 2005<sup>27</sup> comes into force ('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 10) or is withdrawn.”.

- 
- <sup>1</sup> *Volume 1998, page 507, Volume 1999, pages 413, 420 and 527, Volume 2000, pages 705 and 716 to 745, Volume 2002, page 107 and R&Os 9402 and 127/2000.*
- <sup>2</sup> *Volume 1998, page 507, Volume 1999, pages 413, 420 and 527, Volume 2000, pages 705 and 716 to 745, Volume 2002, page 107 and R&Os 9402 and 127/2000.*
- <sup>3</sup> *Volume 1998, page 512 and Volume 2000, page 716.*
- <sup>4</sup> *Volume 1998, page 517 and Volume 2000, page 716.*
- <sup>5</sup> *Volume 1998, page 518 and Volume 2000, page 716.*
- <sup>6</sup> *Volume 1998, page 519 and Volume 2000, page 740.*
- <sup>7</sup> *Volume 1998, page 525 and Volume 2000, page 726.*
- <sup>8</sup> *Volume 1998, page 526 and Volume 2000, page 742.*
- <sup>9</sup> *Volume 1998, page 527 and Volume 2000, page 727.*
- <sup>10</sup> *Volume 1998, page 530 and Volume 2000, page 728.*
- <sup>11</sup> *Volume 1998, page 541.*
- <sup>12</sup> *Volume 1998, page 542 and Volume 2000, page 730.*
- <sup>13</sup> *Volume 1998, page 546, Volume 2000, page 743 and Volume 2002, page 107.*
- <sup>14</sup> *Volume 1998, page 548.*
- <sup>15</sup> *Volume 1998, page 550 and Volume 2000, page 743.*
- <sup>16</sup> *Volume 1998, page 550 and Volume 2000, page 743.*
- <sup>17</sup> *Volume 1998, page 553 and Volume 2000, page 744.*
- <sup>18</sup> *Volume 1998, page 557 and Volume 2000, pages 732 and 745.*
- <sup>19</sup> *Volume 1998, page 566, Volume 2000, page 734 and Volume 2002, page 111.*
- <sup>20</sup> *Volume 1998, page 573 and Volume 1999, page 527.*
- <sup>21</sup> *Volume 1998, page 581, Volume 2000, page 736 and R&Os 9402 and 127/2000.*
- <sup>22</sup> *Volume 1998, page 594.*
- <sup>23</sup> *Volume 1990-1991, page 982 and Volume 2002, page 255.*
- <sup>24</sup> *Volume 1990-1991, page 978.*
- <sup>25</sup> *Volume 1996-1997, pages 81 and 552, Volume 1998, pages 274 and 427, Volume 1999, pages 420 and 526, Volume 2000, page 701, Volume 2002, page 711, Volume 2002, page 113 and Volume 2003, page 131.*
- <sup>26</sup> *Volume 1996-1997, pages 81 and 552, Volume 1998, pages 274 and 427, Volume 1999, pages 420 and 526, Volume 2000, page 701, Volume 2002, page 711, Volume 2002, page 113 and Volume 2003, page 131.*
- <sup>27</sup> *Volume 2005, page 1.*