

Jersey R & O 11/2001

Financial Services (Jersey) Law 1998

**FINANCIAL SERVICES (INVESTMENT BUSINESS (SPECIAL
PURPOSE 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

“special purpose regulated scheme” has the meaning given to that expression by Article 3;

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

(2) A reference in this Order to an Article by number alone is a reference to the Article of that number in this Order, and a reference in an Article or other division of this Order to a paragraph by number alone is a reference to the paragraph of that number contained in the Article or other division of this Order in which that reference occurs.

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.

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

Meaning of “special purpose investment business”

2.-(1) In this Order “special purpose 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 special purpose 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 special purpose 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 special purpose regulated scheme;
 - (d) giving investment advice to a special purpose 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 paragraph (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 “special purpose regulated scheme”

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

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

- (a) the relevant consent had been issued in respect of the scheme before 1st July 1999; and
- (b) it was established for a special purpose; and
- (c) except in the case of a person who held securities in the scheme before 1st July 1999, securities in the scheme are issued or allotted exclusively to qualified professional investors.

(3) An investment scheme is a “special purpose regulated scheme” if -

- (a) the relevant consent has been issued in respect of the scheme; and
- (b) it was established for a special purpose; and
- (c) securities in the scheme are issued or allotted exclusively to qualified professional investors.

(4) In this Article -

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

“functionary” means a person who, in relation to a special purpose regulated scheme, acts as an agent or counterparty, 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 special purpose regulated scheme;

“investment scheme” includes any investment arrangement;

“investment warning”, in respect of an investor in a special purpose 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 the securities in question are only suitable for acquisition by a person who -
 - (i) has a significantly substantial asset base such that would enable him to sustain any loss that might be incurred as a result of acquiring such securities; and
 - (ii) is sufficiently financially sophisticated to be reasonably expected to know the risks involved in acquiring the securities; 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

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.

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

“professional investor” means a person whose ordinary activities involve him in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of his business or who it is reasonable to expect will acquire, hold, arrange or dispose of investments (as principal or agent) for the purposes of his business;

“qualified professional investor” means -

- (a) a person who is a professional investor; or
- (b) a person who has received and acknowledged an investment warning;

“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;

“special purpose”, in respect of a special purpose regulated investment scheme, means that the only or principal purpose of the scheme is the securitization or repackaging of assets that involves the issue of securities or other capital market transaction or category of capital market transaction as the Commission may from time to time approve.

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 special purpose regulated scheme, the person -

- (a) acts as a functionary; and
- (b) carries on special purpose 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. 1A) (Jersey) Order 1999¹⁰ shall be revoked.

Citation and commencement

6. This Order may be cited as the Financial Services (Investment Business (Special Purpose 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. 9411.

11/2001

Explanatory Note

R & O 11/2001

Financial Services (Investment Business (Special Purpose Investment Business - Exemption)) (Jersey) Order 2001

Finance and Economics Committee

This Order revokes and replaces the Investment Business (Exemption No. 1A) (Jersey) Order 1999 and 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 purpose of this Order is to exempt advisors in respect of certain regulated investment schemes known in the financial industry as “special purpose vehicles” from the obligation to register under the Financial Services (Jersey) Law 1998 (formerly called the Investment Business (Jersey) Law 1998).

The Order also 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(04)

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