



Jersey

**COLLECTIVE INVESTMENT FUNDS
(RECOGNIZED FUNDS) (COMPENSATION
FOR INVESTORS) (JERSEY)
REGULATIONS 1988**

Official Consolidated Version

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COLLECTIVE INVESTMENT FUNDS (RECOGNIZED FUNDS) (COMPENSATION FOR INVESTORS) (JERSEY) REGULATIONS 1988

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THE STATES, in pursuance of Article 12 of the [Collective Investment Funds \(Jersey\) Law 1988](#), have made the following Regulations –

Commencement [[see endnotes](#)]

PART 1

INTRODUCTORY

1 Interpretation

In these Regulations, unless the context otherwise requires–

“compensation costs” has the meaning given in Regulation 13;

“compensation levy” has the meaning given in Regulation 12;

“compensation sum” has the meaning given in Regulation 8;

“compensator” has the meaning given in Regulation 12;

“custodian”, “manager” and “trustee” have the same meanings as in the Recognized Funds Order;

“default” shall be construed in accordance with Regulation 2;

“eligible liability” has the meaning given in Regulation 3;

“functionary” means a person who is, or has been, any of the following –

- (a) in the case of a unit trust, the trustee or the manager; and
- (b) in the case of an open-ended investment company, the custodian or the manager;

“holding company” and “subsidiary” have the meanings given in Article 2 of the Recognized Funds Order;

“investor”, in relation to a fund which takes the form of an open-ended investment company, does not include the company itself;

“professional investor” in relation to any services provided by a functionary, means a person who carries on investment business and for whom these services are provided in the course of the person’s carrying on that investment business;

“recognized fund” has the same meaning as in the Recognized Funds Order.

“Recognized Funds Order” means the Collective Investment Funds (Recognized Funds) (General Provisions) (Jersey) Order 1988.

2 Meaning of “default”

For the purposes of these Regulations, a functionary is to be regarded as being in default if the Viscount determines that it should be so regarded on the basis that –

- (a) it has become bankrupt; and
- (b) it is unable, or is likely to be unable, to satisfy claims in respect of any description of civil liability incurred in connection with a recognized fund.

3 Meaning of “eligible liability”

- (1) An “eligible liability” is a civil liability owed by a functionary in its capacity as a functionary of a recognized fund to an investor at the date of the functionary’s default which was incurred by the functionary in connection with its business as such a functionary done with the investor or as agent on the investor’s behalf and, for this purpose, any liability of the manager or trustee or custodian of a recognized fund to holders of units in that fund is to be taken to have been incurred by the manager or trustee or custodian in connection with business done with the unit holder or as agent on the unit holder’s behalf.
- (2) A liability incurred by a functionary in its capacity and in connection with its business as a functionary of a recognized fund, being a liability to account for property of any description, is to be taken as having been incurred in connection with its business as such a functionary if, at the date of the default, the functionary held the property in connection with its business as such a functionary.

4 Supplementary provisions relating to eligible liabilities¹

- (1) Where a liability is owed to a person in different capacities, these Regulations apply as if the liabilities in each different capacity were owed to different persons, but subject to paragraph (2), the compensation sum payable to a person, regardless of the number of liabilities owed to the person is limited to the amount specified in Regulation 10(1)(a), (b) or (c).
- (2) Notwithstanding paragraph (1), the compensation sum payable to a person in respect of 2 or more liabilities owed to the person where one or more of those liabilities is a liability owed to a person in the person’s capacity as personal representative of an investor is –
 - (a) in respect of each liability owed to the person as a personal representative, limited to the amount specified in Regulation 10(1)(a), (b) or (c); and

- (b) in respect of all other liabilities owed to that person, limited to an amount which does not exceed in total the amount specified in Regulation 10(1)(a), (b) or (c).
- (3) Where a liability is owed to 2 or more persons jointly, then, if they are carrying on business together in partnership, the liability is treated as a liability to the partnership, and otherwise each of those persons is taken to be owed a liability for the person's share, and, in the absence of satisfactory evidence as to their respective shares, is taken to be entitled to an equal share.
- (4) Where an agent is owed a liability for one or more principals, the principal or principals are to be treated as being owed the liability to the exclusion of the agent.
- (5) Where any group of persons is owed a liability as trustees, they are to be treated as a single and continuing person distinct from the persons who may from time to time be the trustees, and where the same person is owed a liability as trustee for different trusts, these Regulations apply as if the liabilities owed to each of the trusts were liabilities owed to different persons.
- (6) Where a trustee is owed a liability for one or more other persons, then, where the trustee is a bare trustee, the beneficiaries are taken to be owed the liability, to the exclusion of the trustee, and otherwise the trustee is taken to be owed the liability to the exclusion of the beneficiaries.

PART 2

CLAIMS FOR COMPENSATION

5 Presentation of claims

Where a functionary of a recognized fund is in default, the Viscount shall, as soon as is reasonably practicable, cause to be published in the Jersey Gazette, the London Gazette and in a national daily newspaper circulating in the United Kingdom a notice requiring every investor who has a claim against the functionary arising out of its business as a functionary of a recognized fund to submit a statement of the claim in such form and within such period (not being less than 3 months after the date of publication of the notice) as may be specified in the notice.

6 Determination and payment of claims

- (1) On the expiration of the time fixed for the submission of claims, the Viscount shall examine the claims and, if satisfied that the functionary –
 - (a) has an eligible liability to the investor; and
 - (b) is unable, or likely to be unable to meet that liability, in whole or in part,the Viscount shall, subject to paragraph (3) and the following Regulations, determine to pay to the investor a compensation sum in respect of that liability.
- (2) Subject to paragraph (3), when the Viscount has determined the compensation sum payable to an investor the Viscount shall make payment thereof within such time as may seem to the Viscount to be fair and reasonable, and interest shall be payable thereon in accordance with Regulation 9.

- (3) The Viscount shall not be required to pay a compensation sum to an investor, nor the amount of any interest accruing thereon, until the Viscount has received the amount of the compensation levy, or any interim compensation levy, in accordance with Regulation 12.

7 Refusal of claims

The Viscount shall refuse to admit an investor's claim for compensation if it appears to the Viscount that –

- (a) it is submitted after the expiry of the period specified in the notice referred to in Regulation 5, unless the Viscount determines that, by reason of exceptional circumstances, it ought to be allowed;
- (b) if it was made in respect of a default occurring before the date of the coming into force of these Regulations;
- (c) if the application is made by an investor who has any responsibility for, or has directly or indirectly profited from, the circumstances giving rise to the functionary's financial difficulties; or
- (d) it is made by a professional investor, so far as the liabilities of the functionary were for the investor's own account.

8 Assessment of compensation

- (1) Subject to these Regulations, the amount of the sum (referred to in these Regulations as the "compensation sum") payable to an investor in respect of an eligible liability shall be such amount (not exceeding the amount of the liability which the Viscount is satisfied that the functionary is unable or likely to be unable to meet) as is determined by the Viscount to be appropriate having regard to –
 - (a) the investor's rights in respect of the liability;
 - (b) any compromise of the liability;
 - (c) any security or right of set-off available to the investor in respect of the liability;
 - (d) the investor's ability, if any, to recover in respect of the liability from any third party also liable in respect of it; and
 - (e) any other means whereby the investor has, or has had, or might have, an opportunity of recovering in respect of the liability, including any means of so recovering from the functionary.
- (2) The Viscount may reduce the amount of the compensation sum to the extent that payment of the full amount would provide benefits to the investor which are disproportionate to the benefits which might reasonably have been payable.
- (3) Notwithstanding Regulation 6, the Viscount may, where the Viscount is satisfied as there mentioned, but considers that immediate payment in full would not be prudent, determine to make to the investor a payment on account of the compensation sum there mentioned, which shall, for the purposes of these Regulations, be treated in all respects as the payment of a compensation sum, but without prejudice to the Viscount's powers to make a determination in respect of the balance of the investor's claim.

9 Interest

- (1) The rate of interest on a compensation sum shall be 2% below the London Inter Bank Offered Rate (LIBOR).
- (2) Subject to paragraph (4), interest shall be payable for a period beginning on such date as may seem to the Viscount to be fair and reasonable (not being earlier than 3 months from the expiry of the period specified in the notice published in accordance with Regulation 5) and ending on the date when the compensation sum is remitted to the investor.
- (3) In any case where the Viscount makes an interim payment or interim payments to the investor on account of the compensation sum, interest shall cease to be payable on the amount of such payment or payments to the investor on the dates on which they are so paid.
- (4) Interest payable under this Regulation shall not be taken into account for the purposes of the limits prescribed in Regulation 10(1).

10 Limits of compensation

- (1) The compensation sum payable to an investor under these Regulations is limited as follows –
 - (a) if the total amount of the functionary's liability to the investor does not exceed £30,000, no limit applies;
 - (b) if the total amount of the functionary's liability to the investor exceeds £30,000 but does not exceed £50,000, the maximum payable is £30,000 plus 90% of so much of that amount as exceeds £30,000;
 - (c) if the total amount of the functionary's liability to the investor exceeds £50,000 the maximum payable is £48,000,but so that the maximum overall amount which the Viscount may determine to pay by way of compensation costs in respect of defaults occurring in any calendar year shall be £5,000,000.²
- (2) If it appears to the Viscount that the total amount of compensation costs is otherwise likely to exceed £5,000,000 in respect of defaults occurring in any calendar year, the Viscount shall not pay the full amount in respect of any claim but shall ensure, as far as the Viscount reasonably can, that all payments the Viscount then determines to make, taking into consideration any payment on account, are abated rateably one with another.³

PART 3

SUBROGATION

11 Subrogation

- (1) Where a functionary of a recognized fund is in default, this Regulation has effect for the subrogation of the Viscount to the rights of investors who submit claims for compensation under these Regulations.

- (2) Notwithstanding any other provision of these Regulations, the Viscount shall not pay or determine to pay a compensation sum in respect of a liability unless the investor has agreed that –
- (a) the investor's existing rights in respect of that liability, or in respect of any part of that liability required by the Viscount, shall vest in the Viscount;
 - (b) the investor will execute any document (including any declaration of trust), do any act or provide any assistance to the Viscount to enable the Viscount to exercise those rights;
 - (c) the investor will pay to the Viscount any amount which the investor receives in respect of those rights, after deduction of any amount which, under paragraph (3), the Viscount would have been required to pay to the investor; and
 - (d) where relevant, any prospect of the investor's recovering in excess of the compensation sum payable under these Regulations (and interest on it) will be in the hands of the Viscount who may compromise the claim.
- (3) Any amount recovered by the Viscount from the functionary by virtue of this Regulation, shall be retained by the Viscount up to the amount of the compensation sum paid to the investor, interest on it at 2% below LIBOR, and the costs of recovery; and any balance shall be paid to the investor.

PART 4

CONTRIBUTIONS

12 Levy of contributions

- (1) If the Viscount has determined that a functionary is in default, the Viscount shall be entitled to levy on any person (other than the functionary which is in default) who was a functionary of a recognized fund at the time when the default occurred (each such person being referred to in these Regulations as "a compensator") contributions (the aggregate of which is referred to in these Regulations as the "compensation levy") of such amount as appears to the Viscount to be necessary to pay the compensation costs arising out of the default.
- (2) The amount of the contribution payable by each compensator shall be in accordance with the following formula –

$$CLC = \frac{CC \times IC}{AIC}$$

where –

CLC is the contribution to be levied on the compensator;

CC are the compensation costs;

IC is the declared income of the compensator; and

AIC is the aggregate of the declared incomes of all compensators.

- (3) For the purpose of paragraph (2) a compensator's declared income shall in the case of –

- (a) a manager be its adjusted annual management fees;
 - (b) a custodian or trustee be its adjusted annual custodian or trustee fees,
- for recognized funds for the 365 days immediately preceding the day on which the default was determined.
- (4) Following the determination of a default, the Viscount may by notice require each compensator to furnish to the Viscount, in respect of each recognized fund of which it is a functionary, a statement in writing of its annual management, custodian or trustee fee income for the 365 days immediately preceding the day on which the default occurred and, if such fee income has been payable for less than that period, the period for which such income was payable.
 - (5) The statement shall be accompanied by a report by the functionary's auditors as to whether in their opinion the figures given in the statement are accurately and fairly presented.
 - (6) A compensator's declared income for the purposes of paragraph (3) is the amount derived from annual management, custodian or trustee fees, as the case may be, in respect of recognized funds during the 365 day period there stated adjusted so that, if the proportion of that period for which fee income has been payable to the compensator in respect of any recognized fund is less than 365 days, that amount is the amount of those fees for the period during which such fee income has been payable divided by the number of days in the latter period and multiplied by 365.
 - (7) A functionary shall keep such accounting records as are necessary to enable it to demonstrate its ability to comply with this Regulation.
 - (8) Where a compensator fails to make a statement as required by this Regulation, or the Viscount believes that the statement of income is inaccurate, the Viscount may, taking into account any information available as to the compensator's income in that or any other 365 day period, make an estimate of the amount which is to be regarded as the functionary's fee income for the relevant 365 day period, which amount shall have effect as the amount of the compensator's declared income.
 - (9) The Viscount may make interim compensation levies at any time including prior to incurring compensation costs, which may be based on estimates of such costs.
 - (10) When the Viscount proposes to make a compensation levy or an interim compensation levy the Viscount shall do so by notice in writing given to each compensator stating the amount of the compensator's contribution and the date or dates (not being earlier than 4 weeks from the date of the notice) on which payment of the contribution is to be made; and the compensator shall pay the contribution to the Viscount as required by the notice.
 - (11) If any contribution levied under this Regulation remains unpaid after the date by which it should have been paid, the compensator shall be liable to pay interest on the amount at 2% above LIBOR in respect of the period between that date and the date on which it was paid.
 - (12) Contributions levied under this Regulation and any interest payable under paragraph (11) shall be recoverable by the Viscount from the compensator as a civil debt.
 - (13) In the event of a failure by a compensator to pay any contribution due under these Regulations, the Viscount may levy a further contribution from the remaining compensators in proportion to their original contributions; and each of those

compensators shall be entitled to recover from the compensator who failed to pay the contribution the amount of the further contribution.

- (14) A contribution paid by a compensator to the Viscount, which is not immediately applied by the Viscount to the payment of compensation costs, shall be invested by the Viscount in such manner as the Viscount thinks fit until such time as it is required for the payment of those costs.
- (15) Any balance of the compensation levy which may remain after the compensation costs have been paid in full, together with any interest which may have accrued by virtue of paragraph (11) or (14) shall be paid by the Viscount to the compensators in proportion to their contributions.

13 Compensation costs

- (1) Subject to paragraph (2) of this Regulation, compensation costs are –
 - (a) compensation sums payable by the Viscount to investors in accordance with these Regulations;
 - (b) interest on compensation sums payable by the Viscount to investors in accordance with these Regulations; and
 - (c) costs incurred by the Viscount in establishing the amounts referred to in subparagraphs (a) and (b), including the cost of legal and accountancy services, and any similar costs.
- (2) Any amounts retained by the Viscount in accordance with Regulation 11(3) shall be applied in the reduction of compensation costs.

PART 5

GENERAL

14 Co-operation with Viscount

- (1) All functionaries of a recognized fund, and in a case where the fund takes the form of an open-ended investment company, that company shall co-operate with the Viscount, or any person authorized in writing by the Viscount, in making available all information, books and documents, and shall otherwise render all such assistance, as is necessary to assist the Viscount to perform its functions under these Regulations.
- (2) If a functionary of a recognized fund, and in a case where the fund takes the form of an open-ended investment company, that company has been dissolved, the requirement imposed by paragraph (1) applies to the liquidator, and if a functionary or a company, as the case may be, has made any voluntary arrangements with its creditors, it applies also to the supervisor of those arrangements.

15 Citation

These Regulations may be cited as the Collective Investment Funds (Recognized Funds) (Compensation for Investors) (Jersey) Regulations 1988.

ENDNOTES

Table of Legislation History

Legislation	Year and Number	Commencement
Collective Investment Funds (Recognized Funds) (Compensation for Investors) (Jersey) Regulations 1988	R&O.7819	2 November 1988
Collective Investment Funds (Recognized Funds) (Compensation for Investors) (Amendment) (Jersey) Regulations 1992	R&O.8384	13 May 1992
Collective Investment Funds (Recognized Funds) (Compensation for Investors) (Amendment No. 2) (Jersey) Regulations 1996	R&O.9017	21 November 1996

Table of Renumbered Provisions

Original	Current
PART I	PART 1
1(1)	1
1(2), (3)	spent, omitted from this revised edition
3(3)	repealed by R&O.9017
(4)	repealed by R&O.9017
3A	4
PART II	PART 2
4	5
5	6
6	7
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PART III	PART 3
10	11
PART IV	PART 4
11(3)(i)	12(3)(a)
(3)(ii)	(3)(b)
12	13
PART V	PART 5
13	14
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Table of Endnote References

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- ¹ Regulation 4 inserted by [R&O.9017](#)
² Regulation 10(1) amended by [R&O.8384](#)
³ Regulation 10(2) amended by [R&O.8384](#)