

STATES OF JERSEY



DRAFT BANKING BUSINESS (AMENDMENT OF LAW) (JERSEY) REGULATIONS 201-

**Lodged au Greffe on 26th March 2019
by the Minister for External Relations**

STATES GREFFE



Jersey

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REPORT

The [Banking Business \(Jersey\) Law 1991](#) (“BBJL”) contains information-sharing gateways which allow the Jersey Financial Services Commission (“JFSC”) to provide confidential information to supervisory agencies in different jurisdictions. These gateways are essential to allow the JFSC to assist its colleagues overseas, and help the JFSC to receive information from other agencies.

It has been identified that certain gateways in the BBJL could allow the JFSC to share information that it has received from participants in supervisory colleges, which are groups of regulators in different jurisdictions who have common supervisory oversight of a financial services group. This may not always be appropriate without the written consent of the participant in the supervisory college.

For example, a participant in a supervisory college may provide financial information regarding a member of a financial services group solely for the purpose of enabling the supervisory college to assess the viability of the whole group. This proposition ensures that the information could not be shared onwards by the JFSC without express written permission in line with the provisions in Directive 2013/36/EU, known as the Capital Requirements Directive IV (CRD IV). Not making the amendments within the proposition could prevent EU regulators from sharing information with the JFSC.

It should be noted that any information the JFSC discloses with a view to the investigation of a suspected offence or the institution of, or otherwise for the purposes of, any criminal proceedings, will not be impacted by the amendments within the proposition.

Accordingly, these Regulations bring the BBJL information-sharing gateways in line with CRD IV. If passed, the legislation will be presented to the European Banking Authority Board of Supervisors (the European Banking Authority is the EU Supervisory Agency with oversight of banking policy), with a view to them granting an equivalence determination in respect of the JFSC. This will allow the JFSC to continue to receive information from, and thus fully participate in, supervisory colleges with its counterparties in different jurisdictions.

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of these draft Regulations.

Explanatory Note

These Regulations amend the Banking Business (Jersey) Law 1991 (the “Law” as defined in *Regulation 1*) to make provision for limited disclosure of information held by the Jersey Financial Services Commission (the “Commission”) that originated from a participant in a college of supervisors established under Article 116 of Directive 2013/36/EU.

Regulation 2 amends Article 1 of the Law to define the terms “Directive 2013/36/EU” and “EU competent authority”.

Regulations 3, 4 and 5 amend Articles 43, 44 and 45 of the Law respectively to provide that disclosure of information held by the Commission that originated from a participant in a college of supervisors established under Article 116 of Directive 2013/36/EU is not permitted under those Articles unless the participant in the college of supervisors consents, in writing, to the disclosure; and if such consent is for a specific purpose, the disclosure must only be made for that purpose.

The exception is that disclosure of such information is permitted with a view to investigation of a suspected offence or the institution of, or otherwise for the purpose of, any criminal proceedings.

Regulation 5 provides for the citation of the Regulations and provides for them to come into force 7 days after they are made.



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Arrangement

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Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES, in pursuance of Article 45A and 51 of the Banking Business (Jersey) Law 1991¹, have made the following Regulations –

1 Interpretation

In these Regulations “Law” means the Banking Business (Jersey) Law 1991².

2 Article 1 (interpretation) amended

In Article 1 of the Law after the definition “deposit-taking business” there is inserted –

““Directive 2013/36/EU” means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC;”.

3 Article 43 (disclosure for facilitating discharge of functions of Commission and specified persons) amended

In Article 43 of the Law –

- (a) in paragraph (1), before the words “Article 42” there is inserted “Subject to paragraph (1AA),”;
- (b) after paragraph (1) there is inserted –

“(1AA) Paragraph (1) shall not apply in respect of information held by the Commission that originated from a participant in a college of supervisors established under Article 116 of Directive 2013/36/EU, unless the participant in the college of supervisors consents, in writing, to the disclosure, and if such consent is for a specific purpose, the disclosure must only be made for that specific purpose.”.

4 Article 44 (disclosure for facilitating discharge of functions by other supervisory authorities) amended

In Article 44 of the Law –

(a) in paragraph (1)(c) and (d), before the words “any person for the purpose” where they appear in those sub-paragraphs there is inserted “subject to paragraph (1B),”;

(b) after paragraph (1A) there is inserted –

“(1B)-Paragraph (1)(c) and (d) shall not apply in respect of information held by the Commission that originated from a participant in a college of supervisors established under Article 116 of Directive 2013/36/EU unless the participant in the college of supervisors consents, in writing, to the disclosure, and if such consent is for a specific purpose, the disclosure must only be made for that specific purpose.”.

5 Article 45 (other permitted disclosures) amended

In Article 45 of the Law, after paragraph (6) there is inserted –

“(8) Paragraphs (1)(c) and (e), (2), (3), (4), (5), (6) and (7) shall not apply in respect of information held by the Commission that originated from a participant in a college of supervisors established under Article 116 of Directive 2013/36/EU unless the participant in the college of supervisors consents, in writing, to the disclosure, and if such consent is for a specific purpose, the disclosure must only be made for that specific purpose.”.

6 Citation and commencement

These Regulations may be cited as the Banking Business (Amendment of Law) (Jersey) Regulations 201- and come into force 7 days after they are made.

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- ¹ *chapter 13.075*
² *chapter 13.075*