

Jersey R & O 10/2001

Financial Services (Jersey) Law 1998

FINANCIAL SERVICES (INVESTMENT BUSINESS (RESTRICTED INVESTMENT BUSINESS - EXEMPTION)) (JERSEY) ORDER 2001

THE FINANCE AND ECONOMICS COMMITTEE, in pursuance of Articles 4(1)(a)(i) and 6(2)(a)(ii) of the Financial Services (Jersey) Law 1998,¹ as amended, and on the recommendation of the Jersey Financial Services Commission orders as follows -

Interpretation

1.-(1) In this Order -

“Commission” means the Jersey Financial Services Commission;

“Law” means the Financial Services (Jersey) Law 1998;²

“professional investor regulated scheme” has the meaning given to that expression by Article 3;

“restricted investment business” has the meaning given to that expression by Article 2.

(2) A reference in this Order to an enactment is a reference to that enactment as amended by any subsequent enactment.

(3) A reference in this Order to a numbered Article without further identification is a reference to the Article so numbered in this Order.

¹ Recueil des Lois, Volume 1998, pages 519 and 521.

² Recueil des Lois, Volume 1998, page 507, Volume 1999, pages 413, 420 and 527, Volume 2000, pages 705 and 716 to 745 and Nos. 9402 and 127/2000.

(4) A reference in an Article to a paragraph, sub-paragraph or clause by number or letter only, and without further identification, is a reference to the paragraph, sub-paragraph or clause of that number or letter in the Article of this Order in which the reference occurs.

Meaning of “restricted investment business”

2.-(1) In this Order “restricted investment business” means the carrying on of all or any of the following activities by way of business -

- (a) dealing in investments in relation to a professional investor regulated scheme, that is, buying, selling, subscribing for or underwriting investments, either as principal or as agent;
- (b) dealing in investments in relation to investors in a professional investor regulated scheme, that is buying or selling investments, either as principal or agent;
- (c) discretionary investment management, that is, deciding as agent to buy, sell, subscribe for or underwrite investments for or on behalf of a professional investor regulated scheme;
- (d) giving investment advice to a professional investor regulated scheme, that is, giving advice on the merits of -
 - (i) the purchase, sale, subscription for or underwriting of a particular investment; or
 - (ii) the exercise of rights, conferred by an investment, to acquire, dispose of, underwrite or convert an investment.

(2) In paragraphs (1)(a) and(b) -

- (a) “buying” includes any acquisition;
- (b) “selling” includes any disposal.

(3) In paragraph (2)(b) “disposal” includes -

- (a) in the case of an investment consisting of rights under a contract or other arrangements, assuming the corresponding liabilities under the contract or arrangements;
- (b) in the case of any other investment, issuing or creating the investment or granting the rights or interests of which it consists;
- (c) in the case of an investment consisting of rights under a contract, surrendering, assigning or converting those rights.

Meaning of “professional investor regulated scheme”

3.-(1) In this Order “professional investor regulated scheme” means an investment scheme referred to in paragraph (2) or (3).

(2) An investment scheme securities in which were in issue 1st July 1999 is a “professional investor regulated scheme” if -

- (a) the relevant consent had been issued in respect of the scheme before 1st July 1999; and
- (b) each investor in the scheme, other than an investor who held securities in the scheme before 1st July 1999, received and signed an investment warning.

(3) An investment scheme is a “professional investor regulated scheme” if -

- (a) the relevant consent has been issued in respect of the scheme; and
- (b) each investor in the scheme -
 - (i) has made a minimum subscription of £250,000 or is a professional investor; and
 - (ii) has received and signed an investment warning.

(4) In this Article -

“1958 Order” means the Control of Borrowing (Jersey) Order 1958;³

“functionary” means a person who, in relation to a professional investor regulated scheme, acts as an agent or counter-party, and includes a manager, investment manager, advisor, investment advisor, administrator, paying agent, distributor, subscription agent, placement agent, sales agent, dealer, trustee, custodian, custody agent, depository or general partner of the professional investor regulated scheme;

“investment scheme” includes any investment arrangement;

“investment warning”, in respect of an investor in a professional investor regulated scheme, means a warning issued in accordance with the terms of an offer relating to the subscription, purchase or exchange of securities made or to be made pursuant to an offer document stating -

- (a) that an investment in the scheme is only suitable for sophisticated investors who understand the risks involved in acquiring such an investment; and
- (b) that neither the scheme nor the activities of any functionary with regard to the scheme are subject to all the provisions of the Financial Services (Jersey) Law 1998,⁴

or a warning with words to the like effect approved by the Commission;

“professional investor”, in respect of a professional investor regulated scheme, means -

³ Nos. 3943, 4175, 4361, 7364, 7739, 8027, 8149, 8776, 8840, 9264 and 9267.

⁴ Recueil des Lois, Volume 1998, page 507, Volume 1999, pages 413, 420 and 527, Volume 2000, pages 705 and 716 to 745 and Nos. 9402 and 127/2000.

- (a) a person whose ordinary activities involve the person in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of the person's business or who it is reasonable to expect will acquire, hold, arrange or dispose of investments (as principal or agent) for the purposes of that business; or
- (b) any person who carries on investment business in relation to the professional investor regulated scheme; or
- (c) any employee of a person referred to in paragraph (b) who is engaged in carrying on investment business in relation to the professional investor regulated scheme and, where the person referred to in paragraph (b) is a company, any director of that company and, where the person referred to in paragraph (b) is a partnership, any partner of that partnership; or
- (d) any company which is wholly owned by, or a limited partnership all the limited partners of which are, or a trust established for the benefit only of, one or more persons referred to in paragraphs (b) or (c);

“relevant consent”, in respect of an investment scheme, means -

- (a) in the case of a body corporate, the consent of the Commission under Article 3, 4, 4A or 4B of the 1958 Order to the issue of securities in connection with the scheme or to the raising of money in Jersey by the issue of such securities; or
- (b) in the case of a unit trust, the consent of the Commission under Article 7(1) of the 1958 Order to the issue of securities in connection with the scheme or to the raising of money in Jersey by the issue of such securities; or

- (c) in the case of a limited partnership, the consent of the Commission under Article 8 of the 1958 Order to the creation of securities in connection with the scheme or to the raising of money in Jersey by the creation of such securities;

“securities” means bonds, notes, commercial paper, debentures, debenture stock, instruments creating or acknowledging indebtedness, shares, units or interests under a limited partnership.

Exemption

4.-(1) In accordance with Article 6(2)(a)(ii) of the Law⁵ it is declared that the Law shall not apply to a person when, in relation to a professional investor regulated scheme, the person -

- (a) acts as a functionary; and
- (b) carries on restricted investment business.

(2) In accordance with Article 4(1)(a)(i) of the Law,⁶ it is declared that the exemption conferred by paragraph (1) is amended so that it is limited to Article 6 of the Law.⁷

(3) Articles 10A, 20, 21, 22, 23, 25, 29, 30, 31, 32, 33, 34, 35, 36, and 38 of the Law⁸ shall continue to apply to a person exempted from registration by virtue of paragraph (1) as if the person were a registered person.

(4) A reference to registered persons in those Articles and the reference to persons registered by the Commission in Article 5 of the Law⁹ shall be construed accordingly.

⁵ Recueil des Lois, Volume 1998, page 521.

⁶ Recueil des Lois, Volume 1998, page 519.

⁷ Recueil des Lois, Volume 1998, page 520 and Volume 2000, pages 726 and 741.

⁸ Recueil des Lois, Volume 1998, pages 529, 542, 545, 546, 548, 554, 557, 560, 563, 564, 566, 569 and 571, Volume 1999, page 420 and Volume 2000, pages 705, 728, 730 to 734, 742, 743 and 745.

⁹ Recueil des Lois, Volume 1998, page 519.

(5) In this Article “functionary” has the same meaning as in Article 3.

Revocation

5. The Investment Business (Exemption No. 4A) (Jersey) Order 1999¹⁰ is revoked.

Citation and commencement

6. This Order may be cited as the Financial Service (Investment Business (Restricted Investment Business - Exemption)) (Jersey) Order 2001 and shall come into force on the second day of February 2001.

By Order of the Finance and Economics Committee,

C.M. NEWCOMBE

Greffier of the States.

12th January 2001.

¹⁰ No. 9412.

10/2001

Explanatory Note

R & O 10/2001

Financial Services (Investment Business (Restricted Investment Business - Exemption)) (Jersey) Order 2001

Finance and Economics Committee

The purpose of this Order is to revoke the Investment Business (Exemption No. 4A) (Jersey) Order 1999 (which exempted functionaries in respect of certain regulated investment schemes intended solely for professional or sophisticated investors from the obligation to register under the Investment Business (Jersey) Law 1998, now called the Financial Services (Jersey) Law 1998).

This Order is necessary solely as a consequence of the changes brought about by the Financial Services (Extension) (Jersey) Law 2000. It introduces no new provisions.

The Order includes provisions by which certain powers of the Jersey Financial Services Commission under the Financial Services (Jersey) Law 1998 will continue to be applicable in respect of persons exempted from registration under the Law.

The Order was made on 12th January 2001 and comes into force on 2nd February 2001.

19/12/2000(03)

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