

STATES OF JERSEY



DRAFT BANKING (DEPOSITORS COMPENSATION) (AMENDMENT) (JERSEY) REGULATIONS 200-

**Lodged au Greffe on 8th December 2009
by the Minister for Economic Development**

STATES GREFFE



Jersey

DRAFT BANKING (DEPOSITORS COMPENSATION) (AMENDMENT) (JERSEY) REGULATIONS 200-

REPORT

The Banking Business (Depositors Compensation) (Jersey) Regulations 2009 (“**the DCS Regulations**”) were approved by the States on 6th November 2009 and immediately introduced a Depositors Compensation Scheme (“**DCS**”) to Jersey.

Depositors Compensation Scheme

The DCS came into force immediately on 6th November 2009, providing individual depositors with protection of up to £50,000 in the unlikely event that a Jersey licensed bank should fail. The key features of the DCS are that –

- It provides protection of up to £50,000 per person, per Jersey banking group, for local and international depositors in line with international standards.
- An interim payment of up to £5,000 will be made within 7 working days and the balance of compensation within 3 months.
- The £50,000 limit will apply per person, so a £100,000 deposit held in a joint account by 2 people would be completely covered.
- The DCS will be operated by a independent Board that will appointed by the States as soon as possible.
- The maximum liability of the DCS will be capped at £100 million in any 5 year period, in line with the Guernsey scheme.
- The majority of the cost of the compensation will be borne by the banking industry, with the States making up any shortfall. In most cases, the DCS would be funded solely by levies on the banking industry with any States contribution being fully repaid from the liquidation proceeds.

The Triennial Regulations

Offences cannot be created directly under the DCS Regulations and are therefore prescribed separately in the Banking (Depositors Compensation) (Jersey) Regulations 2009 (“**the Triennial Regulations**”).

Regulation 3 sets out the offences and provides for penalties. It is currently an offence for depositors –

- (i) to provide false or misleading information when applying for compensation; or
- (ii) to fail to inform the DCS of circumstances when they receive less compensation; or
- (iii) To fail without reasonable cause to reimburse compensation if they receive payments in respect of the same deposit from another source.

It is currently an offence for banks –

- (i) to fail without reasonable cause to comply with a notice to provide the Board with a statement of the total amount of eligible deposits held; or
- (ii) to provide false or misleading information in response to such a notice.

It is currently an offence for administrators of failed banks –

- (i) to fail to comply with a notice to provide the Board with information it requires to carry out its functions under these Regulations; or
- (ii) to provide false or misleading information in response to such a notice.

New offence regarding restricted information

The draft Amendment will amend the Triennial Regulations so as to make it an offence for any person to disclose information received under the DCS Regulations without the consent of the person from whom the information was received.

The penalty for the offence would be imprisonment for up to 2 years and/or an unlimited fine. The Law Officers' Department has considered the new offence and has confirmed that it is Human Rights compliant and that the prescribed penalty is consistent with that for similar existing offences.

It is clearly desirable that the Board administering the DCS should be able to share information freely with other safety-net participants. As an exception to the general restriction on disclosing information, the Board will be able lawfully to pass relevant information to certain specified persons, namely –

- (i) the Viscount;
- (ii) the Comptroller and Auditor General;
- (iii) the administrator of the failed bank;
- (iv) the Minister for Economic Development;
- (v) the Jersey Financial Services Commission; and
- (vi) to any person where the purpose of the disclosure is –
 - (a) to assist the DCS Board to discharge its functions;
 - (b) to investigate a suspected offence or for the purposes of criminal proceedings;
 - (c) to assist with any other DCS legal proceedings;
 - (d) to comply with a court order;
 - (e) to obtain advice on the performance of the Board; and

- (f) to co-operate with other DCS schemes in foreign jurisdictions.

There are further exceptions to the general restriction where the information being disclosed is already in the public domain or is in an anonymised or summary form from which no information specific to particular individuals could be ascertained.

The offence regarding restricted information was originally intended to be created under Regulation 14 of the DCS Regulations. Because the DCS Regulations cannot create offences, during the course of the debate on 6th November 2009, the Minister undertook to bring this draft Amendment to insert the new offence into the Triennial Regulations.

Financial and manpower implications

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

Explanatory Note

The Banking (Depositors Compensation) (Jersey) Regulations 2009 (the “principal Regulations”) create offences in respect of acts and omissions under the Banking Business (Depositors Compensation) (Jersey) Regulations 2009 (the “Compensation Regulations”).

These Regulations would amend the principal Regulations so as to make it an offence to disclose information received under the Compensation Regulations, whether received directly or from an intermediary, without the consent of the person from whom the information was received and, if the information was received from an intermediary, the consent of that person. The penalty for the offence would be imprisonment for up to 2 years and/or an unlimited fine.

There are certain exceptions. No offence is committed if the information is already in the public domain or is a summary from which no information about particular persons can be ascertained. In addition, the Jersey Bank Depositors Compensation Board, which would be established in the event of the bankruptcy of a bank in Jersey, could lawfully pass information to the persons, or for the purposes, specified in paragraph (10) as inserted in Regulation 3 of the principal Regulations by these Regulations.

The Regulations would come into force 7 days after they are made.



Jersey

DRAFT BANKING (DEPOSITORS COMPENSATION) (AMENDMENT) (JERSEY) REGULATIONS 200-

Made [date to be inserted]

Coming into force [date to be inserted]

THE STATES, in pursuance of the Order in Council dated 28th March 1771¹,
have made the following Regulations –

1 Regulation 3 of the Banking (Depositors Compensation) (Jersey) Regulations 2009 amended

At the end of Regulation 3 of the Banking (Depositors Compensation) (Jersey)
Regulations 2009² there shall be added the following paragraphs –

“(8) Except as provided by paragraphs (9) and (10), a person who
receives information relating to the business or other affairs of a
person –

- (a) under or for the purposes of the Compensation Regulations;
or
- (b) directly or indirectly from a person who has received the
information under or for the purposes of the Compensation
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, of the person from whom it was received.

(9) Paragraph (8) 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.

(10) Despite paragraph (8), 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 following persons –

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- (i) the Viscount,
 - (ii) the Comptroller and Auditor General,
 - (iii) the administrator of a bank in default, if the information concerns the bank;
- (b) to the Minister, if the information concerns the administration and operation of the scheme;
 - (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; or
 - (d) to any person –
 - (i) for the purpose of enabling or assisting the Board, or a person acting on its behalf, to discharge the Board's functions under the Compensation Regulations,
 - (ii) 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 these Regulations and whether or not in Jersey,
 - (iii) in connection with any other proceedings, whether or not in Jersey, arising out of the Compensation Regulations,
 - (iv) in compliance with a court order,
 - (v) for the purpose of obtaining advice on the performance by the Board of its functions under the Compensation Regulations, or
 - (vi) 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.”.

2 Citation and commencement

These Regulations may be cited as the Banking (Depositors Compensation) (Amendment) (Jersey) Regulations 200- and shall come into force 7 days after they are made.

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- ¹ *chapter 15.120*
² *R&O.111/2009*