



Jersey

## DRAFT FINANCIAL SERVICES COMMISSION (AMENDMENT No. 8) (JERSEY) LAW 202-

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## DRAFT FINANCIAL SERVICES COMMISSION (AMENDMENT No. 8) (JERSEY) LAW 202-

A LAW to amend the Financial Services Commission (Jersey) Law 1998.

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<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

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

### 1 The Financial Services Commission (Jersey) Law 1998 amended

- (1) This Law amends the Financial Services Commission (Jersey) Law 1998.
- (2) In this Law, a reference to an Article by number only is a reference to the Article of the same number in the Financial Services Commission (Jersey) Law 1998.

### 2 Article 1(1) (interpretation) amended

In Article 1(1) –

- (a) the following definitions are inserted in the correct alphabetical sequence –

“compliance officer” has the meaning given to that expression by Article 1(1) of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008;

“key person”, in relation to a registered person, means a person who is or was employed or otherwise engaged by a registered person as an officer or any one or more of the following classes in relation to the conduct of the business of the registered person –

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

“money laundering compliance officer” means a person appointed as compliance officer under the Money Laundering (Jersey) Order 2008;

“money laundering reporting officer” means a person appointed as reporting officer under the Money Laundering (Jersey) Order 2008;

“senior management function”, in relation to a registered person, means a function designated as such by the Commission by notice published on the Commission’s website where –

- (a) the function requires the individual performing it to be responsible for managing one or more aspects of the registered person’s affairs; and
- (b) those aspects involve, or might involve, a risk of serious consequences –
  - (i) for the registered person, or
  - (ii) for business or other interests in Jersey,

and in paragraph (a), the reference to managing one or more aspects of the registered person’s affairs includes a reference to taking decisions, or participating in the taking of decisions, about how one or more aspects of those affairs should be carried on;]”;

- (b) for the definition “principal person” there is substituted –

“principal person” means –

- (a) a director, controller or manager (within the meaning given by Article 1 of the Banking Business (Jersey) Law 1991;
- (b) a chief executive or shareholder controller (within the meaning given by Article 1(1) of the Insurance Business (Jersey) Law 1996 or any individual acting as a director of a permit holder (within the meaning given by Article 1(1) of that Law);
- (c) a principal person within the meaning of Article 1(1) of the Financial Services (Jersey) Law 1998;
- (d) a principal person within the meaning of Article 1(1) of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008;
- (e) a principal person within the meaning of Regulation 2 of the Alternative Investment Funds (Jersey) Regulations 2012; or
- (f) a principal person within the meaning of Article 1(1) of the Collective Investment Funds (Jersey) Law 1988,

and includes a person who was a principal person within the meaning given by sub-paragraph (a), (b), (c), (d) or (e);”;

- (c) in the definition “registered person” after paragraph (d) there is inserted –

- “(e) a supervised person within the meaning of Article 1(1) of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008;
- (f) a certificate holder within the meaning of Article 1(1) of the Collective Investment Fund (Jersey) Law 1988;
- (g) a person required to be a registered person, permit holder, service provider, supervised person or certificate holder under

any of the Laws referred to in paragraph (a), (b), (c), (d), (e) or (f);”.

### 3 Article 21A (power to impose civil penalties) substituted

For Article 21A there is substituted –

#### “21A Power to impose civil penalties

- (1) If the Commission is satisfied that a registered person has, to a significant and material extent, contravened any enactment or Code of Practice to which this Article applies, the Commission may –
  - (a) except where that registered person is a certificate holder that is a fund, impose on that registered person a penalty to the extent permitted by the following provisions of this Law;
  - (b) if satisfied that the contravention by the registered person was –
    - (i) committed with the consent or connivance of, or is attributable to neglect on the part of a principal person, key person or any person who performs or performed a senior management function, or
    - (ii) aided, abetted, counselled or procured by a principal person, key person or any person who performs or performed a senior management function,impose on that principal person, key person or any person who performs or performed a senior management function a penalty to the extent permitted by the following provisions of this Law (notwithstanding that the registered person may be a certificate holder that is a fund).
- (2) This Article applies to –
  - (a) the Money Laundering (Jersey) Order 2008; and
  - (b) the Codes of Practice issued by the Commission under –
    - (i) Article 19A of the Banking Business (Jersey) Law 1991,
    - (ii) Article 42 of the Insurance Business (Jersey) Law 1996,
    - (iii) Article 19 of the Financial Services (Jersey) Law 1998,
    - (iv) Article 22 of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008,
    - (v) Regulation 22 of the Alternative Investment Funds (Jersey) Regulations 2012,
    - (vi) Article 15 of the Collective Investment Funds (Jersey) Law 1988.
- (3) The Minister may by Order amend paragraph (2).”.

#### 4 Article 21B (level of penalty and criteria for imposition) amended

In Article 21B –

- (a) for paragraphs (3) and (3A) there is substituted –
  - “(3) In considering whether to impose a penalty on a registered person, principal person, key person or any person who performs or performed a senior management function and the amount of penalty to be imposed, the Commission must, where applicable, have regard to the following matters –
    - (a) the seriousness of the contravention;
    - (b) whether or not the person knew or ought to have known of the contravention;
    - (c) whether or not the person voluntarily reported the contravention;
    - (d) whether or not the person has taken steps to rectify the contravention and to prevent its recurrence;
    - (e) the potential financial consequences to the person and to third parties (including customers and creditors of the person) of imposing the penalty;
    - (f) the principle of ensuring that a person cannot expect to profit from the contravention;
    - (g) the penalties imposed by the Commission in other cases; and
    - (h) the principles mentioned in paragraph (4) other than those set out in this paragraph.”; and
  - (b) in paragraph (4) there is deleted “and paragraph (3A)(a) to (d)”.

#### 5 Article 21C (notification of imposition of penalty) amended

In Article 21C –

- (a) for “registered or principal person” wherever it occurs there is substituted “registered person, principal person, key person or any person who performs or performed a senior management function”;
- (b) in paragraph (1)(b)(i) after “Code of Practice” there is inserted or the Money Laundering (Jersey) Order 2008”;
- (c) for sub-paragraph (2)(a) there is substituted –
  - “(a) details of the contravention;”.

#### 6 Article 21D (restrictions on powers of Commission in respect of notices) amended

In Article 21D –

- (a) after paragraph (2) there is inserted –
  - “(2AA) The Commission shall not issue a notice of intent under Article 21C(1) in respect of the contravention of the Money Laundering (Jersey) Order 2008 that occurred before the commencement of the Financial Services Commission (Amendment No. 8) (Jersey) Law 202-, except that if the contravention was

continuing at the time of the commencement of the Financial Services Commission (Amendment No. 8) (Jersey) Law 202-, a notice of intent may be issued in respect of such part of the contravention that continued after such commencement.

(2AB)The Commission shall not issue a notice of intent under Article 21C(1) to a key person or a person performing a senior management function in respect of the contravention of a Code of Practice that occurred before the commencement of the Financial Services Commission (Amendment No. 8) (Jersey) Law 202-, except that if the contravention was continuing at the time of the commencement of the Financial Services Commission (Amendment No. 8) (Jersey) Law 202-, a notice of intent may be issued in respect of such part of the contravention that continued after such commencement.”.

## **7 Article 21E (late payment surcharge and enforcement) amended**

For Article 21E(4) –

“(4) A penalty, including any surcharge imposed on a registered person, principal person, key person or any person who performs or performed a senior management function, as the case may be, may be enforced as if it were a debt owed by the registered person, principal person, key person or any person who performs or performed a senior management function, as the case may be, to the Commission.”.

## **8 Article 21F (appeal against imposition of penalty) amended**

In Article 21F(1) for “registered person or principal person” there is substituted “a registered person, principal person, key person or any person who performs or performed a senior management function”.

## **9 Article 21G (proceeds of penalties) amended**

For Article 21G(2) for “principal person” wherever it appears there is substituted “principal person, key person or any person who performs or performed a senior management function”.

## **10 Citation and commencement**

This Law may be cited as the Financial Services Commission (Amendment No. 8) (Jersey) Law 202- and comes into force [7 days after it is registered].

## **SCHEDULE 1**

(Insert Schedule SubSubheading here)

**INSERT SCHEDULE SUBHEADING HERE**