



Jersey

COLLECTIVE INVESTMENT FUNDS (AMENDMENT No. 4) (JERSEY) LAW 2008

Arrangement

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COLLECTIVE INVESTMENT FUNDS (AMENDMENT No. 4) (JERSEY) LAW 2008

A LAW to amend further the Collective Investment Funds (Jersey) Law 1988.

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 Collective Investment Funds (Jersey) Law 1988¹.

2 Article 1 amended

In Article 1 of the principal Law –

- (a) for the words “In this Law” there shall be substituted the words “(1) In this Law”;
- (b) the following definitions shall be inserted in appropriate alphabetical order –

“ ‘certificate’, except in Article 11, means a certificate granted under Article 8B;”;

“ ‘certified fund’ means a fund in relation to which a certificate that is in force has been granted under Article 8B;”;

“ ‘certificate holder’ means a company, trustee, or general partner, to whom a certificate has been granted in relation to a fund;”;

“ ‘compliance officer’ means a person so designated for the purposes of this Law by a holder of a permit or certificate holder

and having the function of monitoring whether the law of Jersey, and any code of practice under this Law, are being complied with in the conduct of the business of the holder of the permit or the certificate holder;”;

“ ‘key person’ means a person employed or otherwise engaged in relation to a collective investment fund as an officer of any one or more of the following classes in relation to the conduct of the fund –

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

“ ‘money laundering compliance officer’ means a person employed or otherwise engaged in relation to a collective investment fund to be in charge of monitoring whether the law of Jersey relating to money laundering is being complied with in the conduct of the fund;”;

“ ‘money laundering reporting officer’ means a person employed or otherwise engaged in relation to a collective investment fund to receive reports, from persons that have functions in relation to the fund, in relation to activities that may constitute money laundering and come to the attention of the persons in the conduct of the fund;”;

“ ‘public statement’ means a statement issued under Article 17;”;

“ ‘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 1988² or the Collective Investment Funds (Recognized Funds) (Rules) (Jersey) Order 2003³;”;

“ ‘shareholder controller’ has the meaning given by sub-paragraph (b)(i) in the definition of ‘principal person’ but does not include any person who, by virtue of sub-paragraph (f) in that definition, is not a principal person;”;

“ ‘unclassified fund’ means a fund that is not a recognized fund;”;

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

- (c) in the definition “court” the words “the Inferior Number of” shall be deleted;
- (d) for the definition “functionary” there shall be substituted the following definition –
 - “ ‘functionary’ means a person who is a functionary in accordance with Article 4 in relation to a recognized fund;”;
- (e) the following definitions shall be inserted in appropriate alphabetical order –
 - “ ‘fund service provider’ means a person who carries on fund services business within the meaning of the Financial Services (Jersey) Law 1998;”;

“ ‘fund service provider in relation to a certified fund’ means a person who carries on, in relation to a certified fund, fund services business within the meaning of the Financial Services (Jersey) Law 1998;”;

“ ‘fund service provider in relation to an unclassified fund’ means a person who carries on, in relation to an unclassified fund, fund services business within the meaning of the Financial Services (Jersey) Law 1998;”;

(f) for the definition of “principal person” there shall be substituted the following definition –

“ ‘principal person’ –

(a) in relation to a sole trader, subject to sub-paragraph (f), means the proprietor;

(b) in relation to a company, subject to sub-paragraph (f), means –

(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;

(ii) a director or equivalent, by whatever name called,

(iii) a person in accordance with whose directions, whether given directly or indirectly, any director of the company, or director of any company of which the company is a subsidiary, is accustomed to act (but disregarding advice given in a professional capacity);

(c) in relation to a partnership, subject to sub-paragraph (f)(ii), means –

(i) a partner,

(ii) where a partner is a company, any person who, in relation to that company, falls within sub-paragraph (b);

(d) in relation to a person whose registered office and principal place of business are outside Jersey, subject to sub-paragraph (f), includes a person who, either alone or jointly with one or more other persons, is responsible for the conduct of the person’s business in Jersey;

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- (e) in relation to a person who has become bankrupt, subject to sub-paragraph (f), includes a person who has been appointed as liquidator or administrator of the person's affairs;
 - (f) does not include any person (person A) who –
 - (i) would be a principal person in relation to a company where –
 - (A) that company is described in Article 8(1)(a), and
 - (B) person A would be principal person in relation to that company under sub-paragraph (b)(i),
 - (ii) would be a principal person in relation to a person described in Article 8(1)(b) or (c) under any of sub-paragraphs (a) to (e), or
 - (iii) would be a principal person in relation to a company where –
 - (A) that company is a functionary described in Group 1, Part 2 of the Schedule, and
 - (B) person A would be principal person in relation to that company under sub-paragraph (b)(i);”;
 - (g) 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;”;
 - (h) at the end there shall be added the following paragraph –
 - “(2) The States may, by Regulations –
 - (a) amend the definitions in paragraph (1);
 - (b) make such transitional arrangements relating to the amendment of definitions under sub-paragraph (a) as the States think necessary or expedient; and
 - (c) exclude or modify the effect of the Regulations on any other enactment which is expressed to have effect in relation to a collective investment fund.”.

3 Article 5 amended

In Article 5 of the principal Law, in paragraphs (1) and (2), for the words “collective investment fund” (wherever occurring) there shall be substituted the words “recognized fund”.

4 Article 6 amended

In Article 6 of the principal Law –

- (a) in paragraph (2) for the words “paragraph (3)” there shall be substituted the words “considering whether to grant or refuse a permit under Article 7(1)”;
- (b) paragraph (3) shall be repealed.

5 Article 7 amended

In Article 7 of the principal Law –

- (a) for paragraph (6) there shall be substituted the following paragraphs –
 - “(6) The Commission may refuse to grant a permit under paragraph (1) on one or more of the following grounds, namely that –
 - (a) having regard to the information before the Commission as to –
 - (i) the integrity, competence, financial standing, structure and organization of the applicant,
 - (ii) the 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) the nature of the collective investment fund to which the applicant’s function relates,
 - (iv) the function to be performed by the applicant,
 - (v) the reputation of the applicant, and
 - (vi) any other functionalities there are or may be of the collective investment fund to which the application relates,
 - the Commission is not satisfied that the applicant is a fit and proper person to be granted a permit;
 - (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 in any material respect with –
 - (i) any condition attached to the grant of a permit or to the grant of a certificate, including any varied condition, or
 - (ii) any condition prescribed as applicable to a permit or certificate (whether generally or not);
 - (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 1991⁴,
 - (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 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 6, or information otherwise obtained, that –
- (i) for the protection of the public or of existing or potential participants in the collective investment fund, the applicant should not be granted a permit,
 - (ii) in order to protect the reputation and integrity of Jersey in financial and commercial matters, the applicant should not be granted a permit, or
 - (iii) in the best economic interests of Jersey, the applicant should not be granted a permit;
- (f) the Commission has reason to believe that at any time there has been failure on the part of the applicant to follow a code of practice; or
- (g) the applicant has failed at any time to comply with a direction by the Commission under Article 13.
- (6A) In exercising its or his or her powers in respect of conditions under paragraphs (1), (3) or (4), the Commission or Minister, as the case may be, shall have regard to such of the matters referred to in paragraph (6) as it, he or she thinks appropriate.
- (6B) For the purposes of paragraph (6A), when the Commission is exercising its powers under paragraph (3), paragraph (6) shall apply with the substitution for references to the applicant of references to the holder of a permit.”;

- (b) in paragraph (7) –
 - (i) the “or” at the end of sub-paragraph (e) shall be deleted,
 - (ii) for sub-paragraph (f) there shall be substituted the following sub-paragraphs –
 - “(f) on one or more of the grounds set out in paragraph (6), which shall apply in such a case with the substitution for references to the applicant of references to the holder of a permit;
 - (g) if there is a failure to comply with a notice of objection served under Article 12A; or
 - (h) if the holder of a permit fails to pay any fee prescribed under paragraph (12).”;
- (c) paragraphs (8) and (9) shall be repealed.

6 Articles 8 replaced

For Article 8 of the principal Law there shall be substituted the following Articles –

“8 Requirement for unclassified fund to hold certificate

- (1) A person who is –
 - (a) a company issuing units that is an unclassified fund and that –
 - (i) is incorporated under the Loi (1861) sur les Sociétés à Responsabilité Limitée⁷ or the Companies (Jersey) Law 1991⁸, or
 - (ii) has an established place of business in Jersey;
 - (b) a trustee of a unit trust that is an unclassified fund and that is –
 - (i) a trust whose proper law is the law of Jersey, or
 - (ii) managed from within Jersey; or
 - (c) the general partner of –
 - (i) a limited partnership established in accordance with the Limited Partnerships (Jersey) Law 1994⁹, or
 - (ii) a limited liability partnership registered under the Limited Liability Partnerships (Jersey) Law 1997¹⁰,that is an unclassified fund managed from within Jersey,
shall not carry on any business of the fund unless a certificate has been granted under Article 8B in relation to the fund and the certificate has not been cancelled.
- (2) A person who contravenes paragraph (1) shall be guilty of an offence and liable to imprisonment for a term of 7 years and to a fine.

- (3) If paragraph (1) is contravened, the rights of any person concerned in any transaction with or in relation to the unclassified fund shall not be affected by the contravention.
- (4) For the purposes of paragraph (1), 'established place of business in Jersey', in relation to a company, includes –
 - (a) a branch, in Jersey, of the business of the company; and
 - (b) an office, in Jersey, of the company.
- (5) For the purposes of paragraph (1), a company shall not be taken to have an established place of business in Jersey by reason only that –
 - (a) the directors of the company meet in Jersey; or
 - (b) a manager, director, or administrator, of the company is ordinarily resident in Jersey.

8A Application for certificate

- (1) A person who is, or is to be –
 - (a) a company issuing units that is an unclassified fund, or the manager of a company issuing units that is an unclassified fund;
 - (b) a trustee of a unit trust that is an unclassified fund; or
 - (c) the general partner of a limited partnership or a limited liability partnership that is an unclassified fund,may apply to the Commission for the grant of a certificate in relation to the fund.
- (2) An application for a certificate shall –
 - (a) be in the form required from time to time by the Commission;
 - (b) specify the collective investment fund and the class of fund (if any) to which the applicant's function as manager, trustee or general partner, as the case may be, relates;
 - (c) contain or be accompanied by any other particulars that the Commission may require;
 - (d) be verified in the manner, and to the extent, that the Commission may require; and
 - (e) be accompanied by the prescribed fee, if any.
- (3) Without prejudice to the generality of paragraph (2)(c), the Commission may require an applicant to provide any information about the collective investment fund to which the application relates that the Commission needs for the purposes of considering whether to grant or refuse a certificate under Article 8B(1).
- (4) An applicant who, while the application is awaiting consideration by the Commission –
 - (a) wishes to alter the application; or

- (b) becomes aware of any event which may affect in any material respect any information provided by the applicant to the Commission in connection with the application,

shall as soon as practicable give written notice of that matter to the Commission.

8B Grant or refusal of certificate, imposition of conditions and cancellation of certificate

- (1) The Commission may grant, or refuse to grant, to an applicant a certificate in relation to an unclassified fund.
- (2) A certificate may be granted either unconditionally or subject to the conditions that the Commission considers appropriate.
- (3) Every certificate shall specify the collective investment fund and the class of fund (if any) to which the certificate relates.
- (4) The Commission may from time to time vary any condition attached to the grant of a certificate under paragraph (2) or attach a new condition.
- (5) The Minister may, on the recommendation of the Commission, by Order prescribe conditions applicable to –
 - (a) all certificates;
 - (b) certain classes of certificates; or
 - (c) all certificates granted in relation to collective investment funds of a certain kind.
- (6) Conditions attached, varied or prescribed under paragraph (2), (4) or (5) may indicate that a code of practice is to be wholly or partly disregarded for the purposes of Article 15(4).
- (7) The Commission may refuse to grant a certificate on one or more of the following grounds, namely that –
 - (a) having regard to the information before the Commission as to –
 - (i) the integrity, competence, financial standing, structure and organization of the applicant,
 - (ii) the 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) the nature of the collective investment fund to which the applicant's role relates,
 - (iv) the role to be performed by the applicant in relation to the collective investment fund,
 - (v) the reputation of the applicant, and

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- (vi) any other fund service providers there are or may be in respect of the collective investment fund to which the application relates,
- the Commission is not satisfied that the applicant is a fit and proper person to be granted a certificate;
- (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 in any material respect with –
- (i) any condition attached to the grant of a certificate or to the grant of a permit, including any varied condition, or
- (ii) any condition prescribed as applicable to a certificate or permit (whether generally or not);
- (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 Financial Services (Jersey) Law 1998,
- (D) the Insurance Business (Jersey) Law 1996,
- (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 in pursuance of requirements of or under Article 8A, or information otherwise obtained, that –
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- (i) for the protection of the public or of existing or potential participants in the collective investment fund, the applicant should not be granted a certificate,
 - (ii) in order to protect the reputation and integrity of Jersey in financial and commercial matters, the applicant should not be granted a certificate, or
 - (iii) in the best economic interests of Jersey, the applicant should not be granted a certificate;
 - (f) the Commission has reason to believe that at any time there has been failure on the part of the applicant to follow a code of practice; or
 - (g) the applicant has failed at any time to comply with a direction by the Commission under Article 13.
- (8) In exercising its or his or her powers under paragraphs (2), (4) or (5), the Commission or Minister, as the case may be, shall have regard to such of the matters referred to in paragraph (7) as it, he or she thinks appropriate.
- (9) For the purposes of paragraph (8), when the Commission is exercising its powers under paragraph (4), paragraph (7) shall apply with the substitution for references to the applicant of references to the certificate holder.
- (10) The Commission may cancel a certificate in relation to a collective investment fund –
- (a) if the fund has ceased to operate;
 - (b) at the request of –
 - (i) where the fund is a company issuing units, the company,
 - (ii) where the fund is a unit trust, a trustee of the unit trust, or
 - (iii) where the fund is a limited partnership or a limited liability partnership, the general partner of the partnership;
 - (c) if it appears to the Commission that any requirements of the Commission in respect of the collective investment fund, or the class of fund of which the fund is a member, are no longer satisfied;
 - (d) if it appears to the Commission that any provision of this Law, or any Regulation or Order made, or a condition of any certificate granted, under this Law, has been contravened by a person who is employed on behalf of the fund or provides services to the fund or if a person has, in purported compliance with any such provision, provided the Commission with false, inaccurate or misleading information;
 - (e) on one or more of the grounds set out in paragraph (7), which shall apply in such a case with the substitution for
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- references to the applicant of references to the certificate holder; or
- (f) if the certificate holder fails to pay any fee prescribed under paragraph (13).

(11) Any person who fails to comply with any condition attached to a certificate under paragraph (2) or (4) or any condition applicable to a certificate under paragraph (5) shall be guilty of an offence.

(12) The record of the conviction of any person for an offence under paragraph (11) shall be admissible in civil proceedings as evidence of the fact of the breach of a condition attached or applicable under this Article.

(13) Fees may be prescribed which shall be payable by a certificate holder –

- (a) at the intervals that may be prescribed; and
- (b) when any events that may be prescribed occur.

8C Display of permit or certificate and conditions

(1) When the Commission grants a permit to a person under Article 7(1) or a certificate under Article 8B(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 permit or certificate, or the information it contains, or both; and
- (b) a record of such conditions as the Commission may specify, being conditions –
- (i) to which that permit or certificate is subject under Article 7(1) or 8B(2), or
- (ii) to which that permit or certificate is subject by virtue of an Order under Article 7(4) or 8B(5).

(2) Where the Commission varies a condition of, or attaches any new condition to, a permit under Article 7(3) or varies a condition of, or attaches any new condition to, a certificate under Article 8B(4), it may give the holder of the permit or the relevant certificate holder notice in writing of the manner in which the holder shall display or otherwise make available to members of the public a record of that condition 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 to a person under paragraph (1) or (2) by further notice to that person.

(4) Without prejudice to the generality of paragraphs (1), (2) and (3), a notice under any of those paragraphs may require the permit, certificate, information or record of conditions, as the case may be, to be displayed at any address at which the holder of a permit or certificate holder, as the case may be, carries on business relating to a collective investment fund 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 8E.
- (7) A holder of a permit or certificate holder who carries on business relating to a collective investment fund 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.

8D Notice of decisions and reasons

- (1) The Commission shall give notice as follows –
 - (a) if under Article 7 it refuses to grant a permit, it shall give notice to the applicant for the permit;
 - (b) if under Article 7 it cancels a permit, it shall give notice to the person named in the permit as the holder of a permit;
 - (c) if under Article 7 it attaches a condition to the grant of a permit, attaches a condition to a permit already granted or varies a condition attached to a permit, it shall give notice to the holder of the permit;
 - (d) if under Article 8B it refuses to grant a certificate, it shall give notice to the applicant for the certificate;
 - (e) if under Article 8B it cancels a certificate, it shall give notice to the person named in the certificate as certificate holder;
 - (f) if under Article 8B it attaches a condition to the grant of a certificate, attaches a condition to a certificate already granted or varies a condition attached to a certificate, it shall give notice to the person named in the certificate as certificate holder;
 - (g) if under any Order under this Law it refuses consent, refuses approval, or imposes a requirement, it shall give notice to the relevant holder of a permit or certificate holder (if any) and any other person in respect of whom the refusal or imposition is made.
- (2) A notice required under paragraph (1) shall –
 - (a) set out the terms of the refusal, cancellation, attachment of conditions, variation of conditions, or imposition, of which it is notice;
 - (b) in the case of the attachment of conditions, set out also the terms of the conditions;
 - (c) in the case of the variation of conditions, set out also the terms of the conditions as so varied;
 - (d) give the reasons for the refusal, cancellation, attachment, variation or imposition (except to the extent that the refusal, cancellation, attachment, variation or imposition is made on

- the application of the relevant holder of a permit, certificate holder or applicant); and
- (e) give particulars of the rights of appeal conferred by Article 8F.
- (3) A notice imposing a requirement under Article 8C shall –
- (a) give the reasons for the imposition of the requirement; and
 - (b) give particulars of the rights of appeal conferred by Article 8F.
- (4) A notice by which an objection and direction are made under Article 12A shall –
- (a) give the reasons for making the objection and direction; and
 - (b) give particulars of the rights of appeal conferred by Article 8F.
- (5) A notice by which a direction is given under Article 12D shall give the reasons for giving the direction.
- (6) A notice of a direction under Article 13 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 13(5) and (6); and
 - (d) give particulars of the rights of appeal conferred by Article 8F.
- (7) 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.

8E 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) the cancellation of a permit under Article 7;
 - (b) the attachment under Article 7 of an additional condition to a person's permit, or variation under that Article of the conditions attached to a person's permit, at any time after the grant of the permit;

- (c) the cancellation of a certificate under Article 8B;
 - (d) the attachment under Article 8B of an additional condition to a certificate, or variation under that Article of the conditions attached to a certificate, at any time after the grant of the certificate;
 - (e) the imposition of requirement under Article 8C(2) or (3);
 - (f) an objection under Article 12A(2) or (3).
- (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 desirable in the best interests of existing or potential participants in a collective investment fund to which a permit or certificate relates, 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 relevant holder of a permit, certificate holder, unclassified fund or fund service provider in relation to an unclassified fund.
- (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.

8F Appeals

- (1) A person aggrieved by an act of the Commission, being –
- (a) the refusal, or cancellation, under Article 7 of a permit;
 - (b) the attachment under Article 7 of a condition to the grant of a person's permit, the attachment under that Article of an additional condition to a person's permit, or the variation under that Article of the conditions attached to a person's permit;
 - (c) the refusal, or cancellation, under Article 8B of a certificate;
 - (d) the attachment under Article 8B of a condition to the grant of a person's certificate, the attachment under that Article of an additional condition to a person's certificate, or the variation under that Article of the conditions attached to a person's certificate;

- (e) the imposition of a requirement under Article 8C;
- (f) an objection and a direction under Article 12A;
- (g) the giving of a direction under Article 13;
- (h) the refusal of an application under Article 13(5) or granting of such an application only in part; or
- (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)(g) against the giving of a direction that makes a requirement referred to in Article 13(2)(d) or (f), 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)(g) against the giving of a direction shall not suspend the operation of the direction.
- (7) An appeal made under paragraph (1)(h) in relation to an application under Article 13(5) shall not suspend the operation of the direction in connection with which the application was made.”.

7 Article 9 amended

In Article 9 of the principal Law –

- (a) in paragraphs (1) and (2), for the words “or a former holder of a permit” there shall be substituted the words “, a former holder of a permit, a fund service provider, or a former fund service provider, in relation to an unclassified fund or a person to whom a certificate has been granted”;
- (b) in paragraph (3), after the words “holder of a permit”, in each place where they occur, there shall be inserted the words “, a fund service provider, or a former fund service provider, in relation to an unclassified fund or a person to whom a certificate has been granted”;
- (c) in paragraph (4), for the words “any holder of a permit, the Commission or that person” there shall be substituted the words “a holder of a permit, a fund service provider, or a former fund service provider, in relation to an unclassified fund or a person to whom a certificate has been granted, the Commission or that authorized person”;

- (d) in paragraph (4), for the words “appears to the Commission or that person” there shall be substituted the words “appears to the Commission or that authorized person”;
- (e) in paragraph (5), for the words “a holder of a permit or other person to produce” there shall be substituted the words “the production of”;
- (f) in paragraph (5)(a)(ii), for the words “the holder of the permit” there shall be substituted the words “the relevant holder of a permit, fund service provider, former fund service provider, or person to whom a certificate has been granted”;
- (g) for paragraph (10) there shall be substituted the following paragraphs –
 - “(10) References in paragraphs (3), (4) and (5) to a holder of a permit include references to –
 - (a) a former holder of a permit;
 - (b) any person who the Commission has reasonable cause to believe has committed an offence under Article 10; and
 - (c) any person who appears to the Commission to be acting or to have acted in contravention of Article 5.
 - (11) References in paragraphs (3), (4) and (5) to a person to whom a certificate has been granted include references to any person who appears to the Commission to be acting or to have acted in contravention of Article 8.”.

8 Article 12 substituted

For Article 12 of the principal Law there shall be substituted the following Article –

“12 Compensation schemes

The States may by Regulations establish, in relation to collective investment funds generally or a particular collective investment fund, a scheme or schemes for compensating investors in cases where –

- (a) functionaries or former functionaries; or
- (b) fund service providers in relation to an unclassified fund, former fund service providers in relation to an unclassified fund or persons to whom a certificate has been granted,

are unable, or likely to be unable, to satisfy claims in respect of any description of civil liability incurred by them in connection with a collective investment fund or collective investment funds.”.

9 New Articles 12A to 12D inserted

In the principal Law, after Article 12 there shall be inserted the following Articles –

“12A Objection to principal person or key person and to changes in holdings

- (1) This paragraph applies 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 7(6) or 8B(7), a person who is a principal person, or key person of any class, in relation to a holder of a permit or certificate holder or in respect of whom notice has been given that the person will become (respectively) a principal person, or key person of any class, is not a fit and proper person to be (respectively) a principal person, or key person of the relevant class or any class, in relation to the holder of a permit or certificate holder.
- (2) Where paragraph (1) applies, the Commission shall serve on the person described in that paragraph who is or will become a principal person or key person and on the holder of a permit or certificate holder a written notice of objection, directing that the person shall not continue to be, or shall not become, (respectively) a principal person, or key person of the relevant class or any class.
- (3) Following receipt of a notice under Article 12B(2) 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 holder of the permit concerned a written notice of objection, directing that that person 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.

12B Notification of change of principal person or key person and change in shareholding

- (1) No person shall become a principal person, or key person of any class, in relation to a holder of a permit or certificate holder unless that person has notified the Commission in writing of that person’s intention to become such a principal person, or key person of that class, and the Commission has notified that person in writing that there is no objection to that person becoming such a principal person, or key person of that class.
- (2) No person who is a shareholder controller shall increase, reduce or dispose of that person’s holding in the company in respect of which that person is a shareholder controller 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 –
 - (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.

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- (3) Subject to paragraph (5), a holder of a permit or certificate holder shall, before the end of one month beginning with the day on which that holder becomes aware that any person has become, is about to become or has ceased to be a principal person, or key person, in relation to that holder, or has increased, reduced or disposed of that person's holding, as the case may be, or is about to do so for the purposes of paragraph (2), give written notice to the Commission of that fact.
 - (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 holder of a permit or certificate holder if, being 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 holder of a permit or certificate holder if, being 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.
 - (5) The obligation imposed by paragraph (3) shall not apply in any case where a holder of a permit or certificate holder, as the case may be, 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 obligation, wholly or in part.
 - (6) A notice under paragraph (1), (2) 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 that person's 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.
 - (7) A notice under paragraph (2) or (3) that a person has ceased to be a principal person or key person or has reduced or disposed of that person's holding or is about to do so, as the case may be, shall include a statement of the reasons for the change.
 - (8) Following receipt of a notice under paragraph (1), (2) or (3), the Commission may, by giving written notice, require the person concerned or the holder of a permit or certificate holder, as the case may be, 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 12A.
 - (9) A notice given by the Commission under paragraph (1) or (2) 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.

12C Failure to notify change of principal person or key person or changes in holdings

- (1) A holder of a permit or certificate holder who fails to give the notice required by Article 12B(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 12B(1) or (2) or becomes a principal person, or key person of any class, or increases, reduces or disposes of that person's holding before having been served with a notice by the Commission under Article 12B(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 that person of a notice of objection under Article 12A in that connection,shall be guilty of an offence.
- (3) Subject to paragraph (4), a person shall not be guilty of an offence under paragraph (2) if that person shows that he or she did not know of the acts or circumstances by which that person became a principal person, by which that person became a key person of any class, or whereby that person's holding was increased, reduced or disposed of, as the case may be.
- (4) Where a person subsequently becomes aware of the relevant acts or circumstances by which that person became a principal person, by which that person became a key person of any class, or whereby that person's holding was increased, reduced or disposed of, as the case may be, that person shall be guilty of an offence unless that person gives the Commission written notice of the fact that that person has become such a principal person, has become a key person of the relevant class, or has increased, reduced or disposed of the person's holding, as the case may be, 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.

12D Powers of Commission and Court in respect of shares

- (1) The powers conferred by this Article shall be exercisable where –
 - (a) a person has contravened Article 12C(2);
 - (b) the holder of the permit concerned is a company; and
 - (c) the person concerned is a shareholder controller of that company.

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- (2) The Commission may, by notice in writing served on the person concerned, direct that any specified shares 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, in the case of unissued shares, any transfer 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;
 - (c) no further shares 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 holder of the permit on the shares, whether in respect of capital or otherwise.
- (3) Subject to paragraph (4), the Court may, on the application of the Commission, order the sale of any specified shares 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.
- (4) No order shall be made under paragraph (3) in a case where a notice of objection has been served under Article 12A –
- (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 by the Court 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 as it thinks fit.
- (6) Where shares are sold in pursuance of an order under this Article –
- (a) 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
 - (b) 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.
- (7) This Article applies –
- (a) to all shares in the holder of a permit 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 that person 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 in another company, to all the shares in that company which are held by the person or any associate of the person and were not so held before that person became a principal person or increased his or her holding, or which were so held immediately before that person reduced or disposed of his or her holding.

- (8) A copy of the notice served on the person concerned under paragraph (2) shall be served on the holder of the permit referred to in paragraph (1) and on any company referred to in paragraph (7)(b) and, if it relates to shares held by an associate of the principal person concerned, on that associate.
- (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 liable to imprisonment for a term of 2 years and to a fine.”.

10 Article 13 substituted

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

“13 Directions

- (1) If it appears to the Commission that –
 - (a) any requirements in relation to a collective investment fund or funds of any class are no longer satisfied;
 - (b) it is in the best interests of existing or potential participants in a collective investment fund or funds of any class or in the best interests of the creditors of a collective investment fund or funds of any class;
 - (c) it is in the best interests of one or more collective investment funds, functionaries, holders of permits, or certificate holders;
 - (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 be omitted 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 any principal person, or key person, in relation to –
 - (i) any functionary of a collective investment fund or fund of any class,
 - (ii) a certificate holder,
 - (iii) a fund service provider in relation to an unclassified fund or unclassified fund of any class,be removed, or removed and replaced, by another person acceptable to the Commission;
 - (c) require that any person having functions in relation to –
 - (i) a collective investment fund or fund of any class,
 - (ii) a certificate holder,
 - (iii) a fund service provider in relation to an unclassified fund or unclassified fund of any class,be removed, or removed and replaced, by another person acceptable to the Commission;
 - (d) 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,any of the following –
 - (A) any functionary of a collective investment fund or of a fund of any class (or any functionary at all),
 - (B) a certificate holder (or any certificate holder at all),
 - (C) a fund service provider in relation to an unclassified fund or in relation to an unclassified fund of any class (or any fund service provider at all);
 - (e) require –
 - (i) a functionary of a collective investment fund or fund of any class,
 - (ii) a fund service provider in relation to an unclassified fund or unclassified fund of any class, or
 - (iii) a certificate holder,to cease the issue or redemption, or both the issue and redemption of units, on a date specified in the direction, either until such further date as is specified in that or another direction or indefinitely;
 - (f) require –
 - (i) a functionary of a collective investment fund or fund of any class,
-

- (ii) a fund service provider in relation to an unclassified fund or unclassified fund of any class, or
 - (iii) the relevant company, trustee or general partner in relation to any fund in respect of which a certificate has been granted,
to wind up the affairs of the fund or of the company, trust or partnership, 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 documents, records, assets and property belonging to or in the possession or control of the functionary, fund service provider, company, trustee or general partner;
 - (g) prohibit the publication or making available of a particular prospectus or any other form of promotion of a collective investment fund or of a fund of any class; or
 - (h) require that any particular prospectus or other form of promotion of a collective investment fund or of a fund of any class 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 any direction, as well as the power to issue further directions.
 - (5) 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 (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 or to a fine.”.

11 Article 14 amended

In Article 14(2)(a) of the principal Law, after the words “functionaries of collective investment funds”, there shall be inserted the words “or any fund service provider in relation to an unclassified fund”.

12 Article 15 amended

For Article 15(1)(a) of the principal Law there shall be substituted the following sub-paragraph –

-
- “(a) prepare a code for the purpose of establishing sound principles and providing practical guidance in respect of –
 - (i) any function of a functionary in relation to a collective investment fund,
 - (ii) any certified fund, or
 - (iii) any provision of this Law or any Regulations or Order made under it; and”.

13 Article 16 amended

In Article 16 of the principal Law –

- (a) in paragraph (2), after the word “permit”, there shall be inserted the words “or certificate”;
- (b) in paragraph (4), after the words “holder of a permit”, there shall be inserted the words “or a fund service provider in relation to a certified fund”;
- (c) after paragraph (5) there shall be inserted the following paragraph –
 - “(5A) The reference in paragraph (4) to a fund service provider in relation to a certified fund includes a reference to any person who appears to the Commission to be acting or to have acted in contravention of Article 8.”.

14 Article 17 substituted

For Article 17 of the principal Law there shall be substituted the following Articles –

“17 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 5;
 - (b) Article 7;
 - (c) Article 8;
 - (d) Article 8B;
 - (e) Article 10;
 - (f) Article 12C;
 - (g) Article 12D;
 - (h) Article 13;
 - (i) Article 16;
 - (j) a Regulation, or an Order, made under this Law.
- (2) The Commission may issue –

- (a) a public statement with respect to, or setting out, any direction that the Commission has given under Article 13;
- (b) a public statement concerning a person if that person appears to the Commission to have failed to comply with a code of practice;
- (c) a public statement concerning –
 - (i) a holder of a permit or certificate holder, or
 - (ii) a person whom the Commission believes to be holding himself or herself out, whether in Jersey or elsewhere, as being a functionary of a collective investment fund, a fund service provider in relation to an unclassified fund, a holder of a permit or a certificate holder,if it appears to the Commission to be desirable to issue the statement –
 - (A) in the best interests of existing or potential participants in a relevant collective investment fund or in relevant funds of any class, or
 - (B) in the best interests of the public;
- (d) a public statement indicating that a collective investment fund that is being held out to be a certified fund or a recognized fund is not such a fund.

17A Notice of public statement

- (1) If a public statement identifies any person who holds a permit or is a certificate holder, the Commission shall serve notice on the person.
- (2) If a public statement identifies any person who does not hold a permit and is not a certificate holder, 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 17C in respect of the statement; and
 - (e) if the statement is issued, in accordance with a decision under Article 17B(3), before the date specified in Article 17B(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 17B and 17C, 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.

17B Notice period

- (1) If service is required under Article 17A(1) or (2) in relation to a
public statement, the Commission shall not issue the public
statement earlier than 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 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 17C(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 17C(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.

17C Appeals and orders about public statements

- (1) A person aggrieved by a decision of the Commission under Article 17B(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 17A 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.”.

15 Article 18 amended

In Article 18 of the principal Law, for paragraph (1) there shall be substituted the following paragraph –

- “(1) Where an offence under this Law committed by –
- (a) a holder of a permit or former holder of a permit;
 - (b) a fund service provider in relation to a certified fund or a former fund service provider in relation to a certified fund;
 - (c) a person to whom a certificate has been granted; or
 - (d) a person acting in contravention of Article 5 or 8,
- 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 offender, that principal person shall be guilty of the offence and liable in the same manner as the offender to the penalty provided for that offence.”.

16 Article 20 amended

For Article 20(3) and (4) 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.”.

17 Article 21 substituted

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

“21 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 1954¹¹ 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."

18 Article 22 amended

In Article 22 of the principal Law –

- (a) in paragraph (1), after the words "holders of permits relating to the collective investment fund" there shall be inserted the words " , any fund service provider in relation to a certified fund or a person to whom a certificate has been granted,";

- (b) for paragraphs (2) and (3) there shall be substituted the following paragraphs –

“(2) An inspector appointed under this Article may examine under oath –

- (a) the holder of a permit;
- (b) a fund service provider in relation to a certified fund;
- (c) a certificate holder;
- (d) a principal person in relation to, or fund service provider, employee, banker, auditor or legal adviser of, the holder of a permit, a certified fund, or a fund service provider in relation to a certified fund;
- (e) any person nominated or approved to make a report in respect of the holder of a permit, a certified fund, or a fund service provider in relation to a certified fund; and
- (f) any other person who appears to be in possession of relevant information,

for the purpose of obtaining any information that the inspector considers necessary for the purpose of the inspector’s investigation.

(3) References in paragraphs (1), (2) and (6) –

(a) to a holder of a permit include references –

- (i) to a former holder of a permit,
- (ii) to any person who the Commission has reasonable cause to believe has committed an offence under Article 10, and
- (iii) to any person who appears to the Commission to be acting or to have acted in contravention of Article 5; and

(b) to a fund service provider in relation to a certified fund include references –

- (i) to a former fund service provider in relation to a certified fund, and
- (ii) to any person who appears to the Commission to be acting or to have acted in contravention of Article 8.”;

- (c) in paragraph (6), after the words “holder of a permit” there shall be inserted the words “, a fund service provider in relation to a certified fund”.

19 Article 25 amended

In Article 25 of the principal Law –

- (a) in paragraph (1) after sub-paragraphs (a) and (b) there shall be inserted the following sub-paragraphs –

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- “(ba) the power to refuse to grant a certificate under Article 8B(1) or to cancel a certificate under Article 8B(10);
 - (bb) the power to impose conditions on the grant of a certificate under Article 8B(2) or to vary such conditions or attach a new condition under Article 8B(4);”;
 - (b) for paragraph (6)(a) there shall be substituted the following sub-paragraph –
 - “(a) a reference –
 - (i) in Article 9(10) or (11) to an offence under Article 10 or to a contravention of Article 5 or 8, or
 - (ii) in Article 22(3) to an offence under Article 10 or to a contravention of Article 5 or 8,shall include a reference to a contravention (committed at any time, including a time before the enactment 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 5, 8 or 10; and”;
 - (c) in paragraph (7) for the words “Article 5 or 10” there shall be substituted the words “Article 5, 8 or 10”.

20 Article 27 amended

In Article 27 of the principal Law, for paragraph (2) there shall be substituted the following paragraph –

- “(2) Without prejudice to the generality of paragraph (1), Article 26 does not preclude the disclosure of information by the Commission to the auditor of –
 - (a) a holder of a permit or former holder of a permit;
 - (b) a certified fund or a former certified fund; or
 - (c) a person who appears to the Commission to be acting or to have acted in contravention of Article 5 or 8,if it appears to the Commission that disclosing the information would enable or assist the Commission to discharge the functions mentioned in paragraph (1) or would otherwise be in the interests of existing or potential participants in collective investment funds.”.

21 Article 29 amended

For Article 29(1)(c) of the principal Law there shall be substituted the following sub-paragraphs –

- “(c) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise of professional duties by –
 - (i) an auditor of an applicant for a permit, of a holder of a permit or of a former holder of a permit,

- (ii) an auditor of a certified fund, of a former certified fund, of an applicant for a certificate, of a fund service provider in relation to a certified fund or of a former fund service provider in relation to a certified fund,
 - (iii) a person who was the auditor of a holder of a permit or a former holder of a permit at any time during the period the permit was held,
 - (iv) a person who was the auditor of a certified fund, of a former certified fund, of a fund service provider in relation to a certified fund or of a former fund service provider in relation to a certified fund, at any time during the period the certificate was in force,
 - (v) an accountant or other person nominated or approved under Article 9(2), or
 - (vi) an inspector appointed under Article 22;
- (d) to a person by the Commission showing whether or not any person holds a permit or certificate under this Law, including any conditions to which that permit or certificate is subject under Article 7 or Article 8B as the case may be.”.

22 Article 32 amended

In Article 32 of the principal Law –

- (a) in paragraph (2) for the words “former holder of a permit or” there shall be substituted the words “former holder of a permit, a person to whom a certificate has been granted, a fund service provider in relation to a certified fund or a former fund service provider in relation to a certified fund, or the business or affairs of a”;
- (b) in paragraph (3) for the words “ or former holder of a permit” there shall be substituted the words “, a former holder of a permit, a person to whom a certificate has been granted, a fund service provider in relation to a certified fund, or a former fund service provider in relation to a certified fund.”;
- (c) in paragraph (4) for the words “and holders of permits” there shall be substituted the words “, holders of permits, certified funds and fund service providers in relation to certified funds”;
- (d) for paragraph (6) there shall be substituted the following paragraph –
 - “(6) In this Article, ‘auditor’ means an auditor of –
 - (a) a holder of a permit or a former holder of a permit;
 - (b) a certified fund, a former certified fund, a fund service provider in relation to a certified fund or a former fund service provider in relation to a certified fund; or
 - (c) a collective investment fund,and includes –

- (d) a person who was the auditor of a holder of a permit or former holder of a permit at any time during the period the permit was held; and
- (e) a person who was the auditor of a person to whom a certificate has been granted, a fund service provider in relation to a certified fund or a former fund service provider in relation to a certified fund at any time during the period in which the certificate in relation to the fund was in force.”.

23 Article 33 amended

In Article 33 of the principal Law –

- (a) in the heading to the Article, after the words “of permits”, there shall be added the words “and certified funds”;
- (b) for paragraph (1) there shall be substituted the following paragraph –
 - “(1) The Commission shall keep a register of –
 - (a) persons to whom permits have been granted; and
 - (b) certified funds.”.

24 Article 34 amended

In Article 34 of the principal Law –

- (a) paragraphs (1) to (4) shall be repealed;
- (b) in paragraphs (5) and (6) after the word “functionary”, in each place where it occurs, there shall be inserted the words “or fund service provider in relation to an unclassified fund”;
- (c) in paragraph (7) after the words “functionaries of the collective investment fund” there shall be inserted the words “or any fund service provider in relation to an unclassified fund”;
- (d) in paragraphs (8)(a) and (9)(a) for the words “or permit granted”, in each place where they occur, there shall be substituted the words “, or permit or certificate granted”.

25 New Article 34A

After Article 34 of the principal Law there shall be inserted the following Article –

“34A Commission may apply to Court for appointment of a manager in prescribed circumstances

- (1) The Minister may, on the recommendation of the Commission, 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, or any part of the affairs, of any person

mentioned in paragraph (2) in so far as those affairs relate to a collective investment fund.

- (2) Those persons are –
 - (a) any person granted a permit or a certificate;
 - (b) any person whom the Commission reasonably believes to be in breach of Article 5 or 8.
- (3) An Order made under paragraph (1) may contain such incidental or supplementary provisions as the Minister thinks necessary or expedient.
- (4) The Court may, on an application made to it by the Commission, in circumstances prescribed 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 any person mentioned in paragraph (2) in so far as those affairs relate to a collective investment fund.
- (5) Subject to the terms of his or her appointment, a person appointed under paragraph (4) 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 a collective investment fund.”.

26 New Article 38A

After Article 38 of the principal Law there shall be inserted the following Article –

“38A Certain permits become certificates

- (1) An unclassified fund that immediately before this Article comes into force –
 - (a) is a company issuing units; and
 - (b) holds a permit,shall be taken to have been granted on the day on which this Article comes into force a certificate subject to –
 - (i) the conditions specified on the permit; and
 - (ii) any conditions that apply from time to time in relation to certificates in accordance with Article 8B(5).
- (2) The Commission may, without receiving an application from a person in relation to an unclassified fund, exercise in relation to the fund the Commission’s powers under Article 8B and 8C as if an application had been received in relation to the fund.
- (3) A certificate granted pursuant to such an exercise shall be taken to replace a certificate taken to have been granted under paragraph (1).”.

27 Amendment of Companies (Jersey) Law 1991

In the Companies (Jersey) Law 1991¹², in Article 1(1), in the definition “open-ended investment company”, for paragraph (c) there shall be substituted the following paragraph –

“(c) which holds a permit as a functionary of Group 1 of Part 2 of the Schedule to the Collective Investment Funds (Jersey) Law 1988¹³ or in relation to which there is a certificate that is in force under that Law;”.

28 Citation and commencement

- (1) This Law may be cited as the Collective Investment Funds (Amendment No. 4) (Jersey) Law 2008.
- (2) This Law shall come into force 7 days after it is registered.

A.H. HARRIS

Deputy Greffier of the States

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- ¹ *chapter 13.100*
 - ² *chapter 13.100.60*
 - ³ *chapter 13.100.75*
 - ⁴ *chapter 13.075*
 - ⁵ *chapter 13.225*
 - ⁶ *chapter 13.425*
 - ⁷ *L.1/1861 (repealed by L.30/1991 (chapter 13.125))*
 - ⁸ *chapter 13.125*
 - ⁹ *chapter 13.500*
 - ¹⁰ *chapter 13.475*
 - ¹¹ *chapter 15.360*
 - ¹² *chapter 13.125*
 - ¹³ *chapter 13.100*