



Jersey

BANKING BUSINESS (AMENDMENT No. 6) (JERSEY) LAW 2008

Arrangement

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BANKING BUSINESS (AMENDMENT No. 6) (JERSEY) LAW 2008

A LAW to amend further the Banking Business (Jersey) Law 1991.

Adopted by the States

7th November 2007

Sanctioned by Order of Her Majesty in Council

12th March 2008

Registered by the Royal Court

28th March 2008

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

1 Interpretation

In this Law “principal Law” means the Banking Business (Jersey) Law 1991¹.

2 Article 1 amended

In Article 1 of the principal Law –

- (a) the following definitions shall be inserted in appropriate alphabetical order –

“ ‘code of practice’ means a code of practice under Article 19A;”;

“ ‘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;”;

“ ‘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 in respect of which the registered person is registered –

- (a) compliance officer;

(b) money laundering compliance officer;

(c) money laundering reporting officer;”;

“ ‘money laundering compliance officer’ means a person employed or otherwise engaged by a registered person to be in charge of monitoring whether the law of Jersey relating to money laundering is being complied with in the conduct of the business in respect of which the registered person is registered;”;

“ ‘money laundering reporting officer’ means a person employed or otherwise engaged by a registered person to receive reports from employees of the registered person in relation to activities that may constitute money laundering and come to the attention of the employees in the conduct of the business in respect of which the registered person is registered;”;

“ ‘public statement’ means a public statement issued under Article 48;”;

“ ‘vary’ includes amend, replace and revoke;”;

“ ‘wholly-owned subsidiary’ has the meaning given in Article 4.”;

(b) for the definition “Court” there shall be substituted the following definition –

“ ‘Court’ means the Royal Court;”;

(c) in the definitions of “deposit”, “deposit-taking business”, “holding company” and “subsidiary company” the words “but subject to any Order under Article 5”, wherever occurring, shall be deleted;

(d) for the definition “former registered person” there shall be substituted the following definition –

“ ‘former registered person’ means a person –

(a) who was formerly a registered person under the Investors (Prevention of Fraud) (Jersey) Law 1967 or under this Law; and

(b) who continues to have a liability in respect of any deposit for which it had a liability at a time when the person was a registered person under the Investors (Prevention of Fraud) (Jersey) Law 1967² or under this Law;”;

(e) for the definition “relevant supervisory authority” there shall be substituted the following definition –

“ ‘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;”.

3 Article 5 substituted

For Article 5 of the principal Law there shall be substituted the following Article –

“5 Power to amend definitions

- (1) The States may by Regulations amend any definition in Article 1, 2, 3 or 4 or in the Schedule.
- (2) Without prejudice to the generality of paragraph (1), Regulations under that paragraph amending the definition of deposit-taking business may provide for taking into account as activities of an institution the activities of any person who is connected with it in such a manner as is specified in the Regulations.
- (3) Regulations made under this Article may include provisions that exclude or modify the effect of the Regulations on any other enactment which is expressed to have effect in relation to a deposit or deposit-taking business within the meaning of this Law.”.

4 Article 10 substituted

For Article 10 of the principal Law there shall be substituted the following Article –

“10 Refusal or revocation of registration

- (1) The Commission shall refuse to grant an application for registration, or where registration has been granted shall revoke the registration, if the applicant or registered person –
 - (a) has no physical presence in Jersey involving meaningful decision-making and management; and
 - (b) is not subject to supervision by a relevant supervisory authority by reason of that person’s connection with any other institution or person.
- (2) For the purposes of paragraph (1)(b), ‘connection’ has the same meaning as in Article 3A of the Income Tax (Jersey) Law 1961³.
- (3) If a person (‘person A’) applies for registration, or is already registered, the Commission may refuse to register the person, or revoke the registration, on one or more of the following grounds –
 - (a) having regard to the information before the Commission as to –
 - (i) the integrity, competence, financial standing, structure and organization of person A,
 - (ii) the persons employed by or associated with person A for the purposes of person A’s business or who are directors, controllers, or managers, in relation to person A, or
 - (iii) the description of business that person A proposes to carry on or carries on,the Commission is not satisfied that person A is a fit and proper person to be registered;

- (b) person A has, at any time and whether or not in relation to his or her application, in any case where information was required under this Law to be given in any connection –
 - (i) failed to provide any such information, or
 - (ii) provided information that was untrue or misleading in any material particular;
- (c) person A has at any time failed to comply in any material respect with any condition prescribed or attached under Article 11 to a current or previous registration held by person A;
- (d) person A or any person employed by or associated with person A for the purposes of person A'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 Collective Investment Funds (Jersey) Law 1988⁴,
 - (C) the Financial Services (Jersey) Law 1998⁵,
 - (D) the Insurance Business (Jersey) Law 1996⁶,
 - (E) any Regulation or Order made under any of those Laws,
 - (iii) any similar offence to those listed in clause (ii) under the laws of any 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 under Article 9, or information otherwise obtained, that –
 - (i) it is not in the best interests of persons who may deposit, or have deposited, money with person A that person A should be registered or should continue to be registered,
 - (ii) in order to protect the reputation and integrity of Jersey in financial or commercial matters, person A should not be registered or should not continue to be registered, or

- (iii) it is not in the best economic interests of Jersey that person A should be registered or should continue to be registered;
- (f) the Commission has reason to believe that there has been a failure at any time on the part of person A to follow a code of practice;
- (g) person A has failed to comply with a direction given to the person at any time under Article 17 or 21.”.

5 Article 11 substituted

For Article 11 of the principal Law there shall be substituted the following Article –

“11 Conditions of registration

- (1) The Minister may, on the recommendation of the Commission, prescribe by Order conditions that are applicable to the registration of all persons under Article 9 or to the registration of a class of persons.
- (2) The Commission –
 - (a) may attach additional conditions to the registration of a person under Article 9; and
 - (b) may vary conditions applying to the registration of a person whether by virtue of paragraph (1) or by virtue of subparagraph (a).
- (3) Without prejudice to the generality of paragraphs (1) and (2), the conditions may include matters that the Commission considers to be desirable in the interests of depositors or potential depositors, whether for the purpose of safeguarding the assets of the person registered or otherwise.
- (4) The conditions may, in particular –
 - (a) require the registered person to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict its business in a particular way;
 - (b) impose limitations on the acceptance of deposits, the granting of credit or the making of investments;
 - (c) prohibit the registered person from soliciting deposits either generally or from persons who are not already depositors with that registered person;
 - (d) prohibit the registered person from entering into any other transaction or class of transactions;
 - (e) require that the registered person shall at all times have appointed a senior officer approved by the Commission responsible for ensuring compliance with the terms and conditions of the registration.

- (5) A person who fails to comply with a condition imposed under this Article, being a condition that has effect in relation to the person, shall be guilty of an offence and liable to imprisonment for 2 years and to a fine.”

6 Article 13 substituted

For Article 13 of the principal Law there shall be substituted the following Article –

“13 Display of registration certificate and conditions

- (1) When the Commission registers a person under Article 9(1), it may give that person notice in writing 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, being conditions –
 - (i) to which the person’s registration is subject by virtue of an Order under Article 11(1), or
 - (ii) to which the person’s registration is subject under Article 11(2).
- (2) Where the Commission under Article 11(2) varies a condition or attaches any new condition to the registration of a person it may give that person notice in writing of the manner in which that person shall display or otherwise make available to members of the public a record of the conditions as varied or the new condition, as the case may be.
- (3) The Commission may at any time vary any requirement in any notice it has given under paragraph (1) or (2) by further notice 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 deposit-taking business or to be published on the internet, or both.
- (5) A notice under paragraph (1) shall take effect on such date as is specified in the notice.
- (6) A notice under paragraph (2) or (3) shall take effect in accordance with Article 18.
- (7) A registered person who carries on a deposit-taking business in breach of any 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.”

7 Article 14 amended

In Article 14 of the principal Law –

- (a) after paragraph (3) the following paragraph shall be inserted –
“(3A) The Commission shall serve notice, on the person from whom notice was received under this Article, stating whether the Commission objects or does not object to his or her becoming a controller, as referred to in paragraph (1).”;
- (b) in paragraph (4)(c) after the words “the criteria” there shall be inserted the words “(including those set out in Article 10)”;
- (c) in paragraph (5)(b) for the words “Article 18” there shall be substituted the words “Article 18A”.

8 Article 15 amended

For Article 15(2) and (3) of the principal Law there shall be substituted the following paragraph –

- “(2) The Commission may, in deciding whether to serve notice under paragraph (1), take into account such of the matters set out in Article 10 as may be relevant, as well as such other matters as it thinks fit.”.

9 Article 17 amended

In Article 17 of the principal Law –

- (a) after paragraph (2) there shall be inserted the following paragraph –
“(2A) The power to give directions under this Article shall include the power by direction to vary a direction given under this Article.”;
- (b) in paragraph (4)(b) after the word “determined” there shall be inserted the words “by the Court”.

10 New Article 17A

After Article 17 of the principal Law the following Article shall be inserted –

“17A Notice of acts and reasons

- (1) The Commission shall give notice as follows –
 - (a) if under Article 10 it refuses an application for registration, it shall give notice to the applicant;
 - (b) if under Article 10 it revokes a person’s registration, it shall give notice to the person;
 - (c) if under Article 11, at the time of a person’s registration it attaches a condition to the registration, or at any time after a person’s registration, it attaches an additional condition to

- the person's registration, or varies the conditions attached to the person's registration, it shall give notice to the person;
- (d) if under Article 39 it refuses permission or grants permission subject to one or more conditions or restrictions, it shall give notice to the applicant for the permission;
 - (e) if under any Order under this Law it refuses consent, refuses approval, or imposes a requirement, it shall give notice to the relevant registered person (if any) and any other person in respect of whom the refusal or imposition is made.
- (2) A notice required under this Article, or a notice under Article 13, 15, 17(2) or 21(6) shall –
- (a) set out the terms of the refusal, revocation, attachment or imposition of conditions, imposition or variation of requirements, objection, conditions or restrictions, direction, or partial grant, of which it is notice;
 - (b) except in the case of an objection under Article 15, set out the terms of the relevant conditions, requirements, or restrictions (including conditions, requirements or restrictions as varied);
 - (c) give the reasons for the refusal, revocation, attachment, imposition, variation, objection, giving of directions, or partial grant (except in the case of a revocation, attachment, or variation, made on the application of the relevant registered person); and
 - (d) except in the case of a notice under Article 17(2), give particulars of the rights of appeal conferred by Article 18A.
- (3) A notice required under Article 21(1), shall –
- (a) give the reasons for the giving of the direction;
 - (b) specify when the direction is to have effect;
 - (c) give particulars of the provisions of Article 21(5) and (6); and
 - (d) give particulars of the rights of appeal conferred by Article 18A.
- (4) If under this Article the Commission is required to give reasons in a notice, that requirement 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.”.

11 Article 18 replaced

For Article 18 of the principal Law there shall be substituted the following Articles –

“18 Delay in taking effect

- (1) Any of the following acts of the Commission shall not take effect until one month after notice of them is given under this Law, such date as is specified in the notice, or, if an appeal is lodged under this Law against the act or the decision relating to the act, before the appeal is determined by the Court or withdrawn, whichever is the latest time –
 - (a) a revocation under Article 10;
 - (b) an attachment under Article 11(2) of an additional condition to a person’s registration, or variation under that paragraph of the conditions attached to a person’s registration, at any time after the registration of the person;
 - (c) the imposition of a requirement under Article 13(2) or (3);
 - (d) an objection under Article 15.
- (2) Paragraph (1) shall not however have effect if –
 - (a) the persons entitled to notice of the act agree with the Commission that the act take effect at a time earlier than the time that would apply under paragraph (1); or
 - (b) the Court orders otherwise under paragraph (3).
- (3) If, on the application of the Commission, the Court is satisfied that it is in the best interests of persons with whom a registered person has transacted or may transact deposit-taking business that paragraph (1) should not have effect, or should cease to have effect in a particular case, or that the period specified in paragraph (1) should be reduced, the Court may so order.
- (4) An order under paragraph (3) may be made without prior notice to and without hearing the registered person concerned.
- (5) The order shall have immediate effect, but any person aggrieved by the order may apply to the Court to vary or set aside the order.
- (6) In respect of an application under paragraph (3), the Court may make such order as it thinks fit, and in respect of an application under paragraph (5), the Court may make such order in respect of the relevant order under paragraph (3) as it thinks fit.

18A Appeals

- (1) A person aggrieved by an act of the Commission, being –
 - (a) a refusal under Article 10;
 - (b) a revocation under Article 10;

- (c) an attachment under Article 11(2) of a condition at the time of a person's registration to the registration, or of an additional condition to a person's registration after that time, or variation under that paragraph of the conditions attached to a person's registration;
- (d) the imposition of a requirement under Article 13;
- (e) an objection under Article 14, 15 or 24;
- (f) the giving of a direction under Article 21;
- (g) the refusal of an application under Article 21(5) or granting of such an application only in part;
- (h) a refusal of permission, or grant of permission subject to one or more conditions or restrictions, under Article 39;
- (i) a refusal of consent, refusal of approval, or imposition of a requirement, under any Order under this Law,

may appeal to the Court, in accordance with this Article, against that act.

- (2) An appeal under paragraph (1) may be made only on the ground that the act appealed against was unreasonable having regard to all the circumstances of the case.
- (3) A person's appeal under this Article 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 relevant act.
- (4) On an appeal under this Article, the Court may make such interim or final order as it thinks fit.
- (5) If an appeal is made under paragraph (1) against the giving of a direction that makes a requirement referred to in Article 21(2)(c) or (d), the direction shall have no effect until the appeal is determined by the Court or withdrawn.
- (6) In other cases, an appeal made under paragraph (1) against the giving of a direction shall not suspend the operation of the direction.
- (7) An appeal made under paragraph (1)(g) in relation to an application under Article 21(5) shall not suspend the operation of the direction in connection with which the application was made.".

12 New Article 19A

After Article 19 of the principal Law there shall be inserted the following Article –

“19A Codes of practice

- (1) The Commission may, after consulting any persons or bodies the Commission considers are representative of the interests concerned –

- (a) issue a code of practice that sets out sound principles for the conduct of deposit-taking business;
 - (b) amend a code of practice; and
 - (c) indicate in a code of practice if and to what extent it is or is not to apply to a class of deposit-taking business or a particular deposit-taking business.
- (2) The Commission shall publish a code of practice in a manner that is likely to bring it to the attention of those affected by it.
- (3) A failure to follow a code of practice does not of itself render a person liable to proceedings of any kind, or invalidate any transaction.
- (4) In proceedings under this Law or otherwise, a code of practice is admissible in evidence if it appears to the court conducting the proceedings to be relevant to a question arising in the proceedings, and is to be taken into account in determining such a question.
- (5) A copy, certified in writing on behalf of the Commission to be an accurate copy –
- (a) of a code of practice; or
 - (b) of a part of a code of practice,
- is admissible in evidence in 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) If a document purports on its face to be a copy of a code of practice or part of a code of practice, 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.”.

13 Article 21 substituted

For Article 21 of the principal Law there shall be substituted the following Article –

“21 Power to issue directions

- (1) If it appears to the Commission that –
- (a) any requirements in relation to the registration of a person are no longer satisfied;
 - (b) it is in the best interests of persons with whom a registered person has transacted or may transact deposit-taking business, or in the best interests of the creditors of a registered person;
 - (c) it is in the best interests of one or more registered persons;
 - (d) it is desirable in order to protect the reputation and integrity of Jersey in financial and commercial matters; or

- (e) 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.
- (2) Without prejudice to the generality of paragraph (1), a direction under this Article may –
- (a) require anything to be done or not to be 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 a director, chief executive, shareholder controller, 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 former 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 former registered person;
 - (e) prohibit the issue, re-issue or continuance of a particular advertisement relating to deposit-taking business;
 - (f) require that any particular advertisement relating to deposit-taking business be modified in a specified manner;
 - (g) prohibit the issue, re-issue or continuance of advertisements (relating to deposit-taking business) of any description; or
 - (h) require that advertisements (relating to deposit-taking business) 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 a direction given under this Article.
- (5) Any person to whom a direction is given under this Article 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 (e) that justify the direction or part of the direction concerned.

- (6) If the Commission refuses an application under paragraph (5), or grants such an application only in part, it shall give notice in writing of that fact to the applicant.
- (7) A person who fails to comply with a direction in respect of which notice is given under paragraph (1) to the person shall be guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.
- (8) The record of the conviction of a person for an offence under paragraph (7) is admissible in civil proceedings as evidence of the facts constituting the offence.”.

14 Article 24 substituted

For Article 24 of the principal Law there shall be substituted the following Article –

“24 Notification of change of director etc.

- (1) A person shall not become a director, controller, key person of any class or manager of a registered person unless –
 - (a) he or she has notified the Commission in writing of his or her intention to become such a director, such a controller, key person of such a class or such a manager; and
 - (b) the Commission has notified the person in writing that there is no objection to his or her becoming such a director, such a controller, key person of such a class or such a manager.
- (2) If the intended director, controller, key person or manager is to be a full time employee of the registered person, the notification to the Commission may be made by the registered person instead.
- (3) The Commission shall serve notice on the person in relation to whom notice was received under paragraph (1) or (2), stating whether the Commission objects or does not object to his or her becoming a director, controller, key person of the relevant class or manager, of a registered person, as referred to in paragraph (1).
- (4) A registered person shall give written notice to the Commission of the fact that any person has become or ceased to be a director, controller, key person or manager of the registered person.
- (5) A notice required to be given under paragraph (4) shall be given before the end of the period of 14 days beginning with the day on which the registered person becomes aware of the relevant facts.
- (6) The Commission may by notice in writing wholly or partly dispense from the obligation imposed by paragraph (4) any

registered person whose principal place of business is outside Jersey.

- (7) A notice of objection under this Article shall –
- (a) subject to paragraph (8), specify the reasons for the Commission’s objection; and
 - (b) give particulars of the rights of appeal conferred by Article 18A.
- (8) Paragraph (7) 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.
- (9) A person who –
- (a) fails to give a notice required by paragraph (1)(a) or (4); or
 - (b) becomes a director, controller, key person of any class, or manager, of a registered person without having been served with a notice by the Commission under paragraph (1)(b) to the effect that the Commission does not object to the person’s so becoming a director, controller, key person of the relevant class or of any class, or manager,
- shall be guilty of an offence.
- (10) A person shall not be guilty of an offence under paragraph (9) 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, or another person, became a director, controller, key person of the relevant class, or manager, of the registered person.
- (11) Despite paragraph (10), 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, or another person, became, as the case may be, a director, controller, key person of the relevant class, or manager, of the registered person, within 14 days of becoming aware of that fact.
- (12) A person guilty of an offence under paragraph (9) or (11) shall be liable to imprisonment for a term of 2 years and to a fine.”.

15 Article 28 amended

For Article 28(1) of the principal Law there shall be substituted the following paragraphs –

- “(1) If it appears to the Commission desirable to do so in the interests of the depositors or potential depositors of a registered person, the

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

- (a) the nature, conduct or state of the registered person's business or a particular aspect of it;
- (b) the ownership or control of the registered person;
- (c) the compliance by the registered person with this Law or with any Regulations, Order or code of practice made or issued under this Law;
- (d) the compliance by the registered person with a condition of the person's grant of registration under this Law; or
- (e) the compliance by the registered person with a direction given to the person under this Law.

(1A) The Commission shall give written notice of the appointment to the registered person concerned.”.

16 New Article 37A

After Article 37 of the principal Law there shall be inserted the following Article –

“37A Commission may appoint a manager in prescribed circumstances

- (1) The Minister may, on the recommendation of the Commission, by Order prescribe circumstances in which the Commission may appoint a person to manage the affairs, or any part of the affairs, of persons in so far as they relate to the carrying on of deposit-taking business.
- (2) An Order made under paragraph (1) –
 - (a) may contain such incidental or supplementary provisions as the Minister thinks necessary or expedient; and
 - (b) may contain different provisions for different classes of deposit-taking business.
- (3) The Commission may, if it is satisfied there exist in respect of a person carrying on deposit-taking business, 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, or any part of the affairs, of the person in so far as they relate to the carrying on of deposit-taking business.
- (4) Subject to the terms of his or her appointment, a person appointed under paragraph (3) shall have all the powers necessary to manage the affairs, or the part of the affairs, of the person in respect of whom the appointment was made in so far as they relate to the carrying on of a deposit-taking business.
- (5) A person aggrieved by the Commission's decision to appoint a person in accordance with paragraph (3), may, within 1 month of being informed of the decision, appeal to the Court on the ground

that the decision was unreasonable having regard to the circumstances of the case.

- (6) On the appeal the Court may –
 - (a) confirm the decision of the Commission to make the appointment;
 - (b) order the Commission to amend the terms of appointment of the person as the Court may specify; or
 - (c) order the Commission to cancel the appointment.”.

17 Article 44 amended

For Article 44(2) of the principal Law there shall be substituted the following paragraph –

- “(2) Article 42 does not preclude the disclosure of information for the purpose of enabling or assisting a relevant supervisory authority to exercise any of its supervisory functions.”.

18 Article 45 amended

In Article 45 of the principal Law –

- (a) at the end of paragraph (1)(a) there shall be added “or 37A”.
- (b) for the full-stop at the end of paragraph (1)(d) there shall be substituted “;”;
- (c) after paragraph (1)(d) there shall be added the following sub-paragraph –
 - “(e) to a person by the Commission showing whether or not any person is registered under this Law, including any conditions which apply to that person or which are attached to the registration of that person under Article 11(2).”.

19 Article 47 amended

In Article 47 of the principal Law –

- (a) in paragraph (1)(a) for “Article 10(1)” there shall be substituted “Article 10(3)”;
- (b) for paragraph (1)(b) there shall be substituted the following sub-paragraph –
 - “(b) the power to attach or vary conditions pursuant to Article 11(2);”.

20 Article 48 replaced

For Article 48 of the principal Law there shall be substituted the following Articles –

“48 Public statement

- (1) The Commission may issue a public statement concerning a person if that person appears to the Commission to have contravened any of the following –
 - (a) Article 8;
 - (b) Article 11;
 - (c) Article 20;
 - (d) Article 21;
 - (e) Article 22;
 - (f) Article 23;
 - (g) a Regulation, or an Order, made under this Law;
 - (h) a code of practice.
- (2) The Commission may issue –
 - (a) a public statement with respect to, or setting out, any direction that the Commission has given under Article 17 or 21;
 - (b) a public statement concerning a person if that person appears to the Commission to have failed to comply with a code of practice; or
 - (c) a public statement concerning a person if the Commission believes that the person is carrying on deposit-taking business, whether in Jersey or elsewhere, and it appears to the Commission to be desirable to issue the statement –
 - (i) in the best interests of persons who have transacted or may transact deposit-taking business with the person, or
 - (ii) in the best interests of the public.

48A Notice of public statement

- (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 48C in respect of the statement; and

- (e) if the statement is issued, in accordance with a decision under Article 48B(3), before the day specified in Article 48B(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 48B and 48C, 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.

48B Notice period

- (1) If service is required under Article 48A(1) or (2) in relation to a public statement, the Commission shall not issue the public statement before the expiration of one month following 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 48A) 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 interest of the public in the issue of the relevant public statement on a date earlier than the date that would apply under that paragraph outweighs the detriment to the persons identified in the statement, being the detriment attributable to that earliness; and
 - (b) the statement is in fact issued on or after the earlier date.
- (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 48C(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 48C(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.

48C Appeals and orders about public statements

- (1) A person aggrieved by a decision of the Commission under Article 48B(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 48A 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.”.

21 Article 48D inserted

Before Article 49 of the principal Law there shall be inserted the following Article –

“48D Transfer of deposit-taking business

The Schedule shall have effect to regulate any transfer of deposit-taking business from one registered deposit taker to another.”.

22 Article 49 replaced

For Article 49 of the principal Law there shall be substituted the following Article –

“49 Service of notices

- (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;
 - (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.
- (5) For the purposes of this Article and of Article 7 of the Interpretation (Jersey) Law 1954⁷ 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."

23 Article 51 amended

For Article 51(2A) and (3) of the principal Law there shall be substituted the following paragraphs –

"(3) Regulations made under this Law may contain such transitional, consequential, incidental or supplementary provisions as appear to the States to be necessary or expedient for the purposes of the Regulations.

(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."

24 New Schedule

The Schedule set out in the Schedule to this Law shall be added at the end of the principal Law.

25 Citation and commencement

- (1) This Law may be cited as the Banking Business (Amendment No. 6) (Jersey) Law 2008.
- (2) This Law shall come into force 7 days after it is registered.

A.H. HARRIS

Deputy Greffier of the States

SCHEDULE

(Article 24)

NEW SCHEDULE**“SCHEDULE**

(Article 48D)

TRANSFER OF DEPOSIT-TAKING BUSINESS

- 1 Where it is proposed to carry out a scheme under which the whole or part of the deposit-taking business carried on in or from within Jersey by a registered person (the ‘transferor’) is to be transferred to another body whether incorporated or not (the ‘transferee’) the transferor or transferee may apply to the Court for an order sanctioning the scheme.
- 2 If such a scheme involves a compromise or arrangement the provisions of Articles 125 to 127 of the Companies (Jersey) Law 1991⁸ shall have effect in the case of a company to which that Law applies as regards that compromise or arrangement, but without prejudice to the operation of the provisions of this Schedule in relation to the scheme.
- 3 The Court shall not determine an application under this Schedule unless the application is accompanied by a report on the terms of the scheme by an independent auditor and the Court is satisfied that the requirements of paragraph 4 have been complied with.
- 4 Those requirements are –
 - (a) that a notice has been published in the Jersey Gazette stating that the application has been made and giving the address of the offices at which, and the period for which, copies of the documents mentioned in sub-paragraph (d) will be available as required by that sub-paragraph;
 - (b) except where the Court has otherwise directed, that a statement –
 - (i) setting out the terms of the scheme, and
 - (ii) containing a summary of the report mentioned in paragraph 3 sufficient to indicate the opinion of the auditor on the likely effects of the scheme on the customers of the transferor and transferee concerned,has been sent to each of those customers and to every member of the transferor and transferee;

- (c) that a copy of the application to the Court, of the report mentioned in paragraph 3 and of any statement sent out under sub-paragraph (b) has been served on the Commission and that a period of not less than 21 days has elapsed since the date of service;
- (d) that copies of the application to the Court and of the report mentioned in paragraph 3 have been open to inspection at offices in Jersey of the transferor and transferee for a period of not less than 21 days beginning with the date of the first publication of a notice in accordance with sub-paragraph (a).

5 The transferor or transferee shall, on payment of such fee as may be prescribed by rules of court, furnish a copy of the application and of the report mentioned in paragraph 3 to any person who asks for one at any time before an order sanctioning the scheme is made on the application to the Court.

6 On an application to the Court under this Schedule –

- (a) the Commission; and
- (b) any person (including any employee of the transferor or the transferee) who alleges that the person would be adversely affected by the carrying out of the scheme,

shall be entitled to be heard.

7 The Court shall not make an order sanctioning the scheme unless it is satisfied that the transferee is, or immediately after the making of the order will be, authorized to carry on the deposit-taking business to be transferred under the scheme.

8 No transfer described in paragraph 1 shall be carried out unless the scheme relating to the transfer has been sanctioned by the Court in accordance with this Schedule.

9 Where the Court makes an order under this Schedule sanctioning a scheme, the Court may, either by that order or by a subsequent order, make provision for all or any of the following matters –

- (a) the transfer to the transferee of the whole or a part of the undertaking and of the property or liabilities of the transferor;
- (b) the allotting or appropriation by the transferee of any shares, debentures, policies, deposits or other like interests in the transferee which under the scheme are to be allotted or appropriated by the transferee to or for any person;
- (c) the continuation by or against the transferee of any legal proceedings pending by or against the transferor;
- (d) the dissolution, without winding up, of the transferor;
- (e) such incidental, consequential and supplementary matters as are necessary to secure that the scheme shall be fully and effectively carried out.

10 Where such order provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest

in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee, and in the case of any property, if the order so directs, freed from any other hypothec, security interest or other charge which is by virtue of the scheme to cease to have effect, except that property so transferred vests in the transferee subject to any obligations and liabilities however arising that bound the transferor in relation to that property on the date of the order.

- 11 Where a scheme is sanctioned by an order of the Court under this Schedule the transferee shall, within 10 days from the date on which the order is made or such longer period as the Commission may allow, deposit 2 copies of the order with the Commission.
- 12 A person who fails to comply with paragraph 5 shall be guilty of an offence and liable to a fine of level 4 on the standard scale.
- 13 A person who fails to comply with paragraph 11 shall be guilty of an offence shall be liable to a fine of level 3 on the standard scale.
- 14 In this Schedule –

‘arrangement’ includes a reorganization of a company’s share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods;

‘customer’, in respect of a transferor or transferee, means –

- (a) a person who has money deposited with the transferor or transferee;
- (b) a person who has money borrowed from the transferor or transferee; or
- (c) a person who owes to the transferor or transferee interest or any other obligation on money borrowed from the transferor or transferee;

‘liabilities’ includes duties;

‘obligations’ includes a requirement or restriction imposed by an enactment affecting the development, use or disposition of property or a transaction in relation to property;

‘property’ includes property, rights and powers of every description.”.

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- 1* chapter 13.075
2 chapter 13.450
3 chapter 24.750
4 chapter 13.100
5 chapter 13.225
6 chapter 13.425
7 chapter 15.360
8 chapter 13.125