

STATES OF JERSEY



DRAFT COLLECTIVE INVESTMENT FUNDS (RECOGNIZED FUNDS) (ACTIONS FOR DAMAGES) (JERSEY) REGULATIONS 200

**Lodged au Greffe on 8th October 2008
by the Minister for Economic Development**

STATES GREFFE



Jersey

DRAFT COLLECTIVE INVESTMENT FUNDS (RECOGNIZED FUNDS) (ACTIONS FOR DAMAGES) (JERSEY) REGULATIONS 200

REPORT

PROPOSALS TO REPLACE AND UPDATE THE REGULATIONS MADE BY THE STATES IN 1988 UNDER ARTICLE 35 OF THE COLLECTIVE INVESTMENT FUNDS (JERSEY) LAW 1988

Article 35 of the Collective Investment Funds (Jersey) Law 1988 (the “**Law**”), provides that, to the extent specified by the States in Regulations, a failure to comply with any statutory requirement under that Law shall be actionable at the suit of a person who suffers loss as a result of that failure, subject to the defences and other incidents applying to actions for breach of statutory duty.

To date, the only Regulations made by the States under that Article have been the Collective Investment Funds (Recognized Funds) (Actions for Damages) (Jersey) Regulations 1988. Those Regulations (the “**original Regulations**”), had the effect of making the Article applicable to any failure by certain operators of funds of the Recognized Funds class to comply with the Law or either of 2 Orders made under it that related to funds of that class.

Recently, one of the 2 Orders was superseded by a new Order. It is therefore necessary to update the Regulations to ensure that the applicability of Article 35 continues to be relevant to the same extent as the original Regulations were before the new Order came into force. Because there are some differences between the terminology employed in the new Order and that of the original Order, it has been simpler to re-draft the Regulations in their entirety, than to amend them.

The Regulations form part of a suite of legislation made under the Law that together defines the Recognized Funds class of collective investment funds and sets the regulatory requirements applicable to funds of that class. One of the objectives of the legislation is to ensure that the investor protection arrangements are equivalent to those available to participants in authorised collective investment funds in the UK. On the basis of such equivalence having been demonstrated, the Secretary of State for the Treasury made an Order designating Jersey for the purposes of Section 270 of the Financial Services and Markets Act 2000. As a result of this Designated Territory status, Recognized Funds in Jersey are permitted to market directly to members of the public in the UK.

It is important to ensure that Article 35 of the Law continues to be applicable to Recognized Funds to ensure the continuance of the Designated Territory status.

As at 30th June 2008, there were 9 Recognized Funds in Jersey that were permitted to market directly into the UK. They had an aggregate sterling equivalent value of approximately £2.5 billion.

Financial and manpower implications

The Draft Regulations have no implications for the financial or manpower resources of the States.

Explanatory Note

Article 35 of the Collective Investment Funds (Jersey) Law 1988 enables the States, by Regulations, to specify provisions of that Law, or subordinate legislation made under it. The effect of specifying a provision is that non-compliance with it gives rise to a civil right of action where a person suffers loss as a result of the non-compliance.

Regulations were first made under Article 35 in 1988. These Regulations replace and update the original Regulations. They create a right of action where a manager, trustee, custodian or depositary (being a functionary in relation to a collective investment fund for which there is a recognized fund certificate under the 1988 Law) does not comply with any provision of the 1988 Law, or of 2 Orders made under it, which applies to such managers, trustees, custodians or depositaries.



Jersey

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Made

[date to be inserted]

Coming into force

[date to be inserted]

THE STATES, in pursuance of Articles 20(4) and 35 of the Collective Investment Funds (Jersey) Law 1988^[1], have made the following Regulations –

1 Provisions specified for the purposes of Article 35 of the Law

The provisions specified for the purposes of Article 35 of the Collective Investment Funds (Jersey) Law 1988^[2] are such provisions of –

- (a) that Law;
- (b) the Collective Investment Funds (Recognized Funds) (Permit Conditions for Functionaries) (Jersey) Order 1988^[3], and
- (c) the Collective Investment Funds (Recognized Funds) (Rules) (Jersey) Order 2003^[4],
as apply to a functionary who is a manager, trustee, custodian or depositary in relation to a recognized fund, but only to the extent that they apply to such a functionary.

2 Revocation

The Collective Investment Funds (Recognized Funds) (Actions for Damages) (Jersey) Regulations 1988^[5] are revoked.

3 Citation and commencement

These Regulations may be cited as the Collective Investment Funds (Recognized Funds) (Actions for Damages) (Jersey) Regulations 200- and shall come into force 7 days after they are made.

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- [1] *chapter 13.100*
- [2] *chapter 13.100*
- [3] *chapter 13.100.70*
- [4] *chapter 13.100.75*
- [5] *R&O.7820 (chapter 13.100.40)*