

# STATES OF JERSEY



## DRAFT COLLECTIVE INVESTMENT FUNDS (AMENDMENT AND VALIDATION) (JERSEY) LAW 201-

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Lodged au Greffe on 17th April 2012  
by the Minister for Economic Development

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STATES GREFFE





Jersey

**DRAFT COLLECTIVE INVESTMENT FUNDS  
(AMENDMENT AND VALIDATION) (JERSEY)  
LAW 201-**

**European Convention on Human Rights**

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Minister for Economic Development has made the following statement –

In the view of the Minister for Economic Development the provisions of the Draft Collective Investment Funds (Amendment and Validation) (Jersey) Law 201- are compatible with the Convention Rights.

(Signed) **Senator A.J.H. Maclean**

## REPORT

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### 1 ISSUES

- 1.1 The Draft Law amends those provisions in the Collective Investment Funds (Jersey) Law 1988 (the “**CIF Law**”) that still refer to fees as being prescribed by Order. The effect of the amendment will be for fees in respect of fund certificates to be determined in accordance with Article 15 of the 1998 Law, in the same way as for all other fees and charges due to the Financial Services Commission (the “**Commission**”), including those in respect of permits under the CIF Law.
- 1.2 The need for this amendment derives from the fact that a decision taken in 2007, to make substantial alterations to the way in which collective investment funds were regulated, coincided with a largely unrelated amendment to the Financial Services Commission (Jersey) Law 1998 (the “**1998 Law**”) that transferred the authority for determining the fees and charges payable to the Commission.
- 1.3 The amendment to the 1998 Law provided for fees and charges to be as published by the Commission after consultation, where previously they had been as prescribed by Ministerial Order. This change was made largely as a result of a recommendation by the International Monetary Fund following the assessment it conducted in 2002/2003 of the Island’s compliance with international standards.
- 1.4 Together with the new arrangements for determining fees, the amendment to the 1998 Law made consequential amendments to other laws where they referred to fees and charges that were affected. However, it preceded the changes to the regulation of funds. As such, no equivalent provision could be made in respect of the fees relating to the new requirement for fund certificates, the introduction of which was a feature of the revised regulatory arrangements that came fully into force in April 2008.
- 1.5 The Draft Law will make the small but necessary changes to the 1988 Law to align the fee-charging arrangements for fund certificate with other fees payable to the Commission, whilst ensuring no change in the amount of fees being charged.
- 1.6 Finally, the Draft Law validates the payments of fees to the Commission in respect of certificates since April 2008 (when the changes to the CIF Law came into force), notwithstanding that those fees were not prescribed by Order until a later date.

### 2 BACKGROUND

- 2.1 Prior to the changes to the way in which funds are regulated, the CIF Law required every functionary of a collective investment fund to hold a permit in respect of each fund for which it acted, if either it was a Jersey company or it carried out any part of its activities in Jersey. Under the new arrangements, the regulation of most functionaries is undertaken through the Financial Services

(Jersey) Law 1998, leaving the CIF Law to be the legislative vehicle for regulating the collective investment fund as a product.

- 2.2 The only functionaries that are still regulated under the CIF Law, and to whom permits are still issued, are those acting for recognized funds. The regulatory arrangements for recognized funds are the basis on which the Island has been granted 'Designated Territory' status by the United Kingdom ("UK") authorities, allowing funds of this class to market directly into the public in the UK. Without the prior agreement of the UK authorities (which would have delayed implementation for all other funds), any changes to those regulatory arrangements would have adversely affected the special status.
- 2.3 For all other funds, where formerly the CIF Law had provided for permits to be issued to functionaries, it now requires that a certificate must be issued in respect of any fund managed from within Jersey (other than a recognized fund). For a fund constituted as a company (typically, approximately 55% of all such funds), the certificate replaced the permit that it previously had to hold. Other types of funds (e.g. unit trusts and partnerships) do not have separate legal personality, so the permits were only issued to the operators of those funds. Accordingly, the introduction of certificates placed such funds on an equal footing with those having a corporate structure.
- 2.4 Key features of the new arrangements were a substantial reduction in the administrative burden, both for the Commission and for industry, in registration and regulation of functionaries together with the introduction of Codes of Practice for functionaries that help to ensure that regulation is consistent with international standards.
- 2.5 In February 2006, the Commission published a paper that initiated a 3 month period of public consultation on the principles of the changes. Those proposals received broad support of the funds industry, as indicated by the summary of the responses that were included in a Position Paper published by the Commission in April 2007.
- 2.6 That Position Paper also presented drafts of all of the legislation. The substantial package of primary and secondary legislation included a draft Order that would prescribe all fees payable under the amended CIF Law, both in relation to permits that would still be issued in respect of recognized funds, and in relation to the certificates that were being introduced. In the case of certificates, both the fees payable on application and those due subsequently by holders of certificates, were the same as were in force at that time in respect of permits.
- 2.7 At the time that the package of amendments was lodged for debate by the States (in September 2007), the law amending the 1998 Law had already been adopted but had not yet received the sanction of Privy Council. Accordingly, the amendments to the CIF Law could only provide that the fees relating to certificates were to be prescribed by Order.
- 2.8 The amendments to the 1998 Law came fully into force in January 2008, making redundant the draft Order (included with the Position Paper). From that date, fees applicable to permits in respect of recognized funds were as published by the Commission in accordance with the amended 1998 Law.

- 2.9 When the amendment to the CIF Law came into force 4 months later, fees in respect of certificates were, and have continued to be, charged by the Commission and paid by industry along the lines set out in the Position Paper and agreed by industry (on the basis of no dissenting comment).
- 2.10 The Collective Investment Funds (Certified Funds – Fees) (Jersey) Order 2012 (the “**2012 Order**”), which came into force on 18th February 2012, formally prescribed the fees applicable to the application for certificates and those payable subsequently by certificate holders. The 2012 Order will remain in effect until the Draft Law comes into force.

### **3 THE DRAFT LAW**

#### **Amending Provisions**

- 3.1 Article 1 of the Draft Law defines the necessary terms.
- 3.2 Article 2 amends the references in the CIF Law which refer to fees that are prescribed, so that they provide instead for the fees to be as published by the Commission in accordance with Article 15 of the 1998 Law. This will bring those provisions into line with the provisions dealing with fees in all other laws administered by the Commission.
- 3.3 The Articles affected in the CIF Law are –
  - 3.3.1 Article 8A(2)(e), which provides for a fee payable with an application for a certificate;
  - 3.3.2 Article 8B(10), which allows the Commission to cancel a certificate for any of a number of reasons, one of which is the failure to pay a fee that is required by Article 8B(13). The change to be made to the provision is a direct consequence of changing Article 8B(13) so that the fees referred to therein are to be as published, instead of as prescribed;
  - 3.3.3 Article 8B(13), which provides for fees to be paid by the holder of a certificate at intervals or on the occurrence of certain events. At present, such fees are due when a certificate is granted, if certain changes are made to the certificate and annually on the 1st July in any year.
- 3.4 Article 2 of the Draft Law makes one further minor amendment in relation to Article 7(7) which was omitted from the list of consequential amendments flowing from the amendment to the 1998 Law when that came into effect in January 2008. Although the provisions for the payment of fees were amended, Article 7(7) which allows the Commission to cancel a permit for the non-payment of a fee was not. As a result it has continued to allow for cancellation only upon non-payment of a prescribed fee, where that fee was required elsewhere (namely, in Article 7(12)) to be a published fee.
- 3.5 When all of these changes have been made, the provisions in the CIF Law regarding fees in respect of certificates will be materially the same as those for fees in respect of permits. Furthermore, the arrangements for determining those fees will be in line with those for all other fees and charges payable under all laws to the Commission.

### **Transfer from present to new arrangements**

- 3.6 The combination of measures contained in Article 3 of the Draft Law, together with the delay in Article 2 coming into effect (see Article 5), are intended to ensure a seamless transfer from fees that have been prescribed to fees that will be published under Article 15(5) of the 1998 Law. These measures require that the fees to apply after the changes take effect are to be published in advance as if Article 2 were already in force.
- 3.7 However, it is also required that the ‘new’ fees to be published should be the same as those that have been prescribed and which are in force under an Order at the time. This basis effectively dispenses with the requirement for the period of consultation that would be required in all other circumstances. The arrangements are substantially the same as those adopted when the amendment to the 1998 Law came into force.

### **Validating provisions**

- 3.8 Article 4 of the Draft Law validates, for the avoidance of any doubt, fees charged and collected by the Commission during the ‘relevant period’. The ‘relevant period’ for these purposes is the period running from 4th April 2008, being the date upon which the amendment to the CIF Law came into force, up to and including 17th February 2012, being the day immediately before the 2012 Order came into force.
- 3.9 The fees applicable during the relevant period are confirmed to be those prescribed by the 2012 Order as made by the Minister on 17th February 2012. If, for whatever reason, a certificate holder or an applicant for a certificate paid during the relevant period a lesser fee than the fee prescribed by the 2012 Order, then they are taken to have paid the full fee.
- 3.10 Additionally, provision is made to ensure that, although the 2012 Order is taken to have been in force throughout the relevant period, a person from whom a fee was due during that period but who has not paid the fee is not guilty of the offence of contravening any provision of an Order (under Article 16(6) of the 1988 Law).

### **Citation**

- 3.11 The final part of the Draft Law (Article 5) deals with citation and the dates when the individual provisions will come into force.

### **Financial and manpower implications**

There are no financial or manpower implications for the States, the Commission or for the financial services industry in Jersey arising from the adoption of this Draft Law.

### **European Convention on Human Rights**

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). On 17th April 2012 the Minister for Economic Development made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Minister for Economic Development the provisions of the Draft Collective Investment Funds (Amendment and Validation) (Jersey) Law 201- are compatible with the Convention Rights.



## Explanatory Note

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*Article 1* defines terms used throughout this Law.

*Article 2* amends certain provisions of the Collective Investment Funds (Jersey) Law 1988 (the “1988 Law”) to enable the publication of fees by the Jersey Financial Services Commission (the “Commission”) in accordance with the Financial Services Commission (Jersey) Law 1998.

*Article 3* makes transitional provisions regarding the publication of fees by the Commission in the period before the amendments made to the 1988 Law come into force.

*Article 4* provides that the Collective Investment Funds (Certified Funds – Fees) (Jersey) Order 2012 (the “2012 Order”) is taken to have been in force throughout the period of 4th April 2008 to 17th February 2012 inclusive. Accordingly, fees published by and paid to the Commission in respect of certificates relating to unclassified funds in that period are taken to have been paid in accordance with the 2012 Order. This Article also ensures that, although the 2012 Order is taken to have been in force throughout that period, a person from whom a fee was due during that period but who has not paid the fee is not guilty of the offence of contravening a provision of the Order.

*Article 5* provides for the citation of this Law and for its coming into force.





Jersey

**DRAFT COLLECTIVE INVESTMENT FUNDS  
(AMENDMENT AND VALIDATION) (JERSEY)  
LAW 201-**

**Arrangement**

**Article**

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Jersey

**DRAFT COLLECTIVE INVESTMENT FUNDS  
(AMENDMENT AND VALIDATION) (JERSEY)  
LAW 201-**

**A LAW** to amend the Collective Investment Funds (Jersey) Law 1988 with regard to the publication of fees and to validate fees paid between the period beginning with 4th April 2008 and ending with and including 17th February 2012.

*Adopted by the States* [date to be inserted]

*Sanctioned by Order of Her Majesty in Council* [date to be inserted]

*Registered by the Royal Court* [date to be inserted]

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

**1 Interpretation**

In this Law –

“1988 Law” means the Collective Investment Funds (Jersey) Law 1988<sup>1</sup>;

“1998 Law” means the Financial Services Commission (Jersey) Law 1998<sup>2</sup>;

“certificate”, “certificate holder” and “prescribed” shall be construed in accordance with Article 1 of the 1988 Law;

“Commission” means the Jersey Financial Services Commission established by the 1998 Law; and

“relevant period” means the period beginning with 4th April 2008 and ending with and including 17th February 2012.

**2 The Collective Investment Funds (Jersey) Law 1988 amended**

(1) The 1988 Law is amended in accordance with paragraphs (2) to (4).

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- (2) In Article 7(7)(h), for the words “any fee prescribed under paragraph (12)” there are substituted the words “any fee published in accordance with paragraph (12)”.
  - (3) In Article 8A(2), for sub-paragraph (e) there is substituted the following sub-paragraph –
    - “(e) be accompanied by such fee as may be published by the Commission in accordance with Article 15 of the Financial Services Commission (Jersey) Law 1998<sup>3</sup>”.
  - (4) In Article 8B –
    - (a) in paragraph (10), for sub-paragraph (f) there is substituted the following sub-paragraph –
      - “(f) if the certificate holder fails to pay any fee published in accordance with paragraph (13).”; and
    - (b) for paragraph (13) there is substituted the following paragraph –

“(13) The Commission may, in accordance with Article 15 of the Financial Services Commission (Jersey) Law 1998<sup>4</sup>, publish fees that shall be payable by the holders of certificates at such intervals and upon the occurrence of such events as the Commission may determine.”.

### 3 Initial publication of fees

- (1) The Commission must publish fees for the purposes of Article 8A(2)(e) and 8B(13) of the 1988 Law before the commencement of Article 2 as if that Article had come into force.
- (2) The fees so published –
  - (a) shall be the same as those prescribed in the Fees Order; and
  - (b) shall have effect when Article 2 comes into force.
- (3) On the coming into force of Article 2 the fees published under this Article shall be taken to have been published in accordance with Article 15 of the 1998 Law (notwithstanding that the requirements of that Article have not been met).
- (4) In this Article –

“published” in respect of fees published under this Article, means published in a manner likely to bring them to the attention of those affected by the fees; and

“Fees Order” is a reference to an Order made under Article 8A(2)(e), 8B(13) and 20 of the 1988 Law, which is in force on the date that this Article comes into force.

### 4 Validation

- (1) The Fees Order shall be taken to have been in force throughout the relevant period.
- (2) Subject to paragraph (3), where during the relevant period –

- (a) an applicant for a certificate; or
- (b) a certificate holder,

has paid a fee in accordance with a scale of fees published by the Commission, but which was not prescribed in accordance with Article 8A(2)(e) or 8B(13) of the 1988 Law, those fees shall be taken to have been paid in accordance with the Fees Order.

- (3) If, during the relevant period, an applicant for a certificate or a certificate holder paid a fee that is less than would be required under the Fees Order, the applicant or certificate holder shall be taken to have paid the full amount required by the Fees Order.
- (4) Notwithstanding paragraph (1), a person shall not be guilty of an offence against Article 16(6) of the 1988 Law by reason of having failed to pay a fee prescribed in the Fees Order and due from the person during the relevant period.
- (5) In this Article “Fees Order” means the Collective Investment Funds (Certified Funds – Fees) (Jersey) Order 2012<sup>5</sup> as it was made by the Minister for Economic Development on 17th February 2012.
- (6) Nothing in this Article shall be taken to derogate from the power to prescribe a fee under Article 8A(2)(e) or 8B(13) of the 1988 Law after 17th February 2012 and before Article 2 of this Law comes into force.

## **5 Citation**

- (1) This Law may be cited as the Collective Investment Funds (Amendment and Validation) (Jersey) Law 201-.
- (2) Articles 1, 3, 4 and this Article shall come into force on the day after the date of registration of this Law.
- (3) Article 2 shall come into force 28 days following the date of registration of this Law.

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- <sup>1</sup> *chapter 13.100*
  - <sup>2</sup> *chapter 13.250*
  - <sup>3</sup> *chapter 13.250*
  - <sup>4</sup> *chapter 13.250*
  - <sup>5</sup> *R&O.23/2012*