

# STATES OF JERSEY



## **DRAFT BANKING BUSINESS (DEPOSITORS COMPENSATION) (JERSEY) REGULATIONS 200-**

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**Lodged au Greffe on 2nd June 2009  
by the Minister for Economic Development**

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**STATES GREFFE**





Jersey

## **DRAFT BANKING BUSINESS (DEPOSITORS COMPENSATION) (JERSEY) REGULATIONS 200-**

### **REPORT**

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These Draft Regulations would establish a deposit protection scheme (“DCS”) in Jersey. The aim of the proposed DCS is to provide depositors with compensation quickly in the unlikely event of a bank failure, thus minimising hardship by enabling depositors to carry on with their everyday economic activities.

The proposal is for a permanent, standalone DCS that will be activated in the unlikely event that a Jersey bank failed. The overall liability of the DCS including administration costs will be capped at £100 million over each 5 year period and levies on industry will also be capped with the States making up any shortfall. This shortfall funding may be repaid to the States depending on the rate of recovery in the bank liquidation. It is envisaged that short-term liquidity will be provided by the States through a loan to the DCS.

The DCS would provide full protection for private individuals up to a maximum of £50,000 per person, per Jersey banking group, whether or not the depositor is resident in Jersey. Up to the first £5,000 of a valid claim would be paid within 7 working days, with the balance being paid within 3 months.

In developing this legislation, the Economic Development Department (“EDD”) commissioned expert economic analysis to consider the case for establishing a DCS in Jersey and the options available for designing a DCS tailored to the specific structure of the deposit-taking market in the Island. EDD also consulted Jersey Finance, the Jersey Financial Services Authority, the Jersey Bankers’ Association, the Viscount’s Department, the Office of the Comptroller and Auditor General and the Law Officers’ Department.

Separate legislation and propositions are being brought by the Treasury and Resources Department concerning the funding and tax treatment of the DCS.

#### Regulations:

*Regulation 1* is an interpretation clause that defines certain terms and phrases used in these Regulations.

*Regulation 2* sets out the requirements for an application for compensation to be a ‘valid claim’.

*Regulation 3* sets out that the amount of the eligible deposit is to be calculated at the relevant date, provides for the conversion rate of non-sterling deposits and requires all compensation payments to be in sterling.

*Regulation 4* provides for the treatment of accounts held in more than one name.

*Regulation 5* defines and clarifies the terms ‘eligible deposit’ and ‘eligible depositor’.

*Regulation 6* allows the Minister for Economic Development to group for the purpose of calculating levies and compensation payments.

*Regulation 7* provides for the liability of a bank to pay a levy to arise on the relevant date (i.e. the date that the Board considers the bank became a bank in default).

*Regulation 8* provides for the Jersey Bank Depositors Compensation Board to be established to administer the bank depositors compensation scheme.

*Regulation 9* provides for the independence of the Board.

*Regulation 10* provides for the constitution of the Board and for the minister to carry out the functions of the Board until he determines that the Board should assume its functions.

*Regulation 11* provides for members of the Board to hold the appointment on terms and conditions agreed with the Minister.

*Regulation 12* sets out certain procedures of the Board and places a duty on the Board with regard to administering the scheme.

*Regulation 13* limits the liability of the Board and certain other parties to pay damages except for acts or omission which are done in bad faith or which are unlawful under human rights law.

*Regulation 14* restricts the disclosure of information received under these Regulations except in certain defined circumstances.

*Regulation 15* provides for the Board to be an independently audited States body and requires its audited accounts and a report to be laid before the States. The Comptroller and Auditor General is also given powers to audit the Board’s accounts.

*Regulation 16* sets out the obligation of the Board if a bank becomes bankrupt. The Board will publish a notice of the relevant date on which it considers the bank to have become bankrupt.

*Regulation 17* provides for the Board to establish administrative arrangements following a bank becoming bankrupt. The Board will send notices to the bank in default and to the other banks requiring information to enable the Board to carry out its functions, for example by verifying claims and calculating levies.

*Regulation 18* requires the Board to establish a fund in respect of a bank in default and sets out what must be paid into and what may be paid out of the fund.

*Regulation 19* provides for the Board to make an interim compensation payment of up to £5,000 within 7 working days where requested to do so in a valid application. The amount of compensation may be decreased and the period may be increased in certain circumstances.

*Regulation 20* provides for the Board to pay the balance of compensation for a valid application within 3 months. The amount of compensation may be decreased and the period may be increased in certain circumstances.

*Regulation 21* allows the Board to refuse to pay compensation if an eligible deposit is liable to confiscation.

*Regulation 22* provides that applications for compensation cannot be accepted more than 6 months after the relevant date except in certain circumstances.

*Regulation 23* limits the amount of compensation per depositor per banking group to £50,000.

*Regulation 24* provides for the payment of compensation where the depositor is also entitled to compensation under a scheme in another jurisdiction.

*Regulation 25* allows the Board to reduce the amount of compensation where a depositor has already received a payment in respect of his eligible deposit.

*Regulation 26* provides for the Board to require banks to pay a levy.

*Regulation 27* provides for total amount of levies to be sufficient to raise funds to pay compensation and its administrative costs, subject to caps on the levies and on the total amount of compensation payable.

*Regulation 28* sets out how the levy on each bank is to be calculated. This will be by reference to the amount of eligible deposits the bank held on the relevant date.

*Regulation 29* limits the total amount that the Board may expend on paying compensation and its administrative costs to £100 million during a 5 year period.

*Regulation 30* caps the levy which banks can be required to pay and sets an overall cap based on a proportion of their eligible deposits.

*Regulation 31* provides for any shortfall resulting from the application of the caps on bank levies to be paid by the States.

*Regulation 32* provides that compensation payments will be reduced where, as a result of the limit on the amount of compensation that the Board may pay or due to a shortfall in funding, the Board has insufficient funds to pay the full amount of the compensation and its administrative costs.

*Regulation 33* requires the Board to apply any excess funds to repay the States and then the banks.

*Regulation 34* provides that a compensation payment will not be made until a depositor has subrogated his rights in the bank insolvency to the Board. Recoveries in the insolvency are then paid to the Board, which will retain these up to the amount of compensation paid to the depositor. Any excess recoveries will be paid over to the depositor.

*Regulation 35* provides for the Board to be treated as creditor of the bank.

*Regulation 36* provides for depositors, banks and the Minister for Treasury and Resources to appeal certain decisions of the Board to the Royal Court.

*Regulation 37* is a citation provision.

*Regulation 38* provides for these Regulations to come into force immediately.

## Explanatory Note

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These Regulations establish a bank depositors compensation scheme to ensure that most individuals and charities with money deposited with a bank in Jersey (an eligible deposit) will receive some compensation if the bank becomes bankrupt.

The compensation will be the lesser of an amount equal to the eligible deposit or £50,000.

The Regulations establish a Board to administer the compensation scheme and to pay the compensation.

In most cases the Board will raise all the necessary funds to do so by imposing a levy on the banks in Jersey that held eligible deposits at the time the bank in default became bankrupt.

However, the amount each bank may be required to pay by way of levy in any period of 5 years is limited. So too is the amount of compensation that the Board may be required to pay by way of compensation during the same period.

Where, in the case of the bankruptcy of certain banks, the amount of the levy the other banks would be required to pay would be insufficient to pay compensation, the States are required to pay the shortfall to the Board.







Jersey

## DRAFT BANKING BUSINESS (DEPOSITORS COMPENSATION) (JERSEY) REGULATIONS 200-

### Arrangement

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#### Regulation

<b>PART 1</b>	<b>11</b>	
<hr/>		
INTERPRETATION	11	
1 Interpretation .....	11	
2 “Valid application” defined.....	12	
3 Determination of money standing to the credit of an eligible deposit .....	13	
4 Provisions in respect of joint accounts .....	13	
5 “Eligible depositor” defined and “eligible deposit” clarified.....	13	
6 Banking groups .....	14	
7 Calculation of periods .....	14	
<b>PART 2</b>	<b>15</b>	
<hr/>		
THE JERSEY BANK DEPOSITORS COMPENSATION BOARD	15	
8 Jersey Bank Depositors Compensation Board .....	15	
9 Independence of Board.....	15	
10 Constitution of the Board .....	15	
11 Terms and conditions of appointment of members of the Board .....	16	
12 Procedures of the Board .....	16	
13 Limitation of liability .....	17	
14 Restricted information.....	17	
15 Accounts and report .....	18	
<b>PART 3</b>	<b>19</b>	
<hr/>		
THE BANK DEPOSITORS COMPENSATION SCHEME	19	
	<i>Obligations of the Board</i>	19
16 Board to publish “relevant date” in respect of bank in default.....	19	
17 Board must establish administrative arrangements .....	19	
18 Board must establish a fund .....	20	
19 Board must make interim payment of compensation .....	21	
20 Board must pay compensation .....	21	

Draft Banking Business (Depositors Compensation) (Jersey)  
Regulations 200-

Arrangement

21	Eligible deposit liable to confiscation .....	21
22	Board to comply with time limit on applications for compensation .....	22
	<i>Amount of compensation</i>	22
23	Amount of compensation .....	22
24	Entitlement under another depositors compensation scheme .....	22
25	Reduction in amount of compensation .....	22
	<i>Levy on banks</i>	23
26	Board to require banks to pay a levy .....	23
27	Total amount of levies .....	24
28	Amount of levy to be paid by each bank .....	24
29	Limitation on amount the Board may expend .....	24
30	Limitation on liability of banks to pay levy .....	24
31	Payment of shortfall .....	25
32	Insufficient funds to pay compensation .....	26
33	Repayment of overpaid levy .....	26
	<i>Subrogation</i>	26
34	Subrogation .....	26
35	Board to be treated as creditor .....	27
	<i>Appeals</i>	27
36	Appeals .....	27
<b>PART 4</b>		<b>28</b>
<hr/>		
FINAL PROVISIONS		28
37	Citation .....	28
38	Commencement .....	28



Jersey

## **DRAFT BANKING BUSINESS (DEPOSITORS COMPENSATION) (JERSEY) REGULATIONS 200-**

*Made* [date to be inserted]

*Coming into force* [date to be inserted]

**THE STATES**, in pursuance of Article 37 of the Banking Business (Jersey) Law 1991<sup>1</sup>, have made the following Regulations –

### **PART 1**

#### **INTERPRETATION**

##### **1 Interpretation**

In these Regulations, unless the context otherwise requires –

“administrative costs”, in respect of the Board, means –

- (a) all the costs incurred by the Board in respect of the bank depositors compensation scheme; and
- (b) the remuneration and expenses of the members of the Board;

“administrator”, in respect of a bank in default, means the person for the time being charged with the administration of the bank’s property;

“bank” means a person registered under the Banking Business (Jersey) Law 1991;

“bank depositors compensation scheme” or “scheme” means the scheme established by Part 3;

“bank in default” means a bank that has become bankrupt;

“bank liable to pay a levy”, in respect of a bank in default, means a bank that, on the relevant date in respect of the bank in default, held eligible deposits;

“bankrupt”, in respect of a bank, includes the winding up of an insolvent bank pursuant to Article 155 of the Companies (Jersey) Law 1991<sup>2</sup>;

“become bankrupt”, in respect of a bank, includes becoming bankrupt, or a state equivalent or similar to becoming bankrupt, under the law of a jurisdiction outside Jersey;

“Board” means the Jersey Bank Depositors Compensation Board established by Regulation 8;

“charity” means a corporation, association or trust, the income from the property of which is exempt from income tax by virtue of Article 115(a), (aa) or (ab) of the Income Tax (Jersey) Law 1961<sup>3</sup>;

“child”, in respect of an eligible depositor, means a person who has not attained the age of 18;

“Commission” means the Jersey Financial Services Commission established by the Financial Services Commission (Jersey) Law 1998<sup>4</sup>;

“compensation” means compensation payable under the bank depositors compensation scheme;

“eligible deposit”, in respect of a bank, means a deposit held by the bank in an account in Jersey in respect of an eligible depositor;

“eligible depositor” has the meaning given to that expression by Regulation 5;

“financial year” has the meaning given to that expression by Article 1(1) of the Public Finances (Jersey) Law 2005<sup>5</sup>;

“function” includes a power and a duty;

“levy”, in respect of a bank, means any levy the bank is required to pay under Regulation 26(2)(b) and includes any additional levy the bank is required to pay under Regulation 26(4);

“relevant date”, in respect of a bank in default, means the date specified in a notice published by the Board in respect of the bank under Regulation 16(1) and any reference to a situation as at a relevant date is a reference to the situation at the start of the day that falls on that date;

“valid application” has the meaning given to that expression by Regulation 2;

“working day” means any day other than a Saturday, a Sunday, Christmas Day or Good Friday or a day that is a bank holiday or a public holiday under the Public Holidays and Bank Holidays (Jersey) Law 1951<sup>6</sup>.

## 2 “Valid application” defined

For the purposes of these Regulations, an application for compensation made to the Board is a valid application if it –

- (a) specifies the name and address of the applicant;
- (b) provides sufficient evidence to show that the applicant is an eligible depositor;
- (c) provides sufficient evidence to identify the eligible depositor’s eligible deposit and the amount of that deposit;

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- (d) contains sufficient proof that the applicant has made a claim in respect of the applicant's eligible deposit to the administrator of the bank in default;
  - (e) contains details of any payments mentioned in Regulation 25(1) that the applicant has received;
  - (f) specifies the manner in which any compensation payable by the Board to the applicant is to be paid; and
  - (g) contains or provides any other information or matter necessary to allow the Board to verify the applicant's claim for compensation and to pay the compensation to the applicant.

### **3 Determination of money standing to the credit of an eligible deposit**

- (1) For the purposes of these Regulations, if a bank becomes bankrupt any calculation of the amount of money standing to the credit of an eligible deposit shall be made as at the relevant date in respect of the bank in default.
- (2) Accordingly, any money standing to the credit of an eligible deposit that is not in the currency of Jersey shall be calculated on the basis of the opening middle market exchange rate as determined by the Board on the relevant date in respect of the bank in default.
- (3) Compensation paid by the Board shall be paid in the currency of Jersey.

### **4 Provisions in respect of joint accounts**

- (1) In this Regulation "joint account" means an account –
  - (a) that is in the names of 2 or more persons; or
  - (b) over which 2 or more persons have rights,that may be operated against the signature of one or more of those persons.
- (2) A deposit held in a joint account with a bank is an eligible deposit to the same extent as an eligible depositor has an interest in the account.
- (3) If an eligible deposit is held in a joint account with a bank, the amount in the account is to be divided –
  - (a) according to the holders' shares in the account; but
  - (b) if there is no indication of the share of each holder, equally between them.

### **5 "Eligible depositor" defined and "eligible deposit" clarified**

- (1) For the purposes of these Regulations, a depositor with a deposit in a bank account in Jersey is an "eligible depositor" if the depositor –
  - (a) is a natural person and the deposit is for the person's own benefit other than as a partner in a partnership;

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- (b) is a natural person and the deposit is for the benefit of a child of the person or for the benefit of a child for whom the person has parental responsibility;
  - (c) is the administrator or executor of the estate of a deceased person and the deposit represents the whole or part of the proceeds of the estate of the person; or
  - (d) is a charity.
- (2) If, by virtue of paragraph (1), a person is an eligible depositor in more than one capacity, the depositor shall be taken to be a separate eligible depositor in each such capacity for the purpose of Regulation 23.
  - (3) Accordingly, if a person is an eligible depositor in respect of more than one child or estate, the depositor shall be taken to be a separate eligible depositor in respect of each such child or estate for the purpose of Regulation 23.
  - (4) Despite the date of maturity of a deposit with a bank in default, an eligible deposit with the bank shall not include any interest on the deposit in respect of any period after the relevant date in respect of the bank.
  - (5) In this Regulation “a deposit in a bank account in Jersey” does not include a deposit that is being held by a bank that is registered to carry on banking business in Jersey for business recovery reasons.

## **6 Banking groups**

- (1) The Minister may, for the purpose of calculating the levy and compensation to be paid in respect of associated banks, group banks.
- (2) The Minister may do so by notice published in a manner that, in the opinion of the Minister, is likely to bring the notice to the attention of those affected by it.
- (3) The banks included in each group of banks are to be taken to be one bank for the purposes of calculating the levy and compensation to be paid in respect of those banks under these Regulations.
- (4) However, if a bank in a group becomes bankrupt, the levy shall still be imposed on the group but the eligible deposits of the group shall be calculated without reference to the eligible deposits of the bank in default.

## **7 Calculation of periods**

- (1) A period of 5 years mentioned in these Regulations starts on a relevant date in respect of a bank in default.
- (2) The liability of a bank to pay a levy in respect of a bank in default arises on the relevant date in respect of the bank in default.

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## PART 2

### THE JERSEY BANK DEPOSITORS COMPENSATION BOARD

#### 8 Jersey Bank Depositors Compensation Board

- (1) There is established a Board, called the Jersey Bank Depositors Compensation Board, to administer the bank depositors compensation scheme.
- (2) The Board is an incorporated body that may, in its own name –
  - (a) sue and be sued;
  - (b) enter into contracts; and
  - (c) acquire, hold and dispose of property of any type.
- (3) The Board may, in so far as it is possible for an incorporated body to do so –
  - (a) exercise the rights, powers and privileges; and
  - (b) incur the liabilities and obligations,  
of a natural person of full age and capacity.

#### 9 Independence of Board

- (1) The Board is independent of the Minister and of the States.
- (2) Accordingly, neither a Minister nor the States are liable for –
  - (a) an act or an omission of the Board; or
  - (b) a debt or other obligation of the Board.

#### 10 Constitution of the Board

- (1) The Minister shall appoint the members of the Board.
- (2) The Board must have at least 3 members.
- (3) The Minister may, in appointing a member of the Board, seek nominations from –
  - (a) the Commission; and
  - (b) the Jersey Bankers Association.
- (4) The Minister may not appoint as a member of the Board a person who is –
  - (a) a member of the States;
  - (b) subject to a disqualification order under Article 78 of the Companies (Jersey) Law 1991 or Article 24(7) of the Bankruptcy (Désastre) (Jersey) Law 1990<sup>7</sup>; or
  - (c) bankrupt.

- (5) The appointment of a person as a member of the Board ceases if the person becomes a person who may not be appointed to be a member of the Board.
- (6) The rights and obligations of the Board, and the performance of its functions, shall not be affected by –
  - (a) any vacancy in its membership; or
  - (b) any defect in the appointment of a member.
- (7) Despite paragraphs (1) and (2) the Board shall not assume its functions until such time as the Minister may determine.
- (8) In the meantime the Minister shall carry out the functions of the Board.

## **11 Terms and conditions of appointment of members of the Board**

- (1) A person appointed to be a member of the Board –
  - (a) holds the appointment on terms and conditions agreed between the person and the Minister; and
  - (b) may be reappointed.
- (2) The terms and conditions must include terms and conditions in respect of –
  - (a) the term of the appointment of the member, being a term not exceeding 5 years;
  - (b) the manner in which the member may resign during that term;
  - (c) the grounds upon which the appointment of the member may be terminated during that term;
  - (d) the remuneration (if any) of the member,and may contain such other terms and conditions as the Minister may consider appropriate or necessary.
- (3) The grounds mentioned in paragraph (2)(c) must include –
  - (a) the member being mentally or physically incapable of carrying out his or her functions as a member; and
  - (b) the member being convicted of an offence that carries a penalty of imprisonment for a term of 2 years or longer.

## **12 Procedures of the Board**

- (1) The quorum for a meeting of the Board is half the number of members appointed to be members of the Board at the time of the meeting.
- (2) The Board must keep a record of its decisions.
- (3) The Minister may determine the procedures of the Board.
- (4) Except as otherwise provided by this Regulation or the Minister, the Board may determine its own procedures.
- (5) The Board must ensure –



- (a) that Board and the scheme are administered in a prudent and economical manner; and
- (b) that the resources of the Board are used efficiently and effectively.

### **13 Limitation of liability**

- (1) This Regulation applies to –
  - (a) the States;
  - (b) a Minister;
  - (c) the Board;
  - (d) a member of the Board;
  - (e) a person who is, or is acting as, an officer, servant or agent of the Board; and
  - (f) a person who is carrying out a function of the Board.
- (2) A body or person to whom this Regulation applies shall not be liable in damages for anything done or omitted to be done in the discharge or purported discharge of a function under these Regulations.
- (3) Paragraph (2) does not apply if it is shown that the act or omission was in bad faith.
- (4) Nor does it apply in the case of a body acting as a public authority for the purposes of the Article 7 of the Human Rights (Jersey) Law 2000<sup>8</sup>, so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000.

### **14 Restricted information**

- (1) Except as provided by paragraphs (2) and (3), a person who receives information relating to the business or other affairs of a person –
  - (a) under or for the purposes of these Regulations; or
  - (b) directly or indirectly from a person who has received the information under or for the purposes of these Regulations,is guilty of an offence and is liable to imprisonment for a term of 2 years and a fine if he or she discloses the information without the consent of the person to whom it relates and, if sub-paragraph (b) applies, the person from whom it was received.
- (2) This Regulation does not apply to information –
  - (a) that is already available to the public; or
  - (b) that is a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.
- (3) Despite paragraph (1), the Board or a person who is, or is acting as, an officer, servant or agent of the Board may release information –
  - (a) to the Viscount;

- 
- (b) for the purpose of enabling or assisting the Board or any person acting on its behalf to discharge their functions under these Regulations;
  - (c) to the Commission or to a person acting on its behalf to enable or assist the Commission to discharge a function under an enactment that gives the Commission a supervisory function;
  - (d) with a view to the investigation of a suspected offence or to the institution of, or for the purposes of, criminal proceedings, in each case, whether or not under Banking (Depositors Compensation) (Jersey) Regulations 200-<sup>9</sup> and whether or not in Jersey;
  - (e) in connection with any other proceedings, whether or not in Jersey, arising out of these Regulations;
  - (f) in compliance with a court order;
  - (g) for the purpose of obtaining advice on the performance by the Board of its functions under these Regulations;
  - (h) for the purpose of cooperating with any person or body administering a bank depositors compensation scheme (however called) in another jurisdiction in respect of a bank in default;
  - (i) in respect of a bank in default, to its administrator;
  - (j) to the Comptroller and Auditor General.
- (4) Nothing in this Regulation shall be taken as prohibiting the Board from providing the Minister with information in respect of the administration and operation of the scheme.

## 15 Accounts and report

- (1) This Regulation applies if during a financial year the Board receives, holds or expends money.
- (2) The Board must keep accounts prepared in accordance with generally accepted accounting principles that show a true and fair view –
  - (a) of the profit or loss of the Board for the financial year; and
  - (b) of the state of the Board's affairs at the end of the financial year.
- (3) The Board must, within 3 months after the end of the financial year, have its accounts audited by an auditor qualified for appointment as an auditor of a company by virtue of Article 113 of the Companies (Jersey) Law 1991.
- (4) The Board must, within 3 months after its accounts have been audited, provide the Minister with –
  - (a) its audited accounts; and
  - (b) a report.
- (5) The report must contain –
  - (a) details of the Board's activities during the financial year; and
  - (b) such other information as the Minister may direct the Board to provide.

- (6) The Minister must lay the accounts and report before the States as soon as practicable after receiving them.
- (7) The Board must keep records that permit its financial position to be ascertained with reasonable accuracy at any time.
- (8) The Comptroller and Auditor General may audit the accounts of the Board.
- (9) When requested to do so by the Comptroller and Auditor General the Board must make its records and accounts available to the Comptroller and Auditor General.
- (10) In addition, the Board is an independently audited States body for the purposes of the Public Finances (Jersey) Law 2005.

### **PART 3**

#### **THE BANK DEPOSITORS COMPENSATION SCHEME**

##### *Obligations of the Board*

#### **16 Board to publish “relevant date” in respect of bank in default**

- (1) The Board must, as soon as practicable after a bank becomes bankrupt –
  - (a) publish a notice, in a manner that is likely to bring it to the attention of those affected by it, specifying the date on which, in the Board’s opinion, the bank became a bank in default in Jersey; and
  - (b) inform the Minister of the date specified in the notice and the name of the bank in default.
- (2) The date specified in the notice is the relevant date in respect of the bank in default.
- (3) The Minister must inform the States as soon as practicable of the name of the bank in default and the relevant date in respect of the bank.

#### **17 Board must establish administrative arrangements**

- (1) This Regulation applies when the Board has published a notice under Regulation 16 in respect of a bank in default.
- (2) The Board must, within 15 working days after the publication of the relevant date in respect of the bank in default send to each bank, other than the bank in default, a notice requiring the bank, within 15 working days of the receipt of the notice, to provide to the Board –
  - (a) a statement of the total amount (if any) the bank calculates that it held on the relevant date by way of eligible deposits; and
  - (b) any evidence required by the Board in support of the statement.

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- (3) Within the same time, the Board must send to the administrator of the bank in default a notice requiring the administrator, as soon as practicable but in any event within 15 working days of the receipt of the notice, to provide to the Board sufficient information in respect of the bank in default to enable the Board to calculate the likely levy to be imposed on banks, the information to be provided in such form and verified in such manner as the Board may specify.
  - (4) The Board may at any time send to the administrator of the bank in default further notices requiring the administrator, as soon as practicable but in any event within 15 working days of the receipt of each notice, to provide to the Board such further information or documents in respect of the bank in default as are required by the Board to enable it to carry out its functions under these Regulations, the information to be provided in such form and verified in such manner as the Board may specify.
  - (5) The Board may, on the application of the bank or the administrator to whom it was sent, extend the period specified in a notice sent under this Regulation as the period for compliance with the notice.
  - (6) The Board must, as soon as reasonably possible, also make such other arrangements as are necessary to administer the bank depositors compensation scheme in respect of the bank in default.
  - (7) Those arrangements must, in particular, be designed to ensure –
    - (a) that applications for compensation are submitted to the Board as soon as practicable;
    - (b) that applicants for compensation are given clear instructions on how they may make valid applications for compensation; and
    - (c) that each claim for compensation is properly verified.

#### **18 Board must establish a fund**

- (1) The Board must establish and maintain a fund in respect of a bank in default.
- (2) The Board must pay into the fund money received by the Board in respect of the default.
- (3) The Board may, in accordance with these Regulations, pay out of the fund –
  - (a) compensation payable in respect of the default;
  - (b) its administrative costs; and
  - (c) such other amounts as may be necessary to meet its obligations in respect of the bank in default.
- (4) The Board may –
  - (a) invest money standing to the credit of the fund;
  - (b) borrow money for the purposes of the bank depositors compensation scheme; and
  - (c) insure against its liabilities.

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**19 Board must make interim payment of compensation**

- (1) This Regulation applies where –
  - (a) the Board receives a valid application for compensation; and
  - (b) the application includes a request for an interim payment of compensation.
- (2) The Board must, within 7 working days of receiving the application, pay to the applicant, by way of compensation the lesser of –
  - (a) £5000; or
  - (b) an amount equal to the eligible deposit of the applicant on the relevant date.
- (3) Paragraph (2) is subject to Regulations 21, 32 and 34.

**20 Board must pay compensation**

- (1) This Regulation applies where the Board receives a valid application for compensation.
- (2) The Board must, within 3 months of receiving the application pay to the applicant the compensation due to the applicant under the bank depositors compensation scheme.
- (3) The Minister may –
  - (a) extend the period mentioned in Regulation 19(2) or paragraph (2) of this Regulation; or
  - (b) permit compensation to be paid by instalments over a specified period,if the Minister is satisfied that it is necessary to do so for the better administration of the scheme.
- (4) The Minister may do so by notice published in a manner that, in the opinion of the Minister, is likely to bring the notice to the attention of those affected by it.
- (5) Paragraph (2) is subject to Regulations 21, 32 and 34.

**21 Eligible deposit liable to confiscation**

- (1) The Board may delay payment of compensation under Regulation 19 or 20 in respect of an eligible deposit if it is satisfied that the whole or any part of the deposit is or may become liable to confiscation by virtue of any enactment, whether of Jersey or elsewhere, that relates –
  - (a) to money laundering;
  - (b) to the proceeds of crime; or
  - (c) to terrorism.
- (2) Compensation is not payable in respect of an eligible deposit that is confiscated or that is liable to confiscation by virtue of an enactment mentioned in paragraph (1).

**22 Board to comply with time limit on applications for compensation**

- (1) The Board must not accept an application for compensation in respect of a bank in default unless the application is made during the period of 6 months after the relevant date in respect of the bank in default.
- (2) Despite paragraph (1), the Board may, in a particular case, accept an application made after the end of the period mentioned in paragraph (1) if it is satisfied that the applicant was prevented by events outside the applicant's control from applying during that period.

*Amount of compensation***23 Amount of compensation**

The maximum amount of compensation that the Board may pay to an eligible depositor in respect of a bank in default is the lesser of –

- (a) £50,000; or
- (b) an amount equal to the total amount of all eligible deposits that the eligible depositor had with the bank in default on the relevant date in respect of that bank.

**24 Entitlement under another depositors compensation scheme**

- (1) This Regulation applies if an eligible depositor in respect of a bank in default is entitled to receive compensation under a bank depositors compensation scheme (howsoever called) operating in some other jurisdiction.
- (2) The eligible depositor is not entitled to receive compensation under these Regulations except to any extent that the Board agrees with the person or body administering the bank depositors compensation scheme in the other jurisdiction.
- (3) Despite paragraph (2), in the absence of agreement under that paragraph, the Board may pay compensation to the eligible depositor.
- (4) However –
  - (a) the amount of compensation that the Board may pay under paragraph (3); and
  - (b) any compensation the eligible depositor receives under the bank depositors compensation scheme operating in the other jurisdiction,must not exceed the maximum amount specified in Regulation 23.

**25 Reduction in amount of compensation**

- (1) The maximum amount of compensation that the Board may pay to an eligible depositor in respect of a bank in default is reduced by an amount equal to any payments that the depositor has received in respect of the eligible deposit.

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- (2) Those payments include any amount that the eligible depositor has received –
    - (a) from a bank depositors compensation scheme (howsoever called) operating in some other jurisdiction;
    - (b) from an insurance policy taken out by the depositor or taken out on his or her behalf; or
    - (c) from the administrator of the bank in default.
  - (3) A person –
    - (a) who is paid compensation by the Board; and
    - (b) who subsequently receives a payment mentioned in paragraph (1), must, within 30 working days of receiving the payment, pay to the Board an amount equal to the payment received.

*Levy on banks*

**26 Board to require banks to pay a levy**

- (1) This Regulation applies if –
  - (a) a bank becomes bankrupt and the Board has published under Regulation 16 a notice specifying the relevant date in respect of the bank; and
  - (b) the Board has sent a notice to banks under Regulation 17(2).
- (2) The Board –
  - (a) must calculate the levy to be paid by each bank liable to pay a levy; and
  - (b) must, as soon as practicable but in any event no later than 6 months after the relevant date, send a written notice to each such bank, requiring it to pay the levy.
- (3) The notice must specify –
  - (a) the levy the bank is required to pay;
  - (b) how the levy has been calculated; and
  - (c) the date or dates on which the levy or any instalment of the levy becomes payable.
- (4) If, at any time, the Board is satisfied that it has become necessary to do so, it may, by written notice sent to each bank required to pay the levy, require each such bank to pay an additional levy.
- (5) The notice must specify –
  - (a) the additional levy the bank is required to pay;
  - (b) how the additional levy has been calculated; and
  - (c) the date or dates on which of the additional levy or any instalment of the levy becomes payable.
- (6) A bank to which a notice has been sent under this Regulation must pay the levy or any instalment of the levy within 15 working days of the date

specified in the notice as the date when the amount of the levy or any instalment of the amount becomes payable.

- (7) A levy that has become payable is a debt due to the Board and therefore can be sued for accordingly.

## **27 Total amount of levies**

Subject to the limitations set out in Regulations 29 and 30, the total amount of the levies to be paid by the banks liable to pay a levy in respect of a bank in default must be sufficient to raise such amount as the Board estimates will be necessary to meet –

- (a) the payment by it of compensation in respect of the bank in default; and  
(b) the Board's administrative costs.

## **28 Amount of levy to be paid by each bank**

Subject to the limitations set out in Regulations 29 and 30, the Board must require each bank liable to pay a levy in respect of a bank in default to pay by way of levy  $\frac{A}{B}$  of the amount required for the purposes mentioned in Regulation 27 where –

$A$  = the total amount held by the bank by way of eligible deposits on the relevant date in respect of the bank in default; and

$B$  = the total amount held on that relevant date by way of eligible deposits by all the banks liable to pay a levy.

## **29 Limitation on amount the Board may expend**

- (1) The maximum amount that the Board may expend –  
(a) by way of compensation; and  
(b) to meet its administrative costs,  
in respect of one or more banks in default during a period of 5 years is £100 million.
- (2) The Board may not pay compensation in respect of a bank in default more than 5 years after the relevant date in respect of the bank in default.

## **30 Limitation on liability of banks to pay levy**

- (1) Subject to the limit set out in paragraph (2), the maximum amount the Board may require a bank to pay by way of levy in respect of a bank in default is an amount equal to 0.3% of the eligible deposits held by the bank on the relevant date in respect of the bank in default.
- (2) The maximum amount the Board may require a bank to pay by way of levy in respect of one or more banks in default in respect of a period of 5 years is –



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- (a) if the amount calculated under paragraph (1) is or would exceed £10 million, £10 million; and
  - (b) in any other case, £5 million.
- (3) The Board may not require a bank to pay by way of levy an amount exceeding –
- (a) in the case of a bank to which paragraph (2)(a) applies, £2 million in respect of any period of 12 months; and
  - (b) in any other case, £1 million in respect of any period of 12 months.
- (4) The Board may not require a bank to pay a levy in respect of a bank in default more than 5 years after the relevant date in respect of the bank in default.
- (5) Nothing in paragraph (4) shall be taken as prohibiting the enforcement after the 5 year period of a requirement to pay a levy falling due before the end of that period.

### **31 Payment of shortfall**

- (1) This Regulation applies if, on a relevant date in respect of a bank in default, the total amount that the banks liable to pay a levy are liable to pay by way of levy is less than the maximum amount the Board may expend under Regulation 29 in respect of the bank in default.
- (2) There shall be due to the Board –
  - (a) by way of payment from the consolidated fund; or
  - (b) by way of set off against any loan to the Board by the States, the amount calculated under paragraph (3).
- (3) That amount is the difference between –
  - (a) the total amount the banks liable to pay a levy are liable to pay by way of levy in respect of the bank in default; and
  - (b) the maximum amount of compensation and administrative costs the Board may expend in respect of the bank in default.
- (4) The Board –
  - (a) must, at the same time as it sends to banks notices under Regulation 26(2)(b) in respect of a bank in default, send a notice to the Minister for Treasury and Resources stating how much is due to the Board by way of shortfall under this Regulation as calculated by the Board; and
  - (b) may subsequently send a further notice to the Minister for Treasury and Resources stating further amounts that are due to the Board by way of any such shortfall.
- (5) A notice under paragraph (4) must specify –
  - (a) the amount due; and
  - (b) how the amount has been calculated.

- (6) The amount mentioned in paragraph (2)(a) must be withdrawn from the consolidated fund and paid to the Board within 30 working days of the receipt of the notice by the Minister.

### **32 Insufficient funds to pay compensation**

- (1) This Regulation applies if a bank is in default and –
  - (a) by virtue of Regulation 29, the amount the Board may expend; or
  - (b) by virtue of Regulation 30, the amount available to the Board,in respect of the bank is insufficient to pay the full amount of the compensation payable in respect of the bank in default and the Board's administrative costs.
- (2) The Regulation also applies if any bank liable to pay the levy defaults in the payment of the levy for any reason.
- (3) The amount of compensation to be paid by the Board in respect of each eligible depositor of the bank in default shall be reduced –
  - (a) by a rateable amount; or
  - (b) in such other manner as the Board considers to be equitable in all the circumstances.
- (4) For the purpose of paragraph (3)(a), any deduction under Regulation 25 shall be disregarded when calculating the reduction to be made under that paragraph.

### **33 Repayment of overpaid levy**

- (1) This Regulation applies if, during or after a period of 5 years, the Board has more money than it requires to pay compensation and to meet its administrative costs and other liabilities.
- (2) The Board must, apply the excess firstly to repay any loan made to it, secondly to repay any shortfall paid to the Board by the States under Regulation 31 and finally to pay any remaining amount to the banks that paid a levy to the Board in proportion to the amount of levy paid by each bank.

#### *Subrogation*

### **34 Subrogation.**

- (1) This Regulation applies if the Board is satisfied that a person has made a valid application for compensation.
- (2) Despite Regulations 19 and 20, the Board must not pay the compensation claimed, under either of those Regulations, until the eligible depositor has agreed in writing that –
  - (a) the depositor's rights in respect of the depositor's eligible deposit with the bank in default are vested in the Board;

- (b) the depositor will provide any assistance the Board may require to enable it to exercise those rights; and
  - (c) the depositor will pay to the Board any amount the depositor receives in respect of those rights, after deducting from that amount any amount the Board would have been required to pay to the depositor under paragraph (3).
- (3) The Board must, as soon as practicable, pay to the depositor any amount that the Board receives in respect of the depositor's eligible deposit that exceeds an amount equal to the amount of compensation paid or payable by the Board to the depositor in respect of the depositor's eligible deposit.

### **35 Board to be treated as creditor**

- (1) This Regulation applies if any depositor's rights in respect of a depositor's eligible deposit with a bank in default have been vested in the Board.
- (2) The Board –
- (a) may participate in the nomination of a person to sit upon any creditors' committee or committee of inspection of the bank in default;
  - (b) may require that it be sent any notice addressed to creditors of the bank; and
  - (c) may nominate a person to attend and vote at a creditors' meeting.
- (3) For the purpose of paragraph (2), the Board is to be taken to be a creditor of the bank in default –
- (a) with the priority of a depositor with the bank; and
  - (b) to the total value of any depositors' rights that have been vested in the Board.

### *Appeals*

### **36 Appeals**

- (1) A person who is dissatisfied with a decision of the Board –
- (a) that the person is not entitled to compensation;
  - (b) in respect of the amount of the compensation to which the person is entitled; or
  - (c) not to extend, under Regulation 22(2), the period during which the person may make an application for compensation,
- may appeal to the Royal Court against the decision on the ground that, on the facts available to the Board, its decision was unreasonable.
- (2) A bank that is dissatisfied by a decision of the Board requiring the bank to pay a levy may appeal to the Royal Court against the decision on the grounds that –
- (a) the bank is not liable to pay a levy;

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- (b) the Board has miscalculated the amount of the levy or any instalment of the levy that the bank is required to pay; or
  - (c) the Board has miscalculated the date on which the levy or any instalment of the levy becomes payable.
- (3) Unless the Royal Court otherwise directs, an appeal by a bank under paragraph (2) does not suspend the operation of a notice sent to the bank under Regulation 26.
  - (4) The Minister for Treasury and Resources may appeal to the Royal Court against a decision of the Board requiring the payment of a shortfall under Regulation 31 on the grounds that –
    - (a) the shortfall is not payable;
    - (b) the Board has miscalculated the amount of the shortfall; or
    - (c) the Board has miscalculated the date on which the shortfall is payable.
  - (5) Unless the Royal Court otherwise directs, an appeal by the Minister for Treasury and Resources under paragraph (4) does not suspend the operation of a notice sent to the Minister under Regulation 31(4).
  - (6) On an appeal under this Article, the Royal Court may make any order it considers appropriate.

## **PART 4**

### **FINAL PROVISIONS**

#### **37 Citation**

These Regulations may be cited as the Banking Business (Depositors Compensation) (Jersey) Regulations 200-.

#### **38 Commencement**

These Regulations shall come into force upon being made.

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- <sup>1</sup> *chapter 13.075*
  - <sup>2</sup> *chapter 13.125*
  - <sup>3</sup> *chapter 24.750*
  - <sup>4</sup> *chapter 13.250*
  - <sup>5</sup> *chapter 24.900*
  - <sup>6</sup> *chapter 15.560*
  - <sup>7</sup> *chapter 04.160*
  - <sup>8</sup> *chapter 15.350*
  - <sup>9</sup> *P.87/2009*