STATES OF JERSEY

DRAFT BANK (RECOVERY AND RESOLUTION) (JERSEY) LAW 201-: CONSULTATION PAPER

Presented to the States on 22nd March 2016
by the Chief Minister

STATES GREFFE

Chief Minister's Department

Consultation Paper

Draft Bank (Recovery and Resolution) (Jersey) Law 201-

17th March 2016

SUMMARY

Jersey is developing a new bank resolution regime (**Jersey Resolution Regime**) in line with developments internationally. The aims are to ensure the continuity of critical banking functions, to avoid adverse effects on financial stability, to protect public funds by minimising reliance on extraordinary public financial support to failing banks, and to protect covered depositors' and clients' assets.

The international standards state that in order to avoid moral hazard, any failing bank should be able to exit the market, irrespective of its size and interconnectedness, without causing systemic disruption. A failing bank could in principle be liquidated under normal insolvency proceedings in Jersey. However, liquidation under normal insolvency proceedings may jeopardise financial stability, interrupt the provision of critical functions, and affect the protection of depositors. In such a case, it is likely that there would be a public interest in stabilising the bank rather than resorting to normal insolvency proceedings.

The Draft Bank (Recovery and Resolution) (Jersey) Law 201- (**Draft Law**) closely follows the European Union's Bank Recovery and Resolution Directive 2014/59/EU (**BRRD**) and the transposition in the Banking Act 2009 into the law of England and Wales (**Banking Act**) for the sake of consistency and to adhere to international standards.

The aim of this consultation is to invite comments on the proposed Draft Law before it is submitted to the States of Jersey for debate.

Supporting document attached:

Draft Bank (Recovery and Resolution) (Jersey) Law 201-

How we will use your information

The information you provide will be processed for the purpose of consultation. The Department of the Chief Minister will use your information in accordance with the Data Protection (Jersey) Law 2005 and the Freedom of Information (Jersey) Law 2011. Please note that we may quote or publish responses to this consultation, but we will not publish the names and addresses of individuals. If you do not want any of your response to be published, you should clearly mark it as confidential. Confidential responses will be included in any summary of statistical information received and views expressed.

Outline of consultation

During the height of the financial crisis of 2008–2009, a number of credit institutions and investment firms in difficulty were either saved by sovereign governments, or entered bankruptcy causing or contributing to widespread financial contagion. A number of aspects of the responses of public authorities were considered unsatisfactory, for example –

(a) There was no clear paradigm within which governments or public authorities decided whether to bail out a bank or whether to allow it to fail.

(b) The short-term cost to the public purse has been high.

(c) The rescue of a failed bank on the basis that it is "too big to fail" creates moral hazard; market participants should not be incentivised to take untenable risks with the knowledge that the price of failure will be government bail-out.

(d) The financial crisis demonstrated that inadequacies in general corporate insolvency procedures which are not bespoke to bank insolvency are magnified by the differences between the approaches taken in different jurisdictions.

It therefore became apparent to policy-makers that there was a lack of adequate tools available to deal effectively with failed or failing banks. It was concluded that powers were needed, in particular, to prevent insolvency or, when insolvency occurs, to minimise negative repercussions by preserving the critical economic and systemically important functions of the bank concerned. Such tools would also need to ensure that shareholders bear losses first, and that creditors bear losses after shareholders, provided that there are safeguards in place which normally protect creditors with compensation payable where they endure greater losses that would have incurred under normal insolvency proceedings, as set out below.

Consequently, the G20 formed the Financial Stability Board which went on to formulate and publish its Key Attributes for Effective Resolution Regimes for Financial Institutions **(Key Attributes)**. Within this framework, many jurisdictions have implemented resolution regimes which provide tools for addressing banks in financial difficulty within the jurisdiction. Of particular note to Jersey is the BRRD, and the implementation of the UK's Special Resolution Regime primarily through the bringing into force of the Banking Act, as subsequently amended under the law of England and Wales, and as supplemented by various policy statements and codes of practice.

The implementation of the Key Attributes will be assessed in due course as part of any Financial Stability assessment carried out by the International Monetary Fund into financial stability.

Jersey, as well as the other Crown Dependencies (Guernsey and Isle of Man) (together referred to as the **CDs**) will need to demonstrate their adequacy as leading international offshore banking centres by aligning their bank resolution framework with international development, while tailoring such to the requirements of the market in Jersey. As the banks that may need resolving are mainly UK or European banks, the focus has been to give a particular emphasis on the EU provisions set out in BRRD, and participating in the international harmonisation of approaches to dealing with failing banks.

The Draft Law has been drafted with the aim of ensuring that Jersey is sufficiently well-equipped to be able to –

(a) assist a foreign jurisdiction in respect of a resolution action being taken on a bank conducting business in Jersey through a branch or subsidiary; and

(b) deal with a scenario in which a bank in Jersey were to fail, and standalone powers were needed to resolve the local business (either as a result of the home jurisdiction taking action which does not satisfactorily deal with the local business, or because Jersey is the home jurisdiction of the bank in difficulty).

In practical terms, the aim of the Jersey Resolution Regime is to be fit to enable the recognition of actions taken by overseas resolution authorities in respect of branches in Jersey, or Jersey's Resolution Authority taking action concurrently with overseas resolution authorities to assist a group resolution in respect of a subsidiary incorporated in Jersey. There may also be cross-border issues in respect of the UK and/or other CDs where there is a bank incorporated in one island with branches in the other islands.

As part of the research and drafting process of the Draft Law, it has been concluded that current Jersey insolvency law is limited in the manner in which it provides for the recovery or resolution of insolvent banks, particularly where such banks involve a global or group nexus and the extent to which it maps out a modern mechanism for winding-up a Jersey bank. Therefore, a bespoke bank winding-up procedure (the **Bank Winding-up Procedure**) has also been drafted as part of the Jersey Resolution Regime and is incorporated within the Draft Law.

The aim of this Draft Law is to provide a new set of tools and powers relevant to particular circumstances. There is no current equivalent law in Jersey or in the other CDs. Therefore, the new Jersey Resolution Regime will not affect existing law and practice; instead it is intended to add clarity to what would happen were a bank to fail or be likely to fail in the jurisdiction.

Respondents are invited to comment generally on the Draft Law as well as answer specific questions that are raised.

Ways to respond to this Consultation Paper:

Write to:	James Mews Director, Finance Industry Development, Financial Services Unit Chief Minister's Department 7th Floor, Cyril Le Marquand House The Parade St. Helier Jersey JE4 8UL
Telephone:	+44 (0) 1534 440413
E-mail	j.mews@gov.je

Responses from the finance industry may be sent to Jersey Finance at the address below:

Write to:	William Byrne Head of Technical, Jersey Finance Limited 4th Floor, Sir Walter Raleigh House 48–50 Esplanade St. Helier Jersey JE2 3QB
Telephone:	+44 (0) 1534 836021
E-mail	William.byrne@jerseyfinance.je

Responses sent to Jersey Finance will be shared with Government unless the respondent indicates that they wish to remain anonymous. Please indicate clearly on your response if this is the case.

This Consultation Paper has been sent to the Public Consultation Register.

Feedback on this consultation

We value your feedback on how well we consult or seek evidence. If you have any comments on the process of this consultation (as opposed to the issues raised), please contact Communications.Unit@gov.je.

Consultation on the Draft Law

Introduction

1. The Assistant Chief Minister invites responses on the text of the Draft Law concerning creating a resolution regime. The provisions commented on in this paper are those which it is considered may be of particular note or of concern to the finance industry in Jersey, or where the approach taken by Jersey significantly differs from that taken under BRRD or the Banking Act.

Article 3 – Application

2. This Article has been drafted widely in order that the Draft Law applies to a person who is registered to carry out deposit-taking business in or from within Jersey under the Banking Business (Jersey) Law 1991 (**Banking Law**), which includes subsidiaries and branches of banks, registered to carry out deposit-taking business in Jersey. Article 3(1)(b) extends the scope to a holding company or a subsidiary of a bank that is registered to carry out deposit-taking business in or from within Jersey. Article 3(1)(c) extends the scope to a branch or subsidiary of a foreign bank where the foreign bank carries out deposit-taking business in or from within Jersey. This means that the Jersey Resolution Authority could, in theory, seek to resolve a branch or subsidiary of a foreign bank outside of Jersey (albeit the jurisdiction in which that branch or subsidiary of the foreign bank was located would need to recognise the action taken by the Jersey Resolution Authority).

3. It was considered preferable to include broad provisions to cover the event that the jurisdiction in which such an entity was located did not have a resolution regime, and that jurisdiction would recognise a resolution action taken under the Jersey Resolution Regime in order to achieve the orderly resolution of entities in its jurisdiction. For example, a resolution action involving entities located in the other CDs might benefit from the Jersey Resolution Authority having the capability under Jersey law to extend its actions to those entities, if the recognition of such actions can be achieved in those other CDs, prior to the other CDs bringing in a resolution law.

4. Further, whilst it is considered unlikely that the Jersey Resolution Authority would ever seek to resolve a branch or subsidiary of a foreign bank itself, it was considered important to ensure that Jersey retained its independence from the home jurisdiction of a bank. For example, where a bank was incorporated in the UK and had a branch in Jersey, the most likely approach to be taken would be for Jersey to support and recognise the resolution action taken by the UK. However, if it was considered that by doing so it would have an adverse effect on the financial stability of Jersey, the Jersey Resolution Authority could, in theory, seek to resolve the branch itself.

5. It was also considered important that the Jersey Resolution Authority had a broad range of powers available in order that it could take actions to assist a foreign resolution action as deemed necessary (for example, by transferring assets located in Jersey to the foreign equivalent of a bridge bank or ensuring that liabilities governed by Jersey law can be written down in a bail-in).

6. Article 96 of the BRRD requires that where an EEA resolution authority has refused to recognise third country resolution proceedings or where the third country resolution authority has not commenced resolution proceedings which affect the branch, and action is in the public interest, the EEA resolution authority has the powers necessary to act in relation to the branch, independently of the third country resolution authority. Therefore, Jersey has taken the same approach as that set out in the BRRD.

7. The view of the Government is that cases where independent action is needed will be highly exceptional. We understand from the Bank of England that there is significant work underway at an international level, to ensure that resolution authorities co-operate in the case of cross-border banks. This includes drawing up and agreeing *ex ante* resolution plans which set out the roles and responsibilities of each resolution authority.

8. Powers to act independently in relation to the Jersey branch of a foreign bank would therefore be used in such exceptional circumstances as 'back-stop' powers to be used in the event that co-operation proved ineffective, and where action was required to protect the public interest of Jersey.

9. This is consistent with the Key Attributes, which recognise the need for resolution authorities to have, as a fall-back option, the ability to take independent action with respect to local operations of foreign banks in certain circumstances.

10. However, it has been suggested by a member of the steering group that a simpler solution would be for the powers of the Jersey Resolution Authority to resolve a Jersey branch of a foreign bank to be 'switched off' in contrast to the position taken overseas. This would mean that the Jersey Resolution Authority would always have to seek to recognise a foreign resolution action. The rationale for such an approach is that it is highly unlikely that Jersey would seek to take resolution action on its own in respect of a branch of a foreign bank.

11. Alternatively, if it is considered that the Jersey Resolution Authority should retain broader powers and have the ability to resolve a Jersey branch of a foreign bank, there are a number of practical implications of resolving a branch of a foreign branch which would need to be considered at greater length.

12. The UK is currently in consultation to include powers to resolve a branch. It is likely that Jersey would seek to mirror the UK's approach as far as possible. The details of the proposals being consulted upon in the UK are set out below for information purposes, and to demonstrate the approach that it is currently envisaged that Jersey would most likely seek to follow.

13. The UK Government is proposing to make the following stabilisation powers available to the Bank of England, when acting independently to resolve a UK branch of a third country institution –

    (a) powers to transfer some or all of the assets, rights and liabilities (**the business of the branch**) to a private sector purchaser, to a bridge bank or to an asset management vehicle; and

(b) the power to bail-in liabilities in connection with the transfer to the private-sector purchaser, the bridge bank, or the asset management vehicle.

14. It is considered that transferring the business of the branch could be achieved without the support of the third country authority. Following the transfer to a private sector purchaser, a bridge bank or an asset management vehicle, bail-in could be used to recapitalise that entity as necessary.

15. The UK Government would not be proposing to introduce standalone bail-in powers. Bailing in the liabilities of the branch itself would unlikely be an effective stabilisation tool, given that the branch would have no legal identity of its own. On that basis, the relevant provisions of the Banking Act would be disapplied where the Bank of England was acting independently to resolve a third country branch.

16. Similarly, the UK government would not be proposing to introduce powers to put branches into temporary public ownership. Temporary public ownership is a resolution tool intended as a 'last resort' stabilisation option for use only where there is serious risk to the financial stability of the UK (as is the case for Jersey in respect of the temporary public ownership stabilisation tool). It can only be applied to banks and holding companies, not to other banking group companies. As such, it would not be appropriate to use temporary public ownership powers for the independent resolution of a branch, which has no legal identity of its own. On that basis, the relevant provisions of the Banking Act would also be disapplied in this regard where the Bank of England is acting independently to resolve a third country branch.

17. The UK Government is not intending to extend share transfer powers to independent resolutions of UK branches, as the branch itself is not a separate legal entity.

18. For the Bank of England to have property transfer powers over the business of the branch, it would need to be specified which assets, rights and liabilities fall within such a definition. The UK Government would propose to define the 'UK branch' as 'a branch situated in the United Kingdom of a third country institution authorised for the purpose of the Financial Services and Markets Act 2000 by the PRA or FCA.' It would then look to define the 'business of a UK branch' as 'any property in the United Kingdom of the relevant third country institution, and any rights and liabilities of the relevant third country institution arising as a result of the operations of a UK branch.

19. The proposed amendments to the Banking Act would provide that the Bank of England may only exercise transfer and bail-in powers over the business of a UK branch where it is necessary to do so having regard to the public interest in advancing the special resolution objectives. This condition would have the practical effect of limiting the scope of the Bank of England's powers to what is proportionate in order to safeguard the UK public interest. As detailed above this approach could be mirrored, either as a matter of practice in the policy development side of implementing a regime, or by amending the Draft Law as far as possible for use in Jersey depending on the views received as a result of this consultation.

20. However, generally speaking, the policy intent is to grant as wide powers as may be necessary for a resolution authority so that the scope of a Draft Law does not need to be changed in the future.

Question 1:

Do you agree with the scope of the Draft Law in respect of resolution under Article 3(1) of the Draft Law? If not, then please state why and what you would prefer?

21. Article 3(2) provides for the scope of the Draft Law in respect of the Bank Winding-up Procedure which is more limited compared to Article 3(1), which applies to recovery and resolution generally. Article 3(2) applies to persons registered to carry out deposit-taking business in or from within Jersey under the Banking Law which includes subsidiaries and branches of foreign banks.

22. The Bank Winding-up Procedure also extends to a company incorporated in Jersey that is a holding company or subsidiary of a person registered to carry out deposit-taking business in or within Jersey under the Banking Law.

Question 2:

Do you agree with the scope of the Draft Law in respect of the Bank Winding-up Procedure under Article 3(2) of the Draft Law?

Part 2 – Jersey Resolution Authority

23. It is a general principle of the Key Attributes, and of BRRD, that in order to ensure the required speed of action, to guarantee independence from economic factors and to avoid conflicts of interest, a public administrative authority should be entrusted with the necessary public administrative powers to perform various functions and tasks under each resolution regime. The Key Attributes state that to act as a resolution authority, the authority must be operationally independent in this role.

24. However, operationally independent does not mean that other members of the financial safety net should not sit on the Board. For example, the IADI Core Principles for Deposit Insurance Systems also adopted by the Financial Stability Board, clearly sets out in Principle 3 that other members of the financial safety net are able to sit on the Board with the board remaining operationally independent, provided that such members do not act as chair or constitute a majority.

25. Article 5(1) of the Draft Law provides for the States to appoint members of the Jersey Resolution Authority from various bodies (including the Chief Minister's Department and the Jersey Financial Services Commission) in order to ensure that different views from sectors of Jersey's financial industry can be heard and taken into consideration as part of the resolution process and eventual decision-making in respect of a bank resolution.

26. In the event that the Minister is unable to/does not make an appointment under Article 5(1) of the Draft Law, Article 5(4) allows the Minister to appoint a public officer, public authority or other person to discharge the functions of the Jersey Resolution. For example, the Jersey Financial Services Commission or the Deposit Compensation Scheme Board could be appointed as the Jersey Resolution Authority if necessary.

27. Also, this provision could be used for a pan-national body such as a CD resolution authority to be appointed. While there are many obstacles to creating a body that would govern resolution actions in more than one CD, there would appear to be possibilities for cost savings and also the alignment of a common interest in working with an overseas resolution authority to resolve a globally systemically important institution.

Question 3:

Do you agree with the approach being taken in respect of appointments to a Jersey Resolution Authority?

Question 4:

Do you consider that there should be a representative of any other body/group/authority represented on the Jersey Resolution Authority?

Question 5:

Do you think that there should be best endeavours taken to create a Resolution Authority spanning more than one of the CDs?

<u>Funding Resolution – General Approach</u>

28. There are likely to be circumstances in which the effectiveness of the resolution tools would depend on the availability of short-term funding for a bank or bridge bank, the provision of guarantees to potential purchasers, or the provision of capital to a bridge bank. For this reason, the Key Attributes and BRRD state that financing arrangements should be set up to ensure that funds are available for such purposes without the need for recourse to public funds. As a matter of general principle, the Key Attributes are clear that the finance industry as a whole must, ultimately, finance the stabilisation of the financial system.

29. The Key Attributes stipulate in general terms that jurisdictions should have in place privately-funded deposit insurance or resolution funds, or a funding mechanism with ex-post recovery from the finance industry of the costs of providing temporary financing to facilitate the resolution of a bank. BRRD is more specific, setting out requirements for each European Member State to establish an ex-ante funded resolution fund. BRRD stipulates that resolution funds should have available funds of at least 1% of the amount of covered deposits of all the banks authorised in the jurisdiction.

30. It is also a general principle under the Key Attributes that where temporary funding from a resolution fund is used to accomplish the stabilisation of a bank, such funds should be recovered: (i) from shareholders and unsecured creditors, subject to the principle that no creditor should be worse off in stabilisation than in winding-up; or (ii) if necessary, by way of contributions from the financial system more widely.

31. In preparing the Draft Law, the Government has been cognisant of the need to balance the implementation of a Jersey Resolution Regime which is credible and in line with international standards on the one hand, with minimising the cost of the implementation of such a regime to Jersey's banking industry on the other hand. The general approach taken in respect of the funding of resolution has therefore sought to strike a balance between these considerations.

Article 16 – Annual Administration Levy

32. The approach taken in respect of the Annual Administration Levy payable under the Draft Law is similar to the approach taken in respect of the Jersey Bank Depositor Compensation Scheme (**JDCS**).

33. Banks in Jersey may be required to pay an Annual Administration Levy, which would be split as necessary in order to fund the Jersey Resolution Authority's expected recurring administrative costs. Whether there is a need for an Annual Administration Levy will be the subject of further consultation in due course.

34. The Jersey Resolution Authority will also have the ability to use the Jersey Bank Resolution Fund to provide or maintain a reserve. This would provide a buffer against initial costs that might be payable in the future as a result of resolution action being taken in respect of a bank in that or any subsequent year, without having to wait for receipt of other funding.

35. The Annual Administration Levy would be used to pay for costs incurred by the Jersey Resolution Authority in respect of preparing for resolution and the standing costs of a Jersey Resolution Authority (for example, the salary of an employee of the Jersey Resolution Authority).

Article 22 – Establishment of Jersey Bank Resolution Fund

36. As detailed above, the Jersey Bank Resolution Fund mirrors the structure of the JDCS and broadly consists of the following elements –

    (a) the amount that can be paid out from the Jersey Bank Resolution Fund for the costs of resolution has not been capped but is limited to the funds available;

    (b) the Jersey Bank Resolution Fund has the capacity to borrow from any source, including the Strategic Reserve Fund (as defined in the Public Finances (Jersey) Law 2005) and private sector sources in order to access funds;

    (c) the Jersey Bank Resolution Fund is able to seek to recover any funds paid out from the bank in resolution;

(d) if there is any negative balance left to the Jersey Bank Resolution Fund following recovery of as much as possible from the bank in resolution, the Jersey Bank Resolution Fund is able to recover such balance from other banks, ex-post, on terms which reflect the JDCS.

37. It was considered that the preferable approach for Jersey's banking industry would be for the Jersey Bank Resolution Fund to have access to immediate liquidity funding, by way of a loan from the Government which could later be recouped from the bank in resolution. Whilst there is the possibility for any costs that cannot be recouped from the bank in resolution to be recouped from other banks in the Island, it is unlikely that this would ever be the case when the amounts required for resolution action is compared to the balance sheets of the banks that are subject to resolution.

38. It was not considered appropriate to create a pre-funded Fund as envisaged in BRRD, as this would require the Island's banks to pay a higher levy than they would be required to pay under the Annual Administration Levy alone. In taking this approach, the financial resources in Jersey were considered, as well as the need to keep the cost of implementing the Jersey Resolution Regime proportional and cost-effective. It is considered that the key backstop for the Jersey Bank Resolution Fund is to have access to liquidity from the States in order to act in a timely fashion.

39. The Jersey Bank Resolution Fund would be used to pay costs including the cost of resolution itself (valuations, etc.) and potential claims for compensation.

40. Article 22(8) of the Draft Law provides a cap of £100 million to be contributed to the Jersey Bank Resolution Fund by the banks during any 5-year period (or such other amount or time period as may be prescribed). This cap on the amount to be contributed is aimed at providing Jersey's banking industry with some comfort as to the maximum amount of liability in respect of resolution costs.

41. Whilst the Jersey Bank Resolution Fund can be used to contribute towards compensation payable for a 'no creditor worse off claim', there is no cap specified in respect of the amount that can be claimed by way of compensation. In other words, if a creditor of a bank in resolution has a compensation claim against a bank in resolution, that creditor can claim the full amount owed and will not be capped at £100 million. However, this begs the question: where will the funds come from for such a claim?

42. The answer is contained in Article 22(9) of the Draft Law, which provides that where a creditor's claim has exhausted the funds in the Jersey Bank Resolution Fund, that creditor will have a direct claim against the bank in resolution, and the claim cannot be made against the Jersey Resolution Authority in respect of the Jersey Bank Resolution Fund. This aims to protect the other banks in Jersey and the Jersey Bank Resolution Fund, while preserving creditors' rights against the party that arguably is responsible for the loss (i.e. the bank in resolution). This moves a creditor's claim away from the Jersey Bank Resolution Fund in the event that the bank in resolution cannot fund the costs of resolution, and the monies contributed by the other banks are insufficient to cover the costs of

resolution. This end result is intended to be that the Fund can continue to operate and provide services to all banks even if a resolution attempt fails.

Question 6:

Do you agree with the approach being taken in respect of the Jersey Bank Resolution Fund? If not, please elaborate on your reasons as to why and how you consider this could be changed?

Question 7:

Do you agree with the approach being taken in respect of creditors' rights and the limitations of liability placed upon the Jersey Bank Resolution Fund? Could the drafting be improved to achieve the aims of transferring liability? If you do not agree with the approach taken, please elaborate on your reasons why, and state how you consider this should be changed?

Article 30 – Creditor Hierarchy

43. While eligible deposits are protected from losses in resolution, other eligible deposits are potentially available for loss absorbency purposes. In order to provide a certain level of protection for natural persons holding eligible deposits above the level of eligible deposits, such deposits have been given a higher priority ranking over the claims of ordinary unsecured, non-preferred creditors under Jersey insolvency law. The claim of the JDCS against all subrogated claims by depositors is then given an even higher ranking under the Jersey Resolution Regime than the aforementioned eligible deposits.

44. There are currently disparities between the creditor hierarchies set out in the laws of England and Wales, other European countries, Jersey and the other CDs. This is partly due to the level of protection afforded to depositors under each jurisdiction's depositor compensation scheme (**DCS**). For example, Jersey protects individual depositors up to £50,000, in comparison to England and Wales which protect individual depositors up to £75,000. Whilst this has been an accepted position in respect of the DCS, it will cause disparity under the resolution regimes because of the definition of 'covered deposit'.

45. An example is in respect of the application of the bail-in tool and the order in which liabilities can be written down or converted. Article 65(7) of the Draft Law makes provision to state that the Authority shall not exercise the write-down or conversion power in respect of 'covered deposits', which is the same approach taken under the BRRD. However, the definition of 'covered deposit' itself differs, in that the BRRD definition is wider than that in the Draft Law due to the difference in the deposits 'covered' by the DCS in different jurisdictions.

46. Under the Draft Law, the term 'Covered Deposit' is defined as the part of eligible deposits that does not exceed the maximum amount of compensation payable to a depositor under the Draft Bank Depositors Compensation (Jersey) Law 201- (**Draft JDCS Law**). In summary, the maximum amount of compensation payable under the JDCS Law is £50,000 per person, per Jersey banking group for local and international depositors. The Draft JDCS Law

covers private individuals, charities and Community Savings Limited. It does not extend to corporations, SMEs, partnerships or trusts.

47. Under BRRD, 'Covered Deposit' is defined as the part of eligible deposits that does not exceed the coverage level laid down in Article 6 of the BRRD which confirms protection of each depositor up to EUR 100,000 (approximately GBP 77,000) and includes deposits resulting from real estate transactions relating to private residential properties and deposits that serve social purposes and are linked to particular life events of a depositor, such as marriage, divorce, retirement, etc. As the law of England and Wales follows BRRD, it covers private individuals, SMEs, corporate bodies, partnerships and charities (although specific rules apply in respect of turnover of charities). Therefore a wider approach is also taken by England and Wales in comparison to Jersey.

48. There is also a risk that a creditor may be worse off as a result of resolution action being taken, or the recognition by the Jersey Resolution Authority of a foreign resolution authority's actions, compared to the position otherwise under Jersey law. Also, if the creditor hierarchy is amended, there is the risk that if a bank were to fail and become insolvent, and the DCS were to pay out, that the recoveries might be less to the DCS as a result of the amended hierarchy.

49. As a matter of policy, the Government is working with the other CDs to achieve, as far as possible, a harmonised approach across the CDs in respect of creditor hierarchy. This is desirable in order to minimise exposure to the Jersey Bank Resolution Fund under the 'no creditor worse off' principle, and to ensure that Jersey is not placed at a competitive disadvantage in respect of the level of protection afforded to depositors.

Question 8:

Are there any preferences in terms of the approach to be adopted with regard to the creditor hierarchy, and as to the appropriate balance to be struck between a policy which favours maximising recoveries in the event of a DCS payout, or one that reduces the chances of a 'no creditor worse off' claim by greater harmonisation with the law of England and Wales?

Article 33 – Objectives of Resolution

50. In accordance with the general principles of BRRD, the Jersey Resolution Regime does not prescribe the exact means by which the Jersey Resolution Authority should intervene with a failing bank. Rather, it maintains and gives the Jersey Resolution Authority the flexibility to use the powers available to it under the Jersey Resolution Regime. In exercising the resolution powers and measures available to it, the Jersey Resolution Authority will be required to take into account the circumstances in which the failure occurs. For example, if the problem arises in an individual bank and the rest of the financial system is not affected, the Jersey Resolution Authority will be able to exercise the resolution powers without much concern for contagion effects, whereas greater care would need to be exercised to avoid destabilising financial markets in an economically fragile environment.

51. The Banking Act has included an objective to state that resolution action can only be taken where it is necessary in the public interest of the UK, and any interference with the rights of shareholders and creditors which results from resolution actions would have to be compatible with the Human Rights Act 1998.

52. It is considered that the use of the resolution tools and powers provided for in the Jersey Resolution Regime may, by their very nature, disrupt the rights of shareholders and creditors. One example is the power to transfer the shares or all or part of the assets of a bank to a private purchaser without the consent of shareholders, which will affect the property rights of shareholders. In addition, the power to decide which liabilities to transfer out of a failing bank based upon the objectives of ensuring the continuity of services and avoiding adverse effects on financial stability may affect the equal treatment of creditors. The Draft Law does not made it a resolution objective to avoid interference with property rights in breach of the Human Rights (Jersey) Law 2000. However, Article 33(5) requires the Jersey Resolution Authority to seek to minimize the cost of resolution and avoid destruction of value unless reasonable to achieve the resolution objectives. This principle is not included in the BRRD, but has been included due to the comparable size of Jersey (to the EU for example) and the liability risks posed by resolution. Article 34(1)(c) also requires that a stabilization tool may only be applied if the Authority is satisfied that the application of that tool is in the public interest of Jersey. The Draft Law will be reviewed generally for compatibility with the Human Rights (Jersey) Law 2000 as a matter of course by the Law Officers.

Article 35 – General Principles of Resolution

53. The Jersey Resolution Authority will be required to take into account the nature of a bank's business; shareholding structure; legal form; risk profile; size; legal status and form, and interconnectedness to other banks or to the financial system in general; the scope and complexity of its activities; whether it is a member of an institutional protection scheme or other co-operative mutual solidarity systems; whether it exercises any investment services or activities; and whether its failure and subsequent winding-up under normal insolvency proceedings would be likely to have a significant negative effect on financial markets, on other banks, on funding conditions, or on the wider economy, when developing recovery and resolution plans and when using the different powers and tools at their disposal.

54. The general principles of resolution in the Draft Law closely follow the principles set out in BRRD. However, it has been proposed that the statement in Article 35(g) that: 'no creditor shall incur greater losses than would have been incurred had the bank been wound up under normal insolvency proceedings' should be constrained by the caveat, unless such is necessary in the public interest. The reason for this possible amendment is to bring the 'no creditor worse principle' directly into line with Article 1, Protocol 1 of the European Convention on Human Rights in respect of interference with property rights. Compensation will be paid out of the Jersey Resolution Fund, which will generally be payable by the bank in resolution. There is also a relationship with Article 78, where there is the ability for compensation to be payable following the 'difference in treatment' valuation.

Question 9:

Do you agree with the application of the 'no creditor worse off' principle as set out in the Draft Law? Should it be further constrained by a caveat: 'unless such interference is necessary in the public interest'? And, if so, should the principle also be linked to Article 78?

Articles 44–50 and 77–78 – Valuations

55. It is important that the Jersey Resolution Authority is able to pursue effective decision-making as regards the application of the resolution tools. The Draft Law has followed the BRRD approach in respect of the valuations to be undertaken as part of the Jersey Resolution Regime. It was considered as part of the drafting process whether a simplified approach could be taken by and in respect of banks in Jersey; however, taking a risk-based approach it was not, subject to the views of consultees, considered sensible or feasible to amend substantially the established valuation methodologies currently used in Europe.

56. Before any resolution action is taken, a fair and realistic valuation of the assets and liabilities of the bank is required to be carried out. The valuation will be an integral part of the decision made by the Jersey Resolution Authority as to whether or not to apply a resolution tool or exercise a resolution power, or the decision to exercise the write down and conversion power.

57. Where possible, a definitive valuation will take place prior to resolution. This valuation will be undertaken by an independent valuer and the purpose of the valuation will be to: (i) assess the value of the assets and liabilities of the institution/entity and ensure that the conditions for resolution are met; (ii) inform the determination as to what the resolution action to be taken should be; (iii) inform the decision on the extent to which the power should be used (depending on the resolution action taken and/or the resolution tools used); and (iv) ensure that any losses on the assets of the bank are fully recognised at the moment that the resolution tools are, or the power is, applied.

58. In cases where a definitive valuation is not possible prior to resolution, and the Jersey Resolution Authority considers that the urgency of the case means that it is appropriate to make a mandatory reduction instrument (i.e. an instrument by which the Jersey Resolution Authority exercises the write-down and/or conversion power), or exercises a stabilisation power, before a valuation can be carried out by an independent valuer, it may carry out a provisional valuation of the assets and liabilities of the bank itself in order to understand whether the bank is failing or likely to fail. This provisional valuation will be the basis of resolution actions until a definitive valuation can be carried out.

59. Following the application of the resolution tools, a 'difference of treatment valuation' will be undertaken. This valuation will compare the treatment that shareholders and creditors have actually been afforded and the treatment that they would have received under normal insolvency proceedings. The purpose of this valuation will be to: (i) ensure that any losses on the assets of the institution/entity are fully recognised in the books of the accounts of the same; and (ii) inform a decision to write back creditors' claims or to increase the value of the consideration paid, where it is determined that shareholders and creditors

have received in payment of, or compensation for, their claims, the equivalent of less than the amount that they would have received under normal insolvency proceedings.

60. Articles 48 and 77 of the Draft Law provide for the Jersey Resolution Authority to set or adopt standards for the purpose of the valuations to be undertaken. The Jersey Resolution Authority may therefore seek to follow the technical standards drafted by the European Banking Authority (as done in BRRD), or it may seek to produce its own.

Article 65 – Application of bail-in tool

61. There are various tools available to the Jersey Resolution Authority in the event that a bank is failing or likely to fail. However, it is considered that the tool that the Jersey Resolution Authority is most likely to apply would be the bail-in tool.

62. The Jersey Resolution Regime aims to minimise the risk that the costs of the resolution of a failing bank are borne by Jersey taxpayers. It aims to ensure that systemic banks can be resolved without jeopardising financial stability. The bail-in tool is intended to achieve these objectives by ensuring that shareholders and creditors of a failing bank suffer appropriate losses and bear an appropriate part of the costs arising from the failure of the bank. The bail-in tool therefore gives shareholders and creditors of banks a stronger incentive to monitor the health of a bank during normal circumstances, and meets the Financial Stability Board's recommendation that statutory debt write-down and conversion powers be included in a framework for resolution, as an additional option in conjunction with other resolution tools.

63. It is not appropriate to apply the bail-in tool to claims insofar as they are secured, collateralised or otherwise guaranteed. However, in order to ensure that the bail-in tool is effective and achieves its objectives, the Draft Law seeks to apply to as wide a range of the unsecured liabilities of a failing bank as possible.

64. Nevertheless, it is considered appropriate under the BRRD (and as transposed in the Banking Act) to exclude certain kinds of unsecured liabilities from the scope of application of the bail-in tool. This is the case to protect covered deposits, but also to ensure continuity of critical functions and to reduce the risk of systemic contagion.

65. As the protection for eligible depositors is one of the most important objectives of resolution, covered deposits are not subject to the exercise of the bail-in tool. Most jurisdictions adopt the definition that is utilised under their deposit compensation regime. However, as detailed above, the current definition of covered deposits under the Draft Law (please refer to Article 65(7)(a) and the definitions set out in Article 1) is narrower than that in the BRRD and the Banking Act. The Draft Law uses the Jersey definition under the legislation relating to JDCS, rather than that under the BRRD, which defines covered deposits to include the standard eligible depositors covered under the JDCS up to the amount that they are protected by the JDCS. Amending this provision to reflect the European approach would have the effect of parity with the UK DCS and a similarity with other European jurisdictions, although it would restrict the

amount of liabilities that the Jersey Resolution Authority could bail-in as part of a resolution.

Question 10:

Do you agree that the definition of covered deposits should be linked to the existing Jersey definition as 'those covered by the Jersey Deposit Compensation Scheme'? If not, please state what definition should be adopted?

66. Article 65(7)(b) has the effect of excluding from bail-in 'secured liabilities including covered bonds and liabilities in the form of financial instruments used for hedging purposes which form an integral part of the cover pool and which according to Jersey law are secured in a way similar to covered bonds'. Covered bonds are defined in defined in Article 2.1(96) of BRRD by reference to Article 52(4) of Directive 2009/65/EC of the European Parliament and of the Council of 13th July 2009 on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities. It would need to be considered specifically by banks which liabilities held by them would fall into this category.

67. Article 65(7)(c) has the effect of excluding from bail-in 'any liability that arises by virtue of the holding by the bank of client assets held on behalf of a recognized fund (within the meaning of Article 1 of the Collective Investment Funds (Jersey) Law 1988) or an AIF (within the meaning of the Alternative Investment Funds (Jersey) Regulations 2012), provided that such a client's assets are protected under normal insolvency law', which follows the approach taken under BRRD using the Jersey equivalent of UCITS as defined in Article 1(2) of Directive 2009/65/EC; or of AIFs as defined in point (a) of Article 4(1) of Directive 2011/61/EU of the European Parliament and of the Council'. Under BRRD, reference is made to 'client assets or client money', whereas the Draft Law refers only to 'client assets' (which is the same approach taken in the Banking Act). Client assets have been specifically defined as 'assets which a bank has undertaken to hold for a client (whether or not on trust, and whether or not the undertaking has been complied with).

68. Article 65(7)(d) has the effect of excluding from bail-in 'any liability that arises by virtue of a fiduciary relationship between the bank (as fiduciary) and another person (as beneficiary), provided that such beneficiary's interests are protected under Jersey insolvency law'. This is the same approach as that taken under BRRD.

69. Article 65(7)(e) has the effect of excluding from bail-in 'liabilities to a credit institution, excluding entities that are part of the same group, with an original maturity date of less than 7 days'. Credit institutions are defined specifically as a bank or an entity that is carrying on deposit-taking business (whether or not incorporated, or carrying on business, in Jersey. This would therefore exclude bank-to-bank liabilities from bail in with an original maturity of less than 7 days which is designed to prevent the freezing-up of the inter-bank lending market.

70. Article 65(7)(f) has the effect of excluding liabilities with a remaining maturity of less than 7 days, owed to payment and securities settlement systems or their participants and arising from the participation in such system. The exclusion under Article 65(7)(f) seeks to reduce the risk of systemic contagion.

71. Article 65(7)(g) has the effect of excluding certain liabilities to employees of the failing bank, or to commercial claims that relate to goods and services critical to the daily functioning of the bank. In order to honour pension entitlements and pension amounts owed or owing to pension trusts and pension trustees, the bail-in tool does not apply to the failing bank's liabilities to a pension scheme. However, the bail-in tool would apply to liabilities for pension benefits attributable to variable remuneration which do not arise from collective bargaining agreements, as well as to the variable component of the remuneration of material risk-takers. This Article also excludes tax and social security services in Jersey and the JDCS.

72. The Jersey Resolution Authority is also able to exclude or partially exclude liabilities in a number of circumstances including where: it is not possible to bail-in such liabilities within a reasonable timeframe; the exclusion is necessary and proportionate to achieve the continuity of critical functions and core business lines; and the application of the bail-in tool to liabilities would cause a destruction in value such that losses borne by other creditors would be higher than if those liabilities were not excluded from bail-in. The Jersey Resolution Authority would be able to exclude or partially exclude liabilities where necessary to avoid the spreading of contagion and financial instability, which may cause serious disturbance to the economy of Jersey.

Question 11:

Do you agree with the approach being taken in respect of liabilities that are excluded under the Draft Law? If so, please explain what the issues are and how you consider they could be rectified.

Article 89 – Recognition of foreign resolution actions

73. International and European financial markets are highly interconnected with many banks operating across national borders. This is particularly noticeable in Jersey, where there are no indigenous banks. The failure of a bank in Jersey is therefore likely to involve a backdrop of external economic shocks and resolution actions being taken in other home and intermediate home jurisdictions.

74. The Bank of England has stated –

"*A host authority should not seek to take action with respect to subsidiaries or branches of foreign banks in its own jurisdiction which might frustrate the orderly resolution of the group being co-ordinated by the home authority.*

In support of these principles of co-operation, the United Kingdom will co-ordinate a group-wide resolution strategy where it is the home supervisory authority of a failing cross-border firm. Regulatory authorities in other countries may need to take supporting regulatory or indeed resolution actions

to assist in this. The Bank [of England] will co-ordinate with host authorities over any action that may be required.

Where the United Kingdom is a host of a foreign firm that needs to be resolved, the UK authorities will aim to co-ordinate closely with the home authorities, and only seek to take independent action in exceptional cases, in line with the approach for cross-border co-operation set out in the Key Attributes. These exceptions are set out in the BRRD, and include where the home country's proposed action, or inaction, is deemed not likely to maintain financial stability in the United Kingdom, and to ensure there is no discrimination against depositors or creditors of host subsidiaries or branches in a host jurisdiction.".

75. Jersey-based subsidiaries of foreign banking groups are established in Jersey and therefore fully subject to Jersey law (including, following its implementation, the Jersey Resolution Regime). However, during the production of the Draft Law it has been considered necessary for Jersey to retain the right to act also in relation to branches where the recognition and application of foreign resolution actions would endanger financial stability in Jersey or where Jersey depositors would not receive equal treatment with depositors in the bank's home (or other) jurisdictions.

76. Therefore, the Draft Law has been drafted on the basis that the Jersey Resolution Authority has the power (after consulting with the relevant foreign resolution authority) to refuse recognition of foreign resolution actions with regard to branches of foreign banking groups operating in Jersey.

77. As detailed above, it is the Government's view that it will only ever be in highly exceptional cases that the Jersey Resolution Authority would ever refuse to recognise a parent bank's resolution action and seek to resolve the Jersey branch of a foreign bank. However, it is considered necessary to keep the power for the Jersey Resolution Authority to make an instrument refusing to recognise the foreign resolution action in the event that such an action would adversely and possibly detrimentally affect Jersey's financial stability. This point also links to the broad scope of Article 3 of the Draft Law (as discussed above).

Part 7 – Banking Winding-up

78. It is a general principle of BRRD, the Banking Act, and of policy of the Government that a failing bank be wound up through normal insolvency proceedings unless the application of one or more stabilisation tools is necessary to achieve the resolution objectives.

79. In the interests of the efficient stabilisation of a failing bank, and in order to avoid conflicts of jurisdiction, in the event that the Jersey Resolution Authority takes a decision to stabilise a bank using the stabilisation tools, normal insolvency proceedings (including the bank winding-up procedure) will be excluded (or, if applicable, discontinued). This will not preclude the Jersey Resolution Authority from applying for a bank winding-up order where –

    (a) the Jersey Resolution Authority has attempted to stabilise the bank but has subsequently concluded that it has failed to do so; or

(b) the Jersey Resolution Authority has successfully stabilised a failing bank, but the bank winding-up procedure is required and used in conjunction with the stabilisation tool(s) to wind up the residual bank, at the initiative of, or with the consent of, the Jersey Resolution Authority.

80. Where the decision has been taken to allow a bank to become insolvent (or in the absence of a decision to take action to prevent it becoming insolvent), the bank will be wound up using an appropriate procedure to ensure that depositors who are eligible for compensation under DCS either receive payouts promptly or have their accounts transferred to another bank, and to ensure that the bank is wound up with minimum disruption to critical services. As part of the preparation of the Jersey Resolution Regime, it was noted that the Banking Act sets out a bespoke procedure for dealing with insolvent banks in the UK. It was concluded that current Jersey insolvency law is limited in the extent to which it provides for the recovery or stabilisation of failed banks, particularly where such banks involve a global or group nexus.

81. It was therefore considered necessary to create a specific bank winding-up procedure in order to set out the appropriate procedure for addressing the insolvency and liquidation of a failed bank. The intention of such a procedure is to codify the bank winding-up procedure, resulting in a framework which will clearly explain the relationship between the solvent stabilisation tools of the Jersey Resolution Regime on the one hand, and the insolvent winding-up of a bank under the bank winding-up procedure on the other.

82. The Bank Winding-up Procedure is one of the resolution tools (but not a stabilisation tool) that can be selected by the Jersey Resolution Authority when considering the best course of action to respond to a failed or failing bank.

83. The Bank Winding-up Procedure outlines a decision-making process that must be followed before an application may be made to Court for a bank winding-up order. The decision-making process determines whether it is appropriate to stabilise the bank through the use of one or more stabilisation tools, or whether it would be more appropriate to wind the bank up using the Bank Winding-up Procedure. In addition, the bank winding-up procedure may be used to wind up a residual bank following the transfer-out of shares, assets, rights or liabilities from a failed bank.

84. Furthermore, the Bank Winding-up Procedure is intended to achieve objectives that are consistent with the need to protect customers' access to deposits, taking into account the role of the JDCS, and which protects the provision of other critical services provided by the failed bank.

85. The Government's policy is that the Bank Winding-up Procedure should not differ radically from existing Jersey insolvency practice. The Bank Winding-up Procedure is therefore modelled in part on the existing law and practice of the just and equitable winding-up procedure set out in Article 155 of the Companies (Jersey) Law 1991 (**Jersey Companies Law**) (as that has been applied in insolvency matters), combined with the powers given to a liquidator under a creditors' winding-up in Chapter 4 of Part 21 of the Jersey Companies Law,

under the framework of principles and objectives established in the UK's Bank Insolvency Procedure.

86. The aim of the codification of case law principles established in relation to just and equitable winding-up under Article 155 is to add clarity and certainty to the process of the winding-up of a failed bank, and to provide reassurance to stakeholders in the stability of the Jersey banking industry.

87. Article 94 (Restriction of other insolvency or winding-up proceedings) of the Draft Law prescribes that the commencement of the bank winding-up proceedings will bar the right to commence any other normal insolvency proceedings against the bank or a winding-up proceeding under Article 155 of the Jersey Companies Law. It also gives the Resolution Authority the power to veto the Court making an order for normal insolvency proceedings or proceedings under Article 155 of the Jersey Companies Law to commence.

Question 12:

Do you have any further comments on the proposals for a Bank Winding-up Procedure?

Question 13:

It has been suggested that the Bank Winding-up Procedure should be the only route available to a bank in respect for winding up (in other words, none of the other normal insolvency proceedings routes will be available to a bank). Do you envisage any issues with this proposal? If so, please provide an explanation.

Next steps

88. Following the completion of the period of consultation, any final changes will be made to the Draft Law as a result of responses, and the Draft Law will then be lodged for debate by the States Assembly.

QUESTIONS

Particular questions as stated above are:

Question 1:

Do you agree with the scope of the Draft Law in respect of resolution under Article 3(1) of the Draft Law? If not, then please state why and what you would prefer?

Question 2:

Do you agree with the scope of the Draft Law in respect of the Bank Winding-up Procedure under Article 3(2) of the Draft Law?

Question 3:

Do you agree with the approach being taken in respect of appointments to a Jersey Resolution Authority?

Question 4:

Do you consider that there should be a representative of any other body/group/authority represented on the Jersey Resolution Authority?

Question 5:

Do you think that there should be best endeavours taken to create a Resolution Authority spanning more than one of the CDs?

Question 6:

Do you agree with the approach being taken in respect of the Jersey Bank Resolution Fund? If not, please elaborate on your reasons as to why and how you consider this could be changed?

Question 7:

Do you agree with the approach being taken in respect of creditors' rights and the limitations of liability placed upon the Jersey Bank Resolution Fund? Could the drafting be improved to achieve the aims of transferring liability? If you do not agree with the approach taken, please elaborate on your reasons why, and state how you consider this should be changed?

Question 8:

Are there any preferences in terms of the approach to be adopted with regard to the creditor hierarchy, and as to the appropriate balance to be struck between a policy which favours maximising recoveries in the event of a DCS payout, or one that reduces the chances of a 'no creditor worse off' claim by greater harmonisation with the law of England and Wales?

Question 9:

Do you agree with the application of the 'no creditor worse off' principle as set out in the Draft Law? Should it be further constrained by a caveat: 'unless such interference is necessary in the public interest'? And, if so, should the principle also be linked to Article 78?

Question 10:

Do you agree that the definition of covered deposits should be linked to the existing Jersey definition as 'those covered by the Jersey Deposit Compensation Scheme'? If not, please state what definition should be adopted?

Question 11:

Do you agree with the approach being taken in respect of liabilities that are excluded under the Draft Law? If so, please explain what the issues are and how you consider they could be rectified.

Question 12:

Do you have any further comments on the proposals for a Bank Winding-up Procedure?

Question 13:

It has been suggested that the Bank Winding-up Procedure should be the only route available to a bank in respect for winding up (in other words, none of the other normal insolvency proceedings routes will be available to a bank). Do you envisage any issues with this proposal? If so, please provide an explanation.

Jersey

DRAFT BANK (RECOVERY AND RESOLUTION) (JERSEY) LAW 201-

REPORT

CONSULTATION DRAFT

Explanatory Note

The object of the Bank (Recovery and Resolution) (Jersey) Law 201- (the "Law") is to make provision for bank recovery, resolution and winding up by implementing provisions of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

Part 1 of the Law comprises *Articles 1 to 3* which deal with preliminary matters.

Article 1 sets out definitions of the terms used in the Law.

Article 2 sets out the circumstances in which a bank is deemed to be "failing or likely to fail".

Article 3 provides for the Law to apply to a person registered to carry out deposit-taking business in or from within Jersey under the Banking Business (Jersey) Law 1991; a holding company or a subsidiary of such a person or where that person is a foreign bank a branch or subsidiary of that foreign bank. However, *Part 7* of the Law only applies to a person registered to carry out deposit-taking business in or from within Jersey under the Banking Business (Jersey) Law 1991 or a company incorporated under the Companies (Jersey) Law 1991 that is a holding company or a subsidiary of such a person. Where a stabilization power is exercised in respect of a bank, it does not cease to be a bank for the purposes of the Law if it is no longer registered as referred to in paragraph (1)(a) as a result of a resolution action. Provision is made in *Article 2* for the Minister to amend that Article by Order.

Part 2 of the Law comprises *Articles 4 to 21* which provide for the establishment, functions and powers of the Jersey Resolution Authority ("Authority" as defined in *Article 1*) and for other matters in respect of the Authority.

Article 4 provides for the establishment of the Authority as a body corporate.

Article 5 provides for the States to appoint the members of the Authority from persons nominated by the Chief Minister ("Minister" as defined in *Article 1*) , the Minister for Treasury and Resources and the Commission. The Minister is required to designate one member of the Authority to be the Chairman. *Article 5* also provides for the functions, powers, rights and obligations of the Authority not to be affected by any vacancy in its membership or a defect in the appointment of any member. Where the Minister does not appoint the Authority, the Minister is empowered to appoint a public officer, public authority or other person to discharge the functions of the Authority and the person appointed shall have all the functions, powers, rights and obligations of the Authority. *Article 5* also makes provision for the appointment of an alternate member for each member to attend, in place of a member, meetings of the Authority that the member is for any reason unable to attend.

Article 6 makes provision for the terms of appointment of members and proceedings of the Authority.

Article 7 provides for the Authority's functions which are to make preparations to facilitate the resolution of banks; to administer the resolution process; to carry out such functions in relation to bank resolution or recovery or such incidental or ancillary matters as are required or authorized by the Law or Regulations and to carry out such other functions as are conferred on it by the Law or any other enactment.

Article 8 gives the Authority the discretion to take into account any matter which it considers appropriate but the Authority is required, in particular, to have regard to the reduction of the risk to the public of financial loss due to financial unsoundness of a person to whom the Law applies; the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters and the best economic interests of Jersey.

Article 9 gives the Authority general powers to do anything that is calculated to facilitate, or that is incidental or conducive to, the performance of any of its functions under the Law, including the exercise of its general resolution powers under *Article 29*, its powers of investigation under *Part 9* and other powers as part of the Authority's routine examination of a bank.

Article 10 limits the liability of the Authority, any member or any person who is, or is acting as, an officer, employee or agent of the Authority or who is performing any duty or exercising any power on behalf of the Authority and the States or any Minister in respect of any delegation of functions to the Authority.

Article 11 provides for the appointment and remuneration of officers, employees and agents of the Authority.

Article 12 provides for the delegation of the Authority's functions and powers to the Chairman, one or more members or an officer of the Authority.

Article 13 gives the Minister the power to give guidance and general directions in respect of the policies to be followed by the Authority in relation to resolution of a bank in Jersey and the manner in which any function of the Authority is to be carried out. The Authority is required to have regard to such guidance and to act in accordance with such directions in carrying out its functions.

Article 14 provides for the publication of information and giving of advice by the Authority on the operation of the Law, or any other enactment in connection with resolution of banks, including, in particular, the rights of depositors, the duties of a bank and the steps to be taken for enforcing those rights or complying with those duties; any matters relating to the functions of the Authority under the Law or any other enactment. The Authority may also publish information and give advice on any

other matters relating to the resolution of a bank about which it appears to it to be desirable to publish information or give advice concerning the reduction of the risk to the public of financial loss due to dishonesty, incompetence or malpractice by, or the financial unsoundness of, persons carrying on deposit-taking business in or from within Jersey; the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters or the best economic interests of Jersey.

Article 15 provides for the funds and resources of the Authority to be the administrative levy payable under *Article 16;* any grant paid to the Authority under *Article 17;* any money borrowed by the Authority accordance with *Article 18*; any other money or property and any income derived from such money or property, as is lawfully vested in the Authority through the exercise of its powers under the Law.

Under *Article 16,* an annual administration levy may be raised by the Authority, in relation to a particular registration year, to enable the Authority to meet its expected recurring administrative costs in that year; to provide or maintain a reserve, of an amount appearing to the Authority to be prudent in that year, against potential recurring administrative costs in future years and to provide or maintain a reserve, of an amount appearing to the Authority to be prudent in that year, against the possibility, in the event of resolution action in respect of a bank in that or any subsequent year, of the Authority wishing to pay administrative costs without needing to wait for receipt of other funding for those costs. The term "registration year" is defined in *Article 16* to mean a period of one year ending on the next day on which registrations under the Banking Business (Jersey) Law 1991 expire by virtue of Article 9(2) of that Law.

Article 17 specifies that in respect of each financial year the States may make a grant to the Authority from their annual income towards the expenses of the Authority in carrying out any of its functions. The amount of any grant must be determined by the Minister after consultation with the Authority, and in determining that amount the Minister shall have regard to the financial position and projected financial position of the Authority.

Article 18 provides for borrowing by the Authority for the purpose of enabling it to carry out its functions. The maximum amount the Authority may borrow may be prescribed by an Order made by the Minister. *Article 18* also provides for the Minister, on such terms as the Minister may determine, on behalf of the States to guarantee the liabilities of the Authority or lend monies to the Authority, up to the maximum amount the Authority may borrow.

Article 19 gives the Authority the discretion to invest any of its funds which are not immediately required in accordance with guidelines set by the Minister.

Article 20 exempts the Authority from liability to income tax or GST (goods and services tax)) on goods and services supplied or goods imported for the purposes of carrying out its functions under the Law.

Article 21 requires the Authority to keep proper accounts and proper records in relation to its accounts and prepare accounts in respect of each financial year and a report on its operations during the year. The Authority's accounts must set out the income and expenditure of the Fund separately from any other money received, held or expended by the Authority. The Authority must have its accounts audited by an auditor and the audited accounts and the report of the auditor must be provided to the Minister within 3 months after the accounts have been audited.The Minister must lay a copy of the audited accounts and the report prepared by the Authority before the States not later than 7 months after the end of each financial year.

Part 3 of the Law comprises *Article 22* which provides for the establishment of the Jersey Bank Resolution Fund for the purpose of ensuring the effective exercise by the Authority of the resolution powers and application by the Authority of the resolution tools. The Fund is to be controlled, managed and administered by the Authority. The Authority is empowered to recover any funds paid out of the Fund from the bank in resolution; to raise contributions from banks where funds are insufficient and to borrow from any source, including the strategic reserve fund (within the meaning given in the Public Finances (Jersey) Law 2005). All monies received by or on behalf of the Authority are to be paid into the Fund. *Article 22* also places restrictions on the use of the Fund.

Part 4 of the Law comprises *Articles 23 to 27* which provide for recovery and resolution planning.

Article 23 requires a bank to draw up and submit to the Commission for approval a recovery plan setting out measures to be taken by the bank for the restoration of its financial position following a significant deterioration of such financial position. A recovery plan must be drawn up and maintained in accordance with a code of practice in respect of recovery planning issued by the Commission in accordance with Article 19A of the Banking Business (Jersey) Law 1991. The Commission is required to submit a copy of a recovery plan submitted to it to the Authority and the Authority may examine the recovery plan with a view to identifying any actions in the recovery plan which may adversely impact the resolvability of a bank and to make recommendations to the Commission regarding those matters. The Minister is empowered to make an Order to provide for recovery planning in respect of a bank.

Article 24 requires the Authority to draw up a resolution plan for a bank which shall be proportionate to the systemic importance of the bank or the bank's group. The Authority must submit a resolution plan for each bank to the Commission and the Commission must examine the resolution plan with a view to identifying any actions in the resolution plan which may adversely impact the resolvability of the bank and make recommendations to the Authority with regard to those matters. The Authority is also required to provide relevant information regarding a resolution plan for a bank to the resolution authorities in jurisdictions in which the bank operates branches or subsidiaries and to the home regulator and intermediate home regulator of the bank's group. Further, where the Authority is required to draw up a resolution plan which includes within its scope branches or subsidiaries of a bank in jurisdictions other than Jersey, the Authority must have regard to the potential impact of the resolution measures in such other jurisdictions.

Article 24(6) requires the Authority, as far as practicable, to communicate to a home resolution authority any decision to deviate from that home resolution authority's resolution plan.

The Authority has the power to require a bank (whether directly or through the Commission) to cooperate, assist and provide the information specified in *Part 1 of Schedule 2* for the purpose of drawing up, implementing and updating a resolution plan for the bank.

Articles 24(8) and (9) provide that details of the resolution plan may be submitted by the Authority to the bank concerned and the Authority must review, and where appropriate update, a resolution plan for a bank at least annually and after any material changes to the legal or organizational structure of the bank or to its business or its financial position that could have a material effect on the effectiveness of the resolution plan or otherwise necessitates a revision of the resolution plan.

Article 24 also provides for the contents of a resolution plan and empowers the Minister to make an Order to provide for resolution planning by the Authority.

Article 25 requires the Authority, in drawing up a resolution plan for the bank, to carry out an assessment to determine whether a bank is resolvable. A bank may be required to take measures to effectively address or remove the substantive impediments to resolvability. A bank will be deemed to be resolvable if it is feasible and credible for the Authority to liquidate it under Part 7 or to resolve it by applying a stabilization tool to, and exercising the resolution powers in respect of, the bank while avoiding to the maximum extent possible any significant adverse effect on the financial system.

Under *Article 26*, the Commission must set for each bank a minimum requirement for own funds and eligible liabilities which the bank must meet at all times. The minimum requirement for own funds and eligible liabilities set for a bank must be calculated as a percentage of the amount of own funds and total liabilities of the bank (including liabilities arising from derivatives expressed on a net basis giving full recognition of counterparty netting rights). The Authority is required to review the minimum requirement for own funds and eligible liabilities and may make recommendations regarding the level of the requirement to the Commission and the Commission must act in accordance with such recommendation. The Minister is empowered by Order to make further provision relating to the minimum requirement for own funds and eligible liabilities of a bank.

Under *Article 27*, the Commission may require a bank to maintain at all times a minimum authorized share capital or other common equity Tier 1 instruments so that in the event of the Authority exercising a write down or conversion power in respect of the bank, the bank shall not be prevented from issuing sufficient new shares to ensure that the conversion of liabilities into shares can be carried out effectively. An assessment by the Commission as to whether to impose capital requirements, or to what extent to impose capital requirements, must be carried out in conjunction with the development of a resolution plan under *Article 24* in respect of that bank.

Part 5 of the Law comprises *Articles 28 to 50* which provide for resolution matters.

Article 28 requires the management of a bank to notify the Commission if the management consider that the bank is failing or likely to fail. The Commission is required to notify the Authority of any notifications received and of any early intervention actions that the Commission requires a bank to take to prevent its failure or likely failure. On receiving a notification that a bank may be failing or likely to fail, the Authority must determine whether the resolution conditions are met in respect of that bank and must record its decision together with reasons for the decision and the actions that the Authority intends to take as a result of it. Where the Authority determines that the resolution conditions are met in relation to a bank, the Authority must give notice of that determination, its decision based on that determination, together with reasons for the decision and the actions that the Authority intends to take as a result of the decision, as soon as practicable to specified persons including the Commission, the Jersey Bank Depositors Compensation Board, the Minister, the Minister for Treasury and Resources, the Viscount and the home resolution authorities and intermediate home resolution authorities of the bank.

Article 29 provides for the Authority to have all the powers necessary to apply a resolution tool to a bank which meets the resolution conditions and, in particular, to have general resolution powers specified in that Article which may be exercised, individually or in any combination, for the purpose of enabling the Authority to achieve the resolution objectives.

Article 30(1) makes provision for the part of an eligible deposit which exceeds the maximum amount of a covered deposit and a deposit that would be an eligible deposit of a bank incorporated in Jersey if it was not made through a branch located outside Jersey to have the same priority ranking, which is higher than the ranking provided for the claims of ordinary unsecured, non-preferred creditors. *Article 30* also makes provision for covered deposits and the Depositors Compensation Fund to have the same priority ranking which is higher than the ranking of the other deposits referred to in paragraph (1) of that Article.

Article 31 gives the Commission or the Authority the power to take early intervention measures where the Commission is satisfied that a bank infringes or is likely, in the near future, to infringe any of the minimum capital requirements placed on it by the Commission under Article 27 or the requirement that the bank is a fit and proper person to be registered to undertake deposit-taking business in accordance with Article 10(3)(a) of the Banking Business (Jersey) Law 1991. An infringement may occur due, among other things, to a rapidly deteriorating financial condition and may include a deteriorating liquidity situation, an increasing level of leverage or an increasing level of nonperforming loans or a concentration of exposures. Early intervention measures include the power of the Commission or the Authority to require the management of the bank to implement one or more of the arrangements or measures set out in its recovery plan and to require one or more members of management to be removed or replaced if those persons are deemed by the Authority or the Commission unfit to perform their duties.

*Article 3*2 provides for the appointment of one or more temporary administrators to the bank where the Authority or the Commission deems the replacement of the management of a bank, as an early intervention measure, to be insufficient to remedy the situation. The temporary administrator may be appointed to replace the management of the bank temporarily or to work temporarily with the management of the bank.

Article 33 sets out the resolution objectives which the Authority must have regard to in exercising the resolution powers and in applying, or considering the application of, a resolution tool in respect of a bank. The Authority is required to exercise the resolution powers that best achieve the resolution objectives that are relevant in the circumstances. The resolution objectives (which are of equal significance) are as follows –

(a) to ensure the continuity of banking services in Jersey and the provision of critical functions in Jersey;

(b) to protect and enhance the stability of the financial system in Jersey, including by preventing contagion (including contagion to market infrastructures such as investment exchanges, clearing houses and central counterparties) and maintaining market discipline;

(c) to protect and enhance public confidence in the stability of the financial system in Jersey;

(d) to protect public funds, including by minimizing reliance on extraordinary public financial support;

(e) to protect eligible depositors to the extent that they have covered deposits;

(f) to protect client assets; and

(g) to avoid interference with property rights in breach of the Human Rights (Jersey) Law 2000.

Article 34 sets out the resolution conditions which must be met in order for a resolution power to be exercised in respect of a bank. The resolution conditions are that –

(a) the bank is failing or is likely to fail;

(b) having regard to timing and other relevant circumstances, it is not reasonably likely that any action (except the exercise of the resolution power) will be taken by or in respect of the bank that will prevent the failure or likely failure of the bank within a reasonable timeframe; and

(c) the application of the stabilization tools is in the public interest of Jersey.

The Authority is permitted to exercise a resolution power in respect of a bank where the bank does not in isolation meet the resolution conditions but the resolution conditions are met by another group entity in the bank's group and the failure or likely failure of another group entity would have adverse consequences for the bank in Jersey which may cause it to meet the resolution conditions in the future.

Article 35 requires the Authority, in applying a resolution tool to a bank, to take appropriate measures to ensure that resolution action is taken in accordance with the general principles of resolution which are specified in that Article.

Article 36 sets out conditions for application of a resolution tool.

Article 37 provides for the manner in which the Authority must recover from a bank in resolution any reasonable expenses properly incurred paid out of the Fund in connection with the application of a resolution tool or exercise resolution power, including the bank winding up procedure under Part 7.

Article 38 makes provision for the Authority to seek funding from alternative financing sources through the application of the government financial assistance tool where an extraordinary situation of a systemic crisis exists, provided that the contribution to loss absorption and recapitalization equal to the amount not less than 8% of the total liabilities including own funds of the bank in resolution, measured by the pre-resolution valuation, has been made by shareholders, holders of relevant capital instruments and other eligible liabilities through write down, conversion or otherwise. The Minister has the power to amend the amount of the total liabilities by Order.

Under *Article 39*, where there is a requirement to notify the Commission of a change in the level of ownership of a person by another person by virtue of the application of a stabilization tool that would result in the acquisition of a qualifying holding or holding which crosses an applicable threshold, the Commission must carry out a relevant assessment related to that notification in a timely manner that does not delay the application of the stabilization tool or prevent the taking of resolution action. The consequences of an assessment not being carried out by the Commission are set out in *Article 39(2.)*

Article 40 requires that the Authority have regard to, and comply with, the Competition (Jersey) Law 2005 in exercising its powers and carrying out its functions under the Law, except where a derogation from that Law is required in order to achieve the resolution objectives (including where the resolution objectives would not be met if additional delay were caused by the requirement to have regard to that Law.

Article 41 requires the Authority, where appropriate, to inform and consult with employee representatives in exercising the resolution powers and applying a resolution tool in respect of a bank.

Article 42 gives the Authority the power to appoint a special manager to replace the management of a bank in resolution. The term of appointment of a special manager must be for a period not exceeding one year, except that the Authority may, in exceptional circumstances, renew the appointment for a further period not exceeding one year if the Authority determines that the conditions for appointment of a special manager continue to be met.

Article 43 provides that nothing in the Law shall cause the Authority to be treated as a director (shadow or de facto) of a bank.

Article 44 makes provision for the Authority to carry out a pre-resolution valuation prior to taking resolution action or exercising a write down or conversion power in respect of a bank. Prior to taking resolution action or exercising a write down or conversion power in respect of a bank, the Authority shall cause a pre-resolution valuation of the assets and liabilities of the bank to be carried out or rely on a pre-resolution valuation carried out by a home resolution authority or the intermediate home resolution authority. The authority must appoint an independent valuer to carry out a pre-resolution valuation. The objective of a pre-resolution valuation shall be to assess the value of the assets and liabilities of a bank that meets the resolution conditions. The purpose of a pre-resolution valuation shall (among other things) be to inform the decision of whether the resolution conditions or the conditions for the write down or conversion power are met and if the resolution conditions are met, to inform the decision on which a resolution tool should be used.

Article 45 provides a provisional valuation of the assets and liabilities of a bank to be carried out where the Authority considers that the urgency of the case makes it appropriate for resolution action to be taken or for a write down or conversion power to be exercised in respect of a bank before a valuation can be carried out by an independent valuer. A provisional valuation will be a valid basis on which a decision to exercise a resolution power may be taken.

Article 46 provides for a definitive valuation of the assets and liabilities of the bank to be carried out by an independent valuer where the Authority has caused to be a provisional valuation to be carried out. The purpose of the definitive valuation is to ensure the full extent of any losses on the assets of the bank is recognized in the accounting records of the bank; and inform a decision by the Authority as to whether additional consideration should be paid by a bridge bank or asset management vehicle for any property, rights, liabilities or shares transferred under a sale of business tool, bridge bank tool or asset separation tool, or to increase or reinstate any liability which has been reduced or cancelled by a resolution instrument.

Article 47 provides that where a definitive valuation produces higher valuation of the net asset value of a bank in resolution than the provisional valuation. The Authority has the power to instruct a purchaser, bridge bank or asset management vehicle to pay additional consideration for any assets, rights, liabilities or shares transferred under the sale of business tool, bridge bank tool or asset separation tool; or to modify any liability of the bank in resolution which has been reduced, deferred or cancelled pursuant to the write down or conversion power or a resolution instrument so as to increase or reinstate that liability. The power must not be exercised so as to increase the value of the liability of the bank in resolution beyond the value it would have had if the resolution instrument which reduced, cancelled or deferred it had not been made.

The Authority must issue a mandatory reduction instrument in accordance with *Article 74* or a supplemental resolution instrument.

Article 48 empowers the Authority to set or adopt technical standards for pre-resolution valuation or definitive valuation. A pre-resolution valuation or a definitive valuation shall be carried out in accordance with the technical standards set or adopted by the Authority.

Article 49 provides for the Minister to set the eligibility criteria for appointment of a person as an independent valuer under *Article 44, 46 or 77*.

Article 50 provides for ancillary powers of an independent valuer.

Part 6 of the Law comprises *Articles 51 to 89* which make provision for the stabilization tools and the resolution safeguards.

Article 51 gives the Authority the power to apply the sale of business tool to a bank that meets the resolution conditions by effecting a sale of business of all or part of the business of the bank to one or more purchasers that are not bridge banks by making one or more share transfer instruments for the transfer of all or part of the shares of the bank or one or more property transfer instruments for the transfer of all or any assets, rights or liabilities of the bank. Subject to the resolution safeguards, the Authority may apply the sale of business tool to a bank without the consent of the shareholders of the bank or any third party other than the purchaser; and without complying with any procedural requirements under any other enactment or the constitutional documents of the bank other than those procedural requirements specified in the Law or Regulations or an Order made under the Law.

Article 52 gives the Authority the power, after the application of the sale of business tool and subject to the resolution safeguards, to transfer assets, rights, liabilities or shares transferred to the purchaser back to the bank in resolution or to original owners. The bank in resolution or the original owners are obliged to take back any such assets, rights or liabilities, or shares.

Under *Article 53*, where a transfer under the sale of business tool is effected by way of a transfer of shares of the bank in resolution, the bank in resolution is entitled to exercise any rights following the transfer that it was entitled to exercise prior to the transfer.

Article 54 provides for the rights of a purchaser under the sale of business tool. A purchaser will acquire the deposit-taking business and any other relevant business of the bank in resolution as a continuation of the deposit-taking business being conducted prior to the transfer to the purchaser and may continue to operate the deposit-taking business of the bank in resolution for a period not exceeding 6 months within which period an application for registration under the Banking Business (Jersey) Law 1991, registration under the Financial Services (Jersey) Law or authorization under any other enactment shall be made.

Article 54 also provides that where a transfer under the sale of business tool has been effected by way of a transfer of assets, rights, and liabilities, the purchaser shall be entitled to exercise any rights following the transfer that the bank in resolution was entitled to exercise prior to the transfer, including membership rights, access to payment, clearing and settlement systems, securities exchanges and the Depositors Compensation Scheme, provided that the purchaser meets the criteria for such membership or participations in such systems. Where a purchaser does not meet the membership or participation criteria for a relevant payment, clearing or settlement system, securities exchange or the Depositors Compensation Scheme, the rights transferred under the sale of business tool shall be exercised for such period as may be

specified by the Authority, not exceeding 24 months, subject to renewal on application by the purchaser to the Authority. Shareholders and creditors of a bank in resolution and other third parties whose assets, rights and liabilities are not transferred under the sale of business tool will not have any rights over or in relation to the assets, rights or liabilities transferred.

Article 55 provides for the marketing of assets, rights, liabilities or shares of a bank by the Authority where it applies the sale of business tool to the bank.

Article 56 allows for the delay of disclosure of information to the public on application of the sale of business tool.

Article 57 provides for the residual bank to be wound up if the sale of business tool has been used to transfer the bank's systemically important services or viable business to a private sector purchaser.

Article 58 provides for the application of the bridge bank tool to a bank that meets the resolution conditions by effecting a transfer of all or part of the business of the bank to a bridge bank. For that purpose the Authority is required to cause to be registered a company that is wholly or partially owned by the Authority, is controlled by the Authority and is created for the purpose of receiving a transfer of the shares or business of the bank in resolution by virtue of the utilization of transfer powers under the bridge bank tool with a view to maintaining access to critical functions, and in due course selling the bank or its business. Subject to the resolution safeguards, the Authority may apply the bridge bank tool to a bank that is failing or likely to fail without the consent of the shareholders of the bank in resolution or any third party other than the bridge bank and without complying with any procedural requirements under any other enactment or the constitutional documents of the bank other than those procedural requirements specified in the Law or the Regulations or an Order made under the Law.

Article 59 gives the Authority the power, after the application of the bridge bank tool and without prejudice to the resolution safeguards, to transfer assets, rights, liabilities or shares transferred to the bridge bank back to the bank in resolution or to original owners.

Under *Article 60*, where a transfer under the bridge bank tool is effected by way of a transfer of shares of the bank in resolution, the bank in resolution may exercise any rights following the transfer that it was entitled to exercise prior to the transfer.

Under *Article 61*, a bridge will acquire the deposit-taking business and any other relevant business of the bank in resolution as a continuation of the deposit-taking business being conducted prior to the transfer to the bridge bank.

Article 61 also provides that where a transfer under the bridge bank tool has been effected by way of a transfer of assets, rights, and liabilities, the bridge bank shall be entitled to exercise any rights following the transfer that the bank in resolution was entitled to exercise prior to the transfer, including membership rights, access to payment, clearing and settlement systems, securities exchanges and the Depositors Compensation Scheme, provided that the bridge bank meets the criteria for such membership or participation in such systems. Where a bridge bank does not meet the membership or participation criteria for a relevant payment, clearing or settlement system, securities exchange or the Depositors Compensation Scheme, the rights transferred under the bridge bank tool shall be exercised for such period as may be specified by the Authority, not exceeding 24 months, subject to renewal on application by the bridge bank to the Authority.

Article 62 provides for the operation of a bridge bank.

Article 63 provides for Authority to apply the asset separation tool to a bank in resolution by effecting a transfer of the assets, rights and liabilities of a bank in resolution, or a bridge bank to which shares or assets, rights and liabilities have been transferred under the bridge bank tool, to an asset management vehicle. The asset separation tool shall be used only in conjunction with the other stabilization tools in order to prevent undue competitive advantage for a bank in resolution.

Article 64 provides for the operation of an asset management vehicle.

Article 65 provides for the application of the bail-in tool to meet the resolution objectives, in accordance with the general principles of resolution –

(a) to recapitalize a bank that meets the resolution conditions to the extent sufficient to restore its ability to satisfy the Commission that bank is a fit and proper person to be registered to undertake deposit-taking business in accordance with Article 10(3)(a) of the Banking Business (Jersey) Law 1991 and to continue to carry out the activities for which it is registered under the Banking Business (Jersey) Law 1991, registered under the Financial Services (Jersey) Law 1998 or authorized under any other enactment, and to sustain sufficient market confidence in the bank; or

(b) in accordance with Article 74 to exercise the Authority's write down or conversion power to convert to equity or reduce the principal amount of claims or debt instruments that are transferred to a bridge bank with a view to providing capital for the bridge bank, or under the sale of business tool or the asset separation tool.

Article 66 provides for the assessment, on the basis of the pre-resolution valuation, the aggregate the amount by which eligible liabilities must be written down in order to ensure that the net asset value of the bank in resolution is equal to zero and the amount by which eligible liabilities must be converted into shares or other types of capital instruments in order to restore the Common Equity Tier 1 capital ratio of either the bank in resolution or the bridge bank.

Article 67 provides for the Authority to take certain action in respect of shareholders of a bank in resolution when applying the bail-in tool.

Article 68 provides for the sequence in which the write down and conversion power will be applied when the bail-in tool is applied.

Under *Article 69*, the Authority is only permitted to exercise the write down or conversion power in relation to a liability arising from a derivative contract upon or after closing-out such derivate contract.

Article 70 provides for the Authority to ensure that where the bail-in tool has been used, a business reorganization plan is drawn up and implemented.

Article 71 sets out ancillary provisions relating to bail-in.

Article 72 provides for a bank shall include in its contractual documents a contractual term by which the creditor or party to an agreement creating an eligible liability recognizes that that liability may be subject to the write down or conversion power and agrees to be bound by any reduction of the principal or outstanding amount due, conversion or cancellation that is effected by the exercise of that power by the Authority, provided that such liability is not excluded under Article 65(7), is not a covered deposit, is governed by the law of another jurisdiction and is issued or entered into after the date on which the Law comes into force.

Article 73 gives the Authority, acting in agreement with and under the direction of the Minister, to apply the government financial assistance tool to a bank that meets the

conditions specified in paragraph (4) by providing extraordinary public financial support to the bank in accordance with this Article for the purpose of resolving the bank, including by intervening directly to avoid its winding up, with a view to meeting the resolution objectives. The Authority may only apply the government financial assistance tool to a bank as a last resort after having assessed and exploited the other stabilization tools to the maximum extent practicable whilst maintaining financial stability, and if the resolution conditions are met , and the Minister and the Authority both determine the application of the resolution tools would not suffice to avoid significant adverse effect on the financial system in Jersey or would not suffice to protect the public interest where extraordinary liquidity assistance has already been given to the bank.

Article 74 gives the Authority the power to issue a mandatory reduction instrument to write down or convert relevant capital instruments or other liabilities of a bank in resolution into shares of the bank (the "write down and conversion power as defined in *Article 1*"). The Authority may only exercise the write down or conversion power after the carrying out a pre-resolution valuation (or a provisional valuation if applicable).

Article 75 makes provision for determining whether a default event provision applies. A "default event provision" is defined in Article 75(9).

Articles 76 to 85 contain the resolution safeguards.

Article 76 provides for treatment of shareholders in the case of partial transfers and application of the bail in tool.

Article 77 makes provision for a difference of treatment valuation to be carried out to determine whether shareholders and creditors would have received better treatment if a bank in resolution had been wound up under normal insolvency proceedings.

Article 78 provides a safeguard for shareholders and creditors so that they would be entitled to the payment of the difference from the Fund, if on application of a resolution tool to a bank, they incur losses that are greater than they would have incurred under normal insolvency proceedings.

Article 79 makes provision for the procedural requirements (publication and notification) after creation of a resolution instrument or share transfer order transfer order by which a resolution action is taken (including a foreign resolution instrument).

Article 80 provides for the protection of security arrangements, title transfer financial collateral arrangements, set-off arrangements, netting arrangements, covered bonds and structured finance arrangements where the Authority –

(a) transfers some, but not all, of the assets, rights or liabilities of a bank in resolution to another entity or, in the exercise of a resolution tool, from a bridge bank or asset management vehicle to another person; or

(b) exercises the power in Article 29(1)(p) to cancel or modify the terms of a contract to which the bank in resolution is a party or substitute a recipient as a party.

Article 81 protects title transfer financial collateral arrangements, set-off arrangements and netting arrangements by prohibiting the transfer of some, but not all, of the rights and liabilities that are protected under any such arrangement between the bank in resolution and another person, and the modification or termination of rights and liabilities that are protected under any such arrangement through the exercise of ancillary powers.

Article 82 protects liabilities secured under security arrangements by prohibiting the transfer of assets against which a liability is secured (unless that liability and the

benefit of the security are also transferred); the transfer of a secured liability (unless the benefit of the security is also transferred); the transfer of the benefit of the security (unless the secured liability is also transferred) or the modification or termination of a security arrangement (through the exercise of ancillary powers, if the effect of that modification or termination is that the liability ceases to be secured).

Article 83 protects structured finance arrangements and covered bonds by prohibiting the transfer of some, but not all, of the assets, rights and liabilities which constitute or form part of a structured finance arrangement or covered bond, or the termination or modification, through the exercise of ancillary powers, of the assets, rights and liabilities which constitute or form part of a structured finance arrangement or covered bond, to which the bank in resolution is party.

Article 84 permits the transfer or modification of covered deposits and other assets, rights or liabilities which are part of any of the arrangements referred to in *Articles 81, 82 and 83* without transferring the covered deposits or other assets, rights or liabilities, where necessary in order to ensure availability of the covered deposits.

Article 85 prevents the application of a resolution tool from prejudicing the operation of payment and settlement systems where the Authority transfers some but not all of the assets, rights or liabilities of a bank in resolution to another entity or exercises its general resolution power under Article 29(1)(p) to cancel or modify the terms of a contract to which the bank in resolution is a party or to substitute a recipient as a party.

Article 86 prohibits the Authority from exercising a resolution power in respect of a bank if the Minister, the Commission or the Attorney General notifies the Authority that the exercise of that resolution power would be likely to contravene an international obligation of the United Kingdom or Jersey. *Article 86* gives the Authority the discretion to request that the Minister, Commission or Attorney General serve an international obligation notice on the Authority where the Authority believes that it is at risk of exercising a resolution power that may contravene an international obligation of the United Kingdom or Jersey.

Article 87 clarifies that nothing in *Article 86(1) or (2)* requires the Minister, the Commission, the Attorney General or any other person to give advice or an opinion on a technical area that is outside of that person's scope, jurisdiction or technical expertise.

Article 88 requires that the Authority submits a report to the Minister with respect to any resolution action taken in respect of a bank not more than 12 months after the resolution action has been concluded. The report must contain a summary of the financial information relating to the resolution of the bank, including the findings of each of the valuations carried out, in particular, outlining the findings of the valuations in relation to the position of creditors, the general principle of resolution under Article 35(g) and the resolution safeguard in Article 78. The Minister must lay the report submitted to him or her before the States as soon as practicable after it is submitted to him or her.

Article 89 provides for the recognition of foreign resolution actions. Where the authority is notified of a foreign resolution action, the Authority is required to make an instrument recognizing a foreign resolution action; refusing to recognize a foreign resolution action; or recognizing part of the foreign action and refusing to recognize the remainder of the resolution action. The Authority may refuse to recognize a foreign resolution action if it is satisfied recognition would have an adverse effect on financial stability in Jersey; the taking of resolution action by the Authority in relation to a branch located in Jersey of a foreign bank is necessary to achieve one or more of the resolution objectives; creditors located or payable in Jersey would not, by reason

of being located in Jersey, receive the same treatment, and have similar legal rights, as creditors (including depositors) who are located or payable in the foreign jurisdiction concerned; or if the recognition of, and taking action in support of, the foreign resolution action would have material fiscal implications for Jersey; or recognition would be unlawful under Article 7(1) of the Human Rights (Jersey) Law 2000.

Part 7 of the Law which comprises *Articles 90 to 142* makes provision for bank winding up.

Article 90 provides for an application for a bank winding up order in respect of a bank to be made on any of specified grounds which will be considered by the Court in determining the application in accordance with *Articles 95 and 96*. The grounds are that –

(a) that the bank is unable, or likely to become unable to pay its debts;

(b) the winding up of the bank would be in the public interest; or

(c) the winding up of a bank would be fair.

Article 91 provides for an application for a bank winding up order to be an application for a bank winding up order to be may be made to the Court by the Authority, Commission or Minister.

Under *Article 92*, the applicant for a bank winding up order shall, not less than 48 hours before the making of the application, give notice of the application to the Authority, the bank, the Commission, the Minister, the Jersey Bank Depositors Compensation Board and the Viscount.

Article 93 gives the Authority, the bank, the Commission, the Minster, the Viscount, the bank or its bank's shareholders and, on application, other interested parties, the right to be heard (or to make representations) at the proceedings for the granting of a bank winding up order.

Under *Article 94*, the commencement of bank winding up proceedings against a bank bars the right to commence any normal insolvency proceedings against the bank or winding up proceedings under Article 155 of the Companies (Jersey) Law 1991.

Article 94 also provides for notice to be given of an application for normal insolvency proceedings or a winding up proceeding under Article 155 of the Companies (Jersey) Law 1991 made in respect of a bank. *Article 94* also provides for specified persons, including the Authority, the Commission and the bank to have the right to be heard. Where notice of normal insolvency proceedings or of a winding up proceeding under Article 155 of the Companies (Jersey) Law 1991, an application may be made within 7 days of the notice being given for a bank winding up order to be made in lieu of any other order and an order to commence normal insolvency proceedings shall not be made except with the consent of the Authority.

Article 95 gives the Court the power to grant an application and make the bank winding up order, adjourn the application (either *sine die* or to a specified a date) or dismiss the application.

Article 96 sets out the circumstances in which the court may grant an application for a bank winding up order based on the grounds for making an application specified in *Article 90*.

Article 97 a bank winding up order must name the persons appointed as the bank liquidators in accordance with *Article 98*. The bank winding up order must also specify the powers of the bank liquidator set out in *Article 104* and the manner in which such powers may be exercised.

Article 98 provides for the appointment of one or more bank liquidators and the qualifications required for such an appointment. An offence is created where a person acts as a bank liquidator when not qualified to do so.

Article 99 sets out the objectives of a bank liquidator in exercising his or her duties which include to work with the Jersey Bank Depositors Compensation Board to ensure that as soon as reasonably practicable each eligible depositor has the relevant account transferred to another bank or receives payment from (or on behalf of) the Depositors Compensation Fund or from the bank liquidator or from the deposit guarantee system of another jurisdiction in which the bank has branches and to wind up the affairs of the bank so as to achieve the best result for the bank's creditors as a whole.

Under *Article 100* where more than one bank liquidator is appointed in respect of a bank under *Article 98*, the powers and obligations granted to or imposed on a bank liquidator are exercisable by them jointly and severally such that they may act together or one may act without the other (and by doing so will bind the other) in the exercise of their powers and obligations.

Article 101 provides a bank liquidation committee to be established on the making of a bank winding up order for the purpose of ensuring that the bank liquidator properly exercises the functions of a bank liquidator. The bank liquidation committee must comprise a representative nominated by and representing each of the Authority, the Commission, the Jersey Bank Depositors Compensation Board, the Minister and the Viscount. *Article 101* imposes a requirement on a bank liquidator to report to the bank liquidation committee.

Article 102 provides for a bank winding up order to take effect from the date that the bank winding up order is made.

Article 103 makes provision for the effect of a bank winding up order.

Article 104 sets out the powers of the bank liquidator.

Under *Article 105* the bank liquidator, may, within 6 months after the commencement of a bank winding up, by the giving of notice signed by him or her and referring to this Article and Article 107 to each person who is interested in or under any liability in respect of the property disclaimed, disclaim on behalf of the bank any onerous property of the bank.

Article 106 prevents the disclaimer of a contract lease from taking effect unless a copy of its disclaimer has been served (so far as the bank liquidator is aware of their addresses) on every person claiming under the bank as a hypothecary creditor or under lessee and either no application under *Article 107* is made with respect to the contract lease before the end of the period of 14 days beginning with the day on which the last notice under this paragraph was served; or where such an application has been made, the Court directs that the disclaimer is to have effect.

Article 107 provides for the powers of court in respect of disclaimed property.

Article 108 contains general provisions relating to bank winding up.

Article 109 provides for the termination of the office of a bank liquidator.

Article 110 requires a bank liquidator who resigns, is removed or for any other reason vacates office to give notice of the resignation, removal or vacation to the Registrar and the applicant for the bank winding up order. An offence is created for failure to comply with this requirement.

Article 111 provides for the application of the rules under the Bankruptcy (Désastre) (Jersey) Law 1990 in a bank winding up.

Article 112 provides for the bank liquidator to pay the bank's debts and adjust rights of contributories.

Article 113 provides for rescission of contracts by an order of the Court on the application of a person who is, as against the bank liquidator, entitled to the benefit or subject to the burden of a contract made with the bank.

Under *Article 114*, if a bank has at a relevant time entered into a transaction with a person at an undervalue the Court has the power on the application of the bank liquidator in a bank winding up to make such an order as the Court thinks fit for restoring the position to what it would have been if the bank had not entered into the transaction.

Under *Article 115*, If a bank has at a relevant time given a preference to a person, the Court has the power, on the application of the bank liquidator in a bank winding up, to make such an order as the Court thinks fit for restoring the position to what it would have been if the preference had not been given.

Article 116 contains definitions which are relevant to *Articles 114* and *115*.

Article 117 lays responsibility for wrongful trading by a bank on a person who as director of the bank knew that there was no reasonable prospect that the bank would avoid normal insolvency proceeding; or on the facts known to him or her, was reckless as to whether the bank would avoid such normal insolvency proceedings.

Article 118 lays responsibility for fraudulent trading by a bank on persons who were knowingly parties to the carrying on of the business by a bank in that manner.

Article 119 gives the Court the power on the application of a bank liquidator to make an order with respect to an extortionate credit transaction.

Article 120 gives the bank liquidator the power to require a person in possession of property to which a bank appears in a bank winding up to be entitled to pay, deliver, convey, surrender or transfer the property or records to the bank liquidator.

Article 121 provides for the liability of a persons in respect of purchase or redemption of shares in a bank.

Article 123 imposes a duty on the officers or employees of a bank or the secretary to a bank to co-operate with bank liquidator in a bank winding up.

Article 124 requires that a bank liquidator report to the Attorney General possible misconduct by the bank or a person in relation to a bank.

Article 125 provides that for the purpose of an investigation by the Minister or the Commission under *Article 124*, an obligation imposed on a person by a provision of the Companies (Jersey) Law 1991 to produce documents or give information to, or otherwise to assist, inspectors appointed as mentioned in that Article is to be regarded as an obligation similarly to assist the Minister in his or her, or the Commission in its, investigation.

Article 126 provides that, subject to *Article 30* and to any other enactment as to the order of payment of debts, a bank's property shall on a bank winding up be applied in satisfaction of the bank's liabilities *pari passu*. The Court has the discretion to fix a time or times within which creditors of the bank are to prove their debts or claims or to be excluded from the benefit of any distribution made before those debts are proved.

Article 127 provides for the payment of interest on any debt proved in a bank winding up, including so much of any such debt as represents interest on the remainder.

Article 128 provides for the enforcement of a bank liquidator's duty to deliver a document or give notice in a bank winding up.

Under Article 129, a bank liquidator may apply to the Court for a determination of a question arising in the bank winding up, or for the Court to exercise any of its powers in relation to the bank winding up.

Article 130 imposes a requirement, for every invoice, order for goods or services or business letter issued by or on behalf of a bank that is being wound up, or the bank liquidator, being a document on or in which the name of the bank appears, to contain a statement that the bank is in liquidation. The bank is guilty of an offence in the event of a failure to comply with that requirement.

Article 131 provides for the liability as contributories of present and past members of a bank that is wound up.

Article 132 provides for the retention of the records of a bank that has been wound up and dissolved and those of the bank liquidator and bank liquidation committee for a period of at least 10 years after the banks dissolution. After 10 years from the bank's dissolution no responsibility rests on the bank, a bank liquidator, the bank liquidation committee or a person to whom the custody of the records has been committed, by reason of any record not being forthcoming to a person claiming to be interested in it. An offence is created for contravention of the requirement to retain the records.

Article 133(1) limits the use by the bank liquidator of information relating to a bank winding up**,** its customers and its creditors for the purpose of achieving the objectives referred to in *Article 99(1)* and provides that, in the pursuit of the objectives, the bank liquidator may disclose such information to a person, entity or insolvency practitioner as appropriate, including a purchaser or potential purchaser of all or part of the business of the bank, the Minister, the Commission, the Jersey Bank Depositors Compensation Board, professional advisers, and as otherwise may be permitted by the Data Protection (Jersey) Law. The bank liquidator is required to seek the approval of the bank liquidation committee to disclose information referred to in *Article 133(1)* for any purpose other than a purpose referred to in *Article 133(1),* unless the disclosure of such information is routinely required to facilitate the ongoing conduct of business and the provision of services to depositors *(Article 133(2)).*

Article 134 makes provision for the inspection of books and papers of a bank being wound up by creditors and contributories as the Court thinks just.

Under Article 135, where a bank is being wound up, all books and papers of a bank and of the bank liquidator are treated, as between the contributories of the bank, prima facie evidence of the truth of all matters purporting to be recorded in them.

Article 136 requires that, if a bank winding up is not concluded within one year after its commencement, a progress report as to the status of the bank winding up must be submitted by the bank liquidator to the Registrar at such intervals as may be specified by the Court, until the bank winding up is concluded.

Article 137 gives the Court the power to direct meetings of creditors and contributories to ascertain wishes of creditors or contributories in a bank winding up.

Article 138 provides for all of the provisions of Part 7 to apply where a bank liquidator exercise his or her powers in respect of a subsidiary of a bank being wound up which by virtue of the insolvency of the bank being wound up, is also insolvent.

Article 139 empowers the Minister to make an Order to provide for any other provision of Jersey insolvency law to be applied to a bank winding up.

Article 140 makes provision for the termination of a bank winding up by order of the Court on the application of the bank liquidator and for any bank liquidator appointed

for the purpose of the bank winding up to cease to hold that office upon such termination.

Article 141 provides for the dissolution of a bank when the affairs of a bank are fully wound up and for the bank liquidator to make up an account and final report of the bank winding up, showing how it has been conducted and how the bank's property has been disposed of.

Article 142 makes provision for assistance to be given to foreign authorities in insolvency matters.

Part 8 of the Law comprises *Articles 143 to 153* which make provision for investigations regarding the affairs of a bank to be carried out.

Article 143 makes provision for the appointment of inspectors to investigate the affairs of a bank and to report on them as the Authority may direct. Article 143 applies whether or not the bank is in resolution or being wound up.

Article 144 provides for an inspector who is appointed to investigate the affairs of a bank and who thinks it is necessary, for the purposes of his or her investigation, to investigate also the affairs of another entity which is or at any relevant time has been the bank's subsidiary or holding company, or a subsidiary of its holding company or a holding company of its subsidiary, to have the power to do so.

Article 145 gives an inspector the power to require a person to produce and make available to the inspector all records in the person's custody or power relating to an investigation and to require the person to attend before the inspector and otherwise to give the inspector all assistance in connection with an investigation which the person is reasonably able to give. A person is under a duty to comply with the requirement of an inspector under *Article 145*.

Article 146 gives an inspector the power to require a director to produce and make available to the inspector all records in the director's possession or under the director's control relating to a bank account if the inspector has reasonable grounds for believing that a director, or past director, of the bank or other person whose affairs they are investigating maintains or has maintained a bank account with another person (whether in Jersey or elsewhere) and into or out of which there has been paid money which has been in any way connected with an act or omission, which constitutes misconduct.

Article 147 provides for an inspector to apply to the Bailiff for a warrant to search and enter specified premises.

Article 148 creates an offence for wilful obstruction of any person acting in the execution of a warrant issued under *Article 147*.

Article 149 creates an offence for failure to co-operate with an inspector.

Article 150 makes provision for the inspector to make interim reports and a final report to the Authority.

Article 151 requires that the expenses of and incidental to an investigation by an inspector be defrayed in the first instance by the Authority, but makes the bank liable to make repayment to the Authority.

Under Article 152, a copy of a report of an inspector, certified by the Authority to be a true copy, is admissible in legal proceedings as evidence of the opinion of the inspector in relation to a matter contained in the report.

Article 153 clarifies that nothing in Part 8 requires the disclosure or production to the Authority, or to an inspector appointed by the Authority, by a person of information or records which the person would in an action in the Court be entitled to refuse to

disclose or produce on the grounds of legal professional privilege in proceedings in the Court except, if the person is a lawyer, the name and address of his or her client.

Par 9 of the Law comprises *Articles 154 to 163* which impose restrictions on disclosure of information.

Article 154 imposes a restriction on the disclosure of information by a person who receives information relating to the business or other affairs of any person under the Law or who obtains any such information directly or indirectly from the person who received it without the consent of the person to whom it relates and (if different) the person from whom it was received. The restriction does not apply to information which, at the time of the disclosure, is or has already been made available to the public from other sources or to information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it. An offence is created for disclosure information in contravention of *Article 154*.

Article 155 permits the disclosure of information for facilitating discharge of functions of the Authority and specified persons.

Article 156 permits the disclosure of information for facilitating discharge of functions by other authorities including the Commission, the Viscount and the Comptroller and auditor General.

Article 157 permits other types of disclosure of information, for example, disclosure of information with a view to investigation of an offence.

Article 158 gives the States the power to make Regulations to amend *Articles 155, 156 and 157*.

Article 159 clarifies that Articles *154 to 157* apply also to information supplied to the Authority for the purposes of its functions by a resolution authority in the jurisdiction in which a bank operates branches or subsidiaries.

Article 160 makes provision for the Authority to negotiate and enter into binding and non-binding framework co-operation agreements with the resolution authorities in other jurisdictions in which the bank's group conducts business.

Article 161 provides for the Authority to issue a public statement concerning a bank if it appears to the Authority to be desirable to issue the statement in the best interests of persons who have transacted or may transact deposit-taking business with the bank, or in the best interests of the public. If the Authority proposes to issues a public statement the Authority must serve a notice on the bank *(Article 161(2)).*

Article 162 prohibits the Authority from issuing the public statement before the expiration of 14 days following the date of the service of a notice under *Article 161(2),* except where certain public interest criteria are met.

Article 163 provides for appeals and orders about public statements.

Part 10 of the Law comprises *Articles 164 to 174* which are miscellaneous provisions.

Article 164 gives the Authority the discretion to apply to the Court for the determination of a question arising in relation to the application of a resolution tool, exercise of a resolution power or the taking of resolution action.

Article 165 makes provision for the service of notices.

Article 166 provides for it to be an offence for a person to make a statement in any document, material, evidence or information which is required to be provided to the Authority or to any person entitled to the information under the Law that, at the time and in the light of the circumstances under which it is made, is false or misleading

with respect to any material fact, or that omits to state any material fact the omission of which makes the statement false or misleading. A person shall not be guilty of the offence if the person did not know that the statement was false or misleading and with the exercise of reasonable diligence could not have known that the statement was false or misleading.

Article 167 sets out the circumstances when partners, directors and officers of a body corporate, a separate limited partnership or a limited liability partnership or other partnership with separate legal identity may be criminally liable where an offence under the Law is proved against such a body corporate or partnership.

Article 168 provides for a person aggrieved by a decision of the Authority, the Commission or any other person exercising a function or power under the Law, to have the right to appeal to the Court against the decision within 28 days of the decision being made. An appeal may be made only on the ground that the decision of the Authority the Commission or other person was unreasonable having regard to all the circumstances of the case. The lodging of the appeal against a decision of the Authority to take a crisis prevention measure does not automatically suspend the effects of the decision against which the appeal is made. Also, the decision of the Authority to take a crisis prevention measure shall be immediately enforceable and shall give rise to a rebuttable presumption that a suspension of its enforcement would be against the public interest.

On an appeal under *Article 168*, the Court has the power to make such interim or final order as it thinks fit.

Article 168 also provides that where it is necessary to protect the interests of third parties acting in good faith who have acquired shares, assets, rights or liabilities of a bank in resolution by virtue of the application of a resolution tool or the exercise of a resolution power by the Authority, the revocation of a decision of the Authority shall not affect any subsequent administrative acts or transactions concluded by the Authority which were based on the revoked decision and in that case the remedies for wrongful decision or action by the Authority shall be limited to compensation for the loss suffered by the applicant as a result of the decision to act.

Article 169 provides that the power to make Rules of Court under the Royal Court (Jersey) Law 1954 includes a power to make Rules for the purposes of the Law.

Article 170 provides that the rules of customary law applicable to a bank apply to a bank except in so far as they are inconsistent with the express provisions of the Law.

Article 171 gives the States the power by Regulations to make such other provision as the States think fit for the purposes of carrying the Law into effect. Article *168* also gives the States power to amend Parts 5 and 6 of the Law.

The Regulations may create offences, and specify penalties for such offences not exceeding imprisonment for 2 years and a fine and may make such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient including, provision making consequential amendments to the Law and any other enactment.

Article 172 gives the Minister power to make an Order prescribing any matter which is to be prescribed under the Law and to amend Part 1 and the Schedules. An Order may make different provision for different cases and contain such incidental, supplemental and transitional provisions as appear to the Chief Minister to be necessary or expedient. By *Article 172(3)* the Chief Minister must consult the Authority or the Commission before making any Orders under the Law.

Article 173 introduces a consequential amendment of Article 8 of the Interpretation (Jersey) Law to add a bank that has been wound up to the definition "bankrupt" and enables the States, by Regulations, to make provision in this or any other Law for any transitional matter connected the coming into force of the Law.

Article 174 cites the Law as the Bank (Recovery and Resolution) (Jersey) Law 201- and provides that it shall come into force on such day or days as the States may by Act appoint.

Schedule 1 contains matters relating to the appointment of members of the Authority and the procedure of the Authority at meetings.

Schedule 2 contains information to be supplied by a bank for resolution planning, matters to be contained in the resolution plan and matters for consideration to assess resolvability of the bank.

Under the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993, level 1 is £50, level 2 is £500, level 3 is £2,000 and level 4 is £5,000.

DRAFT BANK (RECOVERY AND RESOLUTION) (JERSEY) LAW 201-

Arrangement

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DRAFT BANK (RECOVERY AND RESOLUTION) (JERSEY) LAW 201-

A LAW to provide for bank recovery, resolution and winding up and for connected purposes.

Adopted by the States	*[date to be inserted]*
Sanctioned by Order of Her Majesty in Council	*[date to be inserted]*
Registered by the Royal Court	*[date to be inserted]*

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

PART 1

PRELIMINARY

1 Interpretation

In this Law unless the context otherwise requires –

"Additional Tier 1 instruments" means [should be defined in accordance with the definition of "Additional Tier 1 capital" to be adopted by the Commission following its Consultation on the implement of revised Basel Committee standards relating to capital adequacy and leverage (Consultation Paper No. 8 2015, Basel III: Capital Adequacy and Leverage), taking into account the definition given to that term in Article 2.1(69) of BRRD (which applies the definition given in Article 52(1) of Regulation (EU) No 575/2013)];

"affected creditor" means a creditor whose claim relates to a liability that is reduced or converted to shares by the exercise of the write down or conversion power pursuant to the application of the bail-in tool;

"asset management vehicle" means a legal person that meets the following requirements –

(a) it is wholly or partially (directly or indirectly) owned by the Authority;

(b) it is controlled by the Authority; and

(c) it has been created for the purpose of receiving some or all of the assets, rights and liabilities of one or more banks in resolution or bridge banks or both;

"asset separation tool" means the mechanism for effecting a transfer of assets, rights or liabilities of a bank in resolution to an asset management vehicle described in Article 63;

"Authority" means the Jersey Resolution Authority established under Article 4;

"bail-in tool" means the mechanism for recapitalizing a bank or exercise of the write down or conversion power described Article 65(1);

"bank in resolution" means a bank in respect of which resolution action is being taken;

"bank" means a person to whom this Law applies under Article 3(1);

"bank liquidator" means a person appointed as such under Article 98;

"branch" means a place of business which forms part of a bank and which carries out directly all or some of the transactions inherent in the business of that bank but does not have a legal personality separate from the bank;

"bridge bank tool" means the mechanism for transferring one or more share of one or more banks in resolution or all or any assets, rights or liabilities of one or more banks under resolution described in with Article 58(2);

"bridge bank" mean a company referred to in Article 58(1);

"business reorganization plan" means a business reorganization plan drawn up and implemented in accordance with Article 70;

"client assets" means assets which a bank has undertaken to hold for a client (whether or not on trust, and whether or not the undertaking has been complied with);

"Commission" means the Jersey Financial Services Commission established under Article 2 of the Financial Services Commission (Jersey) Law 1998;

"Common Equity Tier 1 instruments" [should be defined in accordance with the definition of "Common Equity Tier 1" to be adopted by the Commission following its Consultation on the implement of revised Basel Committee standards relating to capital adequacy and leverage (Consultation Paper No. 8 2015, Basel III: Capital Adequacy and Leverage), taking into account the definition given to that term in Article 2.1(68) of BRRD];

"conversion rate" means the factor that determines the number of shares into which a liability of a specific class will be converted, by reference either to a single instrument of the class or to a specified unit of value of a debt claim;

"core business lines" means business lines and associated services which represent material sources of revenue, profit or franchise value for a bank or a bank's group;

"court" means the Royal Court;

"covered bond" means a bond issued by a bank where sums deriving from the issue of those bonds shall be invested in assets which, during the whole period of validity of the bonds, are capable of covering claims attaching to the bonds

and which, in the event of failure of the bank, would be used on a priority basis for the reimbursement of the principal and payment of the accrued interest;

"covered deposit" means the part of an eligible deposit that does not exceed the maximum amount of compensation payable to a depositor under Article 22 of the Bank Depositors Compensation (Jersey) Law 201-[1];

"crisis management measure" means –

(a) the exercise of a stabilization power in relation to a bank by the Authority;

(b) the recognition of a foreign resolution action by the Authority;

(c) the exercise of a stabilization power in support of a foreign resolution action by the Authority;

"crisis prevention measure" means –

(a) the imposition by the Authority or the Commission of a requirement to take relevant measures with respect to a bank's recovery plan;

(b) the imposition by the Authority or the Commission of a requirement to take measures to remove impediments to recoverability of a bank;

(c) the imposition of an early intervention measure described in Article 31(4);

(d) the appointment of a temporary administrator under Article 32(1); or

(e) the exercise of the write down or conversion power described in Article 74;

"critical functions" means activities, services or operations the discontinuance of which is likely to lead to the disruption of services that are essential to the real economy in Jersey or the disruption of financial stability due to the size, market share, external and internal interconnectedness, complexity, or cross-border activities of a bank or bank's group, with particular regard to the substitutability of those activities, services or operations;

"debt instruments" means bonds and other forms of transferable debt, instruments creating or acknowledging debt, and instruments giving rights to acquire debt instruments;

"definitive valuation" shall be construed in accordance with Article 46;

"Depositors Compensation Fund" means the compensation fund established under Article 18 of the Bank Depositors Compensation (Jersey) Law 201-;

"Depositors Compensation Scheme" means the scheme for payment of compensation established under the Bank Depositors Compensation (Jersey) Law 201-;"

"deposit" has the meaning given in Article 2 of the Banking Business (Jersey) Law 1991, and "depositor" shall be construed accordingly;

[1] Not yet lodged *au Greffe* at the time of printing this Consultation Draft.

"derivative" means –

(a) options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash;

(b) options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event);

(c) options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market and/or a multilateral trading facility;

(d) options, futures, swaps, forwards and any other derivative contracts relating to commodities that can be physically settled, not otherwise mentioned in paragraph (c) and not being for commercial purposes, and which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are cleared and settled through recognized clearing houses or are subject to regular margin calls;

(e) derivative instruments for the transfer of credit risk;

(f) financial contracts for differences; or

(g) options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event), as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market or a multilateral trading facility, are cleared and settled through recognized clearing houses or are subject to regular margin calls;

"difference of treatment valuation" means a valuation carried out under Article 77(1);

"eligible depositor" and "eligible deposit" shall be construed in accordance with Article 4 of the Bank Depositors Compensation (Jersey) Law 201-;

"eligible liabilities" means liabilities and capital instruments that do not qualify as Common Equity Tier 1 instruments, Additional Tier 1 instruments or Tier 2 instruments of a bank that are not excluded from the exercise of the write down or conversion power under Article 65(7);

"financial contracts" includes the following contracts and agreements –

(a) securities contracts, including –

(i) contracts for the purchase, sale or loan of a security, a group or index of securities,

(ii) options on a security or group or index of securities, and

(iii) repurchase or reverse repurchase transactions on any such security, group or index;

(b) commodities contracts, including –

(i) contracts for the purchase, sale or loan of a commodity or group or index of commodities for future delivery,

(ii) options on a commodity or group or index of commodities, and

(iii) repurchase or reverse repurchase transactions on any such commodity, group or index;

(c) futures and forwards contracts, including contracts (other than a commodities contract) for the purchase, sale or transfer of –

(i) a commodity or property of any other description,

(ii) a service, or

(iii) a right or interest,

for a specified price at a future date;

(d) swap agreements, including –

(i) swaps and options relating to interest rates, spot or other foreign exchange agreements, currency, an equity index or equity, a debt index or debt, a commodity index or commodity, weather, emissions or inflation,

(ii) total return, credit spread or credit swaps, and

(iii) any agreements or transactions that are similar to an agreement referred to in clause (i) or (ii) which is the subject of recurrent dealing in the swaps or derivatives markets;

(e) inter-bank borrowing agreements where the term of the borrowing is 3 months or less; and

(f) master agreements for any of the contracts or agreements referred to in sub-paragraphs (a) to (e);

"foreign bank" means a bank, the head office of which is established in a jurisdiction other than Jersey;

"foreign resolution action" means an action under the law of a jurisdiction, other than Jersey, to manage the failure or likely failure of a foreign bank where the action is comparable, in terms of objectives and anticipated results, to resolution actions under this Law;

"foreign resolution instrument" means an instrument made by the Authority under Article 89(1);

"Fund" means the Jersey Bank Resolution Fund" established under Article 22;

"general principle of resolution" shall be construed in accordance with Article 35;

"government financial assistance tool" means the mechanism for providing extraordinary public financial support to the bank described in Article 73;

"group entity" means a legal person that is part of a group;

"group" means a parent and its subsidiaries;

"home jurisdiction", in relation to a bank, means the jurisdiction in which the bank is incorporated;

"home regulator" in relation to a bank, means the regulator of banks in the bank's home jurisdiction;

"home regulatory supervisor", in relation to a bank, means the supervisor of banks in the bank's home jurisdiction;

"home resolution authority" in relation to a bank, means the resolution authority in the bank's home jurisdiction;

"holding company" has the meaning given to it under Article 2(4) of the Companies (Jersey) Law 1991;

"intermediate home jurisdiction", in relation to a bank, means the jurisdiction in the bank's intermediate home resolution authority is located;

"intermediate home regulatory supervisor" in relation to a bank, means the supervisor of banks in the bank's intermediate home jurisdiction;

"intermediate home resolution authority" in relation to a bank, means the resolution authority (other than the home resolution authority) which if that resolution authority takes resolution action, that action can affect the bank;

"instruments of ownership" mean shares, instruments that are convertible into or give the right to acquire shares, and instruments representing interests in shares;

"international obligations notice" means a notice served by the Authority under Article 86(1);

"intragroup financing agreement" means a contract by which one group entity guarantees the obligations to a third party of another group entity within the same group;

Jersey Bank Depositors Compensation Board" has the same meaning as in Article 7(1) of the Bank Depositors Compensation (Jersey) Law 201-;

"Jersey insolvency law" means the law of Jersey relating to normal insolvency proceedings;

"management", in relation to a bank, includes the directors, senior managers, and managers and, if applicable, former members of management of a bank who are responsible both individually and collectively;

"mandatory reduction instrument" means an instrument issued by the Authority to exercise the write down or conversion power;

"Minister" means the Chief Minister;

"normal insolvency proceedings" means proceedings for making a person bankrupt within the meaning of Article 8 of the Interpretation (Jersey) Law 1954 other than bank winding up proceedings under Part 7;

"own funds" means the sum of Tier 1 capital and Tier 2 capital;

"parent", in relation to a bank, means the body that wholly owns and manages the bank;

"prescribed" means prescribed by an Order made by the Minister;

"pre-resolution valuation" shall be construed in accordance with Article 44;

"provisional valuation" shall be construed in accordance with Article 45;

"recipient" means the person or entity to which shares, debt instruments, assets, rights or liabilities, or any combination of those items are transferred from a bank in resolution.

"recognized foreign resolution action" means a foreign resolution action which is, or part of which is, recognized by the Authority under Article 89(1);

"recovery plan" mean a recovery plan drawn up and maintained by a bank in accordance with Article 21;

"Registrar" means the the registrar appointed pursuant to Article 196 of the Companies (Jersey) Law 1991;

"Regulations" means Regulations made under this Law;

"regulated market" means a multilateral system operated or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments in the system and in accordance with its non-discretionary rules in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules or systems, and which is authorised and functions regularly and in accordance with the provisions of Title III of the Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1);

"relevant capital instrument" means Additional Tier 1 instruments and Tier 2 instruments;

"residual bank" means, in circumstances where part of the business of a bank has been sold to a private sector purchaser using the sale of business tool, or transferred to a bridge bank using the bridge bank tool, the non-sold or non-transferred part of the bank;

"resolution" means the application under this Law of a resolution tool in order to achieve one or more of the resolution objectives;

"resolution action" means the decision to place a bank that satisfies the resolution conditions in resolution;

"resolution authority" means the Authority other authority in a jurisdiction other than Jersey authorized by the law of that jurisdiction to exercise the powers and to carry out functions similar to that of the Authority;

"resolution conditions" means the conditions set out in Article 34(1);

"resolution instrument" means instrument setting out the decision of the Authority regarding the resolution of a bank;

"resolution objectives" means the resolution objectives specified in Article 33;

"resolution plan" means a resolution plan drawn up for a bank by the Authority under Article 24;

"resolution power" means any of the powers specified in Article 29;

"resolution safeguard" means a safeguard set out under Articles 76 to 85;

"resolution tool" means the stabilization tools and the bank winding up procedure set out in Part 7;

"sale of business tool" means transferring shares, assets, rights or liabilities of a bank in resolution to a purchaser in accordance with Article 51(1);

"secured liability" means a liability where the right of the creditor to payment or other form of performance is secured by a charge, pledge or lien or collateral arrangements, including liabilities arising from repurchase transactions and other title transfer collateral arrangements;

"shareholders" mean holders of shares and holders other instruments of ownership,

"shares" includes shares and other instruments of ownership;

"share transfer order" means an order for the transfer of shares;

"stabilization power" means a resolution power which relates specifically to the application of a the stabilisation tool;

"stabilization tools" means the sale of business tool, bridge bank tool, asset separation tool, bail-in tool and government financial assistance tool;

"States Police Force" has the meaning given to it under Article 1 of the States of Jersey Police Force Law 2012;

"subsidiary" shall be construed in accordance with Article 2 of the Companies (Jersey) Law 1991;

"Tier 2 instruments" [should mean in accordance with "Tier 2 capital" to be adopted by the Commission following its Consultation on the implement of revised Basel Committee standards relating to capital adequacy and leverage (Consultation Paper No. 8 2015, Basel III: Capital Adequacy and Leverage), taking into account the definition given to that term in Article 2.1(73) of BRRD, Section 3(1) of the Banking Act and Article 63 of Regulation (EU) 575/2013];

"transfer power" means the power to transfer shares, debt instruments, assets, rights or liabilities, or any combination of those items, from a bank in resolution to a recipient;

"winding up" means, in relation to a bank, the realization of the assets of the bank and the distribution of the assets to those entitled to receive them;

"write down or conversion power" means the power to write down or convert relevant capital instruments of a bank in accordance with Article 74.

2 Circumstances in which a bank is deemed to be failing or likely to fail

For the purposes of this Law, a bank shall be deemed to be failing or likely to fail in one or more of the following circumstances –

(a) the bank has failed to continue to satisfy the Commission that it is a fit and proper person to be registered to undertake deposit-taking business in accordance with Article 10(3)(a) of the Banking Business (Jersey) Law 1991 (including that the bank has incurred or is likely to incur losses that will deplete all or a significant amount of its own funds);

(b) the value of the assets of the bank determined in accordance with the pre-resolution valuation of the bank is less than the value of its liabilities as so determined;

(c) the bank is unable to pay its debts as they fall due;

(d) one or more of sub-paragraphs (a) to (c) will, in the near future, apply to the bank; or

(e) extraordinary public financial support is required in respect of the bank except when, in order to remedy a serious disturbance in the economy of Jersey and preserve financial stability, the extraordinary public financial support is provided temporarily to a solvent bank and takes any of the following forms –

(i) a States guarantee to back liquidity facilities, or of newly issued liabilities, in accordance with the Public Finance (Jersey) Law 2005, or

(ii) an injection of own funds or purchase of capital instruments at prices and on terms that do not confer an advantage upon the bank, where the circumstances referred to in sub-paragraphs (a), (b) or (c) of this paragraph are not present and the write down or conversion power has not been exercised at the time the extraordinary public financial support is granted.

3 Application

(1) Subject to paragraph (2), this Law applies to –

(a) a person registered to carry out deposit-taking business in or from within Jersey under the Banking Business (Jersey) Law 1991;

(b) a holding company or a subsidiary of a person specified in paragraph (a); or

(c) where a person specified in paragraph (a) is a foreign bank, a branch or subsidiary of the foreign bank.

(2) Part 7 shall only apply to –

(a) a person specified in paragraph (1)(a); and

(b) a company incorporated under the Companies (Jersey) Law 1991 that is a holding company or a subsidiary of a person specified in paragraph (1)(a).

(3) Where a stabilization power is exercised in respect of a bank, it does not cease to be a bank for the purposes of this Law if it is no longer registered as referred to in paragraph (1)(a) as a result of a resolution action.

(4) The Minister may by Order amend this Article.

PART 2

JERSEY RESOLUTION AUTHORITY

4 Establishment of the Authority

(1) There shall be established a body to be known as the Jersey Resolution Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal and may –

(a) sue and be sued in its corporate name;

(b) enter into contracts and acquire, hold and dispose of any property; and

(c) so far as possible for a body corporate, exercise the rights, powers and privileges and incur the liabilities and obligations of a natural person of full age and capacity.

(3) The application of the common seal of the Authority shall be authenticated by the signature of a person authorized by the Authority to sign on its behalf and every document bearing the imprint of the seal of the Authority shall be deemed to be properly sealed unless the contrary is proved.

(4) Except as this Law provides to the contrary, the Authority shall be independent of the Minister and of the States and neither the Minister nor the States shall be liable for any act or omission or debt or other obligation of the Authority.

5 Appointment of members of Authority

(1) The States shall appoint the members of the Authority from persons nominated as follows –

(a) one member nominated by the Minister for Treasury and Resources;

(b) one member nominated by the Commission; and

(c) at least one member nominated by the Minister.

(2) The Minister shall designate one member of the Authority to be the Chairman.

(3) The functions, powers, rights and obligations of the Authority shall not be affected by any vacancy in its membership or a defect in the appointment of any member.

(4) Where no appointment is made by the Minister under paragraph (1), the Minister may appoint a public officer, public authority or other person to discharge the functions of the Authority.

(5) A person appointed under paragraph (4) shall have all the functions, powers, rights and obligations of the Authority under this Law.

(6) The Minister may, in respect of each member of the Authority other than the Chairman, appoint, on the nomination of the member, one person to be an alternate member to attend, in place of the member, meetings of the Authority that the member is for any reason unable to attend.

(7) When attending meetings of the Authority, an alternate member shall for all purposes be deemed to be a member of the Authority.

(8) An alternate member shall, unless he or she sooner resigns his or her membership or his or her appointment is sooner revoked, cease to be an alternate member when the member for whom he or she is an alternate member ceases to be a member.

6 Terms of appointment of members and proceedings of the Authority

(1) Schedule 1 shall have effect with respect to the members of the Authority and the proceedings of the Authority.

(2) Subject to the provisions of this Law, the Authority may regulate its own proceedings.

7 Functions of the Authority

The Authority shall carry out the following functions –

(a) make preparations to facilitate the resolution of banks;

(b) administer the resolution of banks;

(c) such functions in relation to bank resolution or recovery or such incidental or ancillary matters as are required or authorized by this Law or by the Regulations; and

(d) such other functions as are conferred on it by this Law or any other enactment.

8 Guiding principles

In exercising any of its functions, the Authority may take into account any matter which it considers appropriate but shall, in particular, have regard to –

(a) the reduction of the risk to the public of financial loss due to financial unsoundness of a person to whom this Law applies;

(b) the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters; and

(c) the best economic interests of Jersey.

9 General powers of the Authority

(1) The Authority has the power to do anything that is calculated to facilitate, or that is incidental or conducive to, the performance of any of its functions under this Law including –

(a) the exercise of its general resolution powers under Article 29;

(b) the exercise of its powers of investigation under Part 9; and

(b) as part of the Authority's routine examination of a bank, the power to –

(i) to require the bank to supply information in a format and at times specified by the Authority, or

(ii) to give a direction to the bank to take measures which in the opinion of the Authority, are required to address impediments to the effective exercise of the stabilization powers or the winding up of a bank.

(2) Without prejudice to the generality of paragraph (1), the Authority may, in connection with the carrying out of its functions –

(a) subject to Part 9, seek and exchange information relating to resolution carried on in or outside Jersey;

(b) consult and seek the advice of such persons or bodies, whether inside or outside Jersey, as it considers appropriate;

(c) subject to Part 9, publish, in such manner as it considers appropriate, such information relating to its functions as it thinks fit; and

(d) provide advice, assistance or services to any person with a view to securing the efficient and effective carrying on of deposit-taking business in or from within Jersey.

10 Limitation of liability

(1) A person or body to whom this Article applies shall not be liable in damages for anything done or omitted in the discharge or purported discharge of any function under, or authorized by or under, this Law or any other enactment unless it is shown that the act or omission was in bad faith.

(2) This Article applies to –

(a) the Authority, any member or any person who is, or is acting as, an officer, employee or agent of the Authority or who is performing any duty or exercising any power on behalf of the Authority or under the control of the Authority; and

(b) the States or any Minister in respect of any delegation of functions to the Authority.

11 Appointment and remuneration of staff

(1) The Authority may appoint such officers, employees and agents as it considers necessary for carrying out its functions.

(2) The Authority may –

(a) make appointments under paragraph (1) on such terms as to remuneration, expenses, pensions and other conditions of service as it thinks fit; and

(b) establish and maintain such schemes or make such other arrangements as it thinks fit for the payment of pensions and other benefits in respect of its officers and employees.

12 Delegation to members and officers

(1) Where any functions or powers are conferred upon or vested in the Authority by or under this Law or any other enactment, the Authority may delegate such functions or powers wholly or partly to –

(a) the Chairman;

(b) one or more members; or

(c) an officer of the Authority.

(2) Nothing in this Article shall authorize the Authority to delegate –

(a) its power of delegation under paragraph (1); or

(b) the review of any of its decisions.

(3) The delegation of any functions under this Article –

(a) shall not prevent the exercise of those functions by the Authority itself; and

(b) may be amended or revoked by the Authority.

13 Guidance and directions

(1) The Minister may, after consulting the Authority and where the Minister considers that it is necessary in the public interest to do so, give to the Authority guidance or give, in writing, general directions in respect of the policies to be followed by the Authority in relation to the resolution of a bank in Jersey and the manner in which any function of the Authority is to be carried out.

(2) The Authority shall, in carrying out any of its functions, have regard to any guidance and act in accordance with any directions given to it by the Minister under this Article.

14 Publication of information and advice

(1) The Authority may publish information or give advice or arrange so to do in such form and manner as it considers appropriate with respect to –

(a) the operation of this Law, or any other enactment in connection with resolution of banks, including, in particular, the rights of depositors, the duties of a bank and the steps to be taken for enforcing those rights or complying with those duties;

(b) any matters relating to the functions of the Authority under this Law or any other enactment; or

(c) any other matters relating to the resolution of a bank about which it appears to it to be desirable to publish information or give advice concerning –

(i) the reduction of the risk to the public of financial loss due to dishonesty, incompetence or malpractice by, or the financial unsoundness of, persons carrying on deposit-taking business in or from within Jersey,

(ii) the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters, or

(iii) the best economic interests of Jersey.

(2) The Authority may offer for sale copies of information published under this Article and may, if it thinks fit, make a reasonable charge for advice given under this Article at any person's request.

(3) Nothing in this Article shall be construed as authorizing the disclosure of information in any case where, apart from the provisions of this Article, it disclosure is prohibited under another law.

15 Funding of the Authority

The funds and resources of the Authority are –

(a) the administrative levy payable under Article 16;

(b) any grant paid to the Authority under Article 17;

(c) any money borrowed by the Authority accordance with Article 18; and

(d) any other money or property, and any income derived from such money or property, as is lawfully vested in the Authority through the exercise of its powers under this Law.

16 Annual administration levy

(1) An annual administration levy may be raised by the Authority, in relation to a particular registration year, to enable the Authority to do any one or more of the following –

(a) to meet its expected recurring administrative costs in that year;

(b) to provide or maintain a reserve, of an amount appearing to the Authority to be prudent in that year, against potential recurring administrative costs in future years (whether by way of contingency, allowance for depreciation, or otherwise); and

(c) to provide or maintain a reserve, of an amount appearing to the Authority to be prudent in that year, against the possibility, in the event of resolution action in respect of a bank in that or any subsequent year, of the Authority wishing to pay administrative costs without needing to wait for receipt of other funding for those costs.

(2) The provisions of this Article apply to any registration year irrespective of whether any resolution action in respect of any bank is applied by the Authority.

(3) Before the end of each registration year the Authority –

(a) shall review, in the light of its budget referred to in Article 21(1), whether it will need to raise an annual administration levy for the next registration year;

(b) may, in the light of the review under paragraph (a), decide to raise an annual administration levy for the next registration year; and

(c) must, if it decides to raise an annual administration levy under paragraph (b), also decide the amount to be raised as such annual administrative levy for the next registration year.

(4) A bank is liable to pay to the Authority an annual administration levy in respect of a year if –

(a) that year is a registration year for which the Authority decides to raise a an annual administrative levy under paragraph (3); and

(b) the bank is registered during any part of that year, irrespective of whether it is not registered during any other part of that year.

(5) The Minister may, by notice to the Authority, direct the Authority not to raise more than a specified amount of annual administration levy for a specified registration year.

(6) An amount specified under paragraph (5) applies to registration years subsequent to the specified year, unless the Minister withdraws or amends the notice.

(7) The Authority –

(a) must calculate the annual administration levy to be paid by each bank liable to pay an annual administrative levy; and

(b) must, as soon as practicable and no later than the date specified in paragraph (8), send a written notice to each such bank, requiring it to pay the annual administrative levy.

(8) The date referred to annual administrative in paragraph (7)(b) is one month after the Authority decides to raise the levy, or the end of the registration year for that annual administrative levy, whichever is sooner.

(9) The notice must specify –

(a) the annual administration levy the bank is required to pay;

(b) how the annual administration levy has been calculated; and

(c) the date or dates on which the levy or any instalment of the levy becomes payable.

(10) If, at any time, the Authority 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.

(11) A bank to which a notice has been sent under this Article must pay the levy or any instalment of the levy within 5 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.

(12) A levy that has become payable is recoverable as a debt due to the Authority.

(13) To calculate the amount of annual administration levy to be paid by each bank liable to pay such a levy in a registration year, the Authority must divide the amount decided under paragraph (3) by the number of banks so liable.

(14) If the Authority has accepted a payment as a contribution from a bank towards the Authority's recurring administrative costs, other than as an annual administration levy, the Authority shall –

(a) disregard the contribution in deciding the amount under paragraph (3), and give credit for the contribution against the amount calculated under paragraph (1) in respect of that bank; or

(b) reduce the amount calculated under paragraph (1) to reflect the payment before calculating the amount due in respect of each bank under paragraph (13).

(15) For the purpose of this Article –

"registered" means registered to carry out deposit-taking business in or from within Jersey under the Banking Business (Jersey) Law 1991;

"registration year" means a period of one year ending on the next day on which registrations under the Banking Business (Jersey) Law 1991 expires by virtue of Article 9(2) of that Law.

17 Grants to the Authority

(1) In respect of each financial year, the States may make a grant to the Authority from their annual income towards the expenses of the Authority in carrying out any of its functions.

(2) The amount of any grant under paragraph (1) shall be determined by the Minister after consultation with the Authority, and in determining that amount the Minister shall have regard to the financial position and projected financial position of the Authority.

18 Borrowing by the Authority

(1) For the purpose of enabling it to carry out its functions, the Authority may borrow monies up to such amount as may be prescribed.

(2) The Minister may, on such terms as the Minister may determine, on behalf of the States –

(a) guarantee the liabilities of the Authority; or

(b) lend monies to the Authority,

up to the maximum amount the Authority may borrow under paragraph (1).

19 Investment of surplus funds

The Authority may invest any of its funds which are not immediately required in accordance with guidelines set by the Minister.

20 Exemption from income tax and GST

(1) The income of the Authority shall not be liable to income tax under the Income Tax (Jersey) Law 1961.

(2) The Authority shall not be liable under the Goods and Services Tax (Jersey) Law 2007 to GST on goods and services supplied or goods imported for the purposes of carrying out its functions under this Law.

(3) In this Article –

"GST" has the meaning given to it under Article 1 of the Goods and Services Tax (Jersey) Law 2007.

21 Accounts, audit and reports

(1) The Authority must, before the start of each financial year adopt a budget for that financial year, and may vary its budget at any time during a year.

(2) The Authority shall –

(a) keep proper accounts and proper records in relation to its accounts that permit its financial position to be ascertained with reasonable accuracy at any time; and

(b) in accordance with paragraph (4) prepare accounts in respect of each financial year and a report on its operations during the year.

(3) The Authority's accounts must set out the income and expenditure of with the Fund separately from any other money received, held or expended by the Authority.

(4) The accounts of the Authority must be prepared in accordance with generally accepted accounting principles and show a true and fair view of the profit or loss of the Authority for the period and of the state of the Authority's affairs at the end of the period.

(5) The Authority shall, within 3 months after the end of the financial year, have its accounts audited by an auditor, as defined by Article 102(1) of the Companies (Jersey) Law 1991.

(6) The Authority shall, within 3 months after its accounts have been audited, provide the Minister with –

(a) its audited accounts; and

(b) the report of the auditor.

(7) The report under paragraph (6) must contain –

(a) details of the Authority's activities during the financial year; and

(b) such other information as the Minister may direct the Authority to provide.

(8) The Minister must lay a copy of the audited accounts and the report prepared by the Authority before the States not later than 7 months after the end of each financial year.

(9) In this Article "financial year" means the period beginning with the day on which this Law comes into force and ending with the 31st day of December next following and each subsequent period of 12 months ending with the 31st day of December in each year.

PART 3

JERSEY BANK RESOLUTION FUND

22 Establishment of Fund

(1) There is established a fund to be known as the Jersey Bank Resolution Fund for the purpose of ensuring the effective exercise by the Authority

of the resolution powers and application by the Authority of the resolution tools.

(2) The Fund shall be controlled, managed and administered by the Authority.

(3) The Authority shall have the power to –

(a) recover from the bank in resolution any funds paid or payable out of the Fund by the Authority in respect of the application of a resolution tool or the exercise of a resolution power in respect of the bank in resolution;

(b) raise contributions from banks where funds referred to in sub-paragraph (a) are insufficient; and

(c) borrow from any source, including the strategic reserve fund (within the meaning given in Article 1(1) of the Public Finances (Jersey) Law 2005).

(4) All monies received by or on behalf of the Authority under this Article, whether by way of contributions, loans or otherwise, shall be paid into the Fund;

(5) Subject to paragraphs (6), (7) and (8), the Authority may only use the Fund –

(a) in accordance with the general principles of resolution;

(b) where reasonable effort has been made by the Authority to raise the required funds for a bank resolution from private funds and every source of such private funds has been exhausted or the Authority is satisfied that there is no reasonable prospect of the required finds being available within the timeframe in which it be required;

(c) where the use of the Fund is necessary to achieve the resolution objectives; and

(d) to the extent necessary to ensure the effective application of the stabilization tools for the following purposes –

(i) to guarantee the assets or liabilities of the bank in resolution, its subsidiaries, a bridge bank or an asset management vehicle or, where a sale of business tool is applied, a purchaser,

(ii) to purchase assets of the bank in resolution,

(iii) to make contributions to a bridge bank or an asset management vehicle or, where a sale of business tool is applied, a purchaser,

(iv) to pay contributions to a bridge bank or an asset management vehicle,

(v) to pay compensation to shareholders or creditors in accordance with the general principle of resolution under Article 35(g) and the resolution safeguard in Article 78,

(vi) to make a contribution to the bank in resolution in lieu of the exercise of the write down or conversion power, when the bail-in tool is applied and the Authority decides to exclude

certain creditors from the scope of the bail-in in accordance with Article 65(7) or (8), and

(vii) to take any combination of the actions referred to in sub-paragraphs (i) to (vi).

(6) The Fund shall not be used to directly absorb the losses of a bank in resolution or to recapitalize such a bank.

(7) Any amounts withdrawn from the Fund and used for the purposes set out in paragraph (5) (including use which results in part of the losses of a bank in resolution being passed on to the Fund) shall be recoverable from the bank in resolution in accordance with the general principles of resolution and may be recovered as contributions in accordance with paragraph (3)(b).

(8) The maximum amount that the banks must contribute to the Fund for the Authority to exercise the resolution powers is one hundred million pounds during any 5 year period or such other amount or period as may be prescribed.

(9) Where any creditor has a right arising as a result of the exercise of a resolution power and the monies in the Fund have been exhausted to the extent of the contributions received under paragraph (8), the right arising as a result of the exercise of the resolution power shall be exercisable against the bank in resolution and the Authority shall not be liable in respect of that right.

PART 4

RECOVERY AND RESOLUTION PLANNING

23 Recovery plan

(1) A bank shall, at such times as the Commission may specify, draw up and submit to the Commission for approval a recovery plan setting out measures that would be taken by the bank for the restoration of its financial position in the event of a significant deterioration of such financial position.

(2) A recovery plan shall be drawn up and maintained in accordance with a code of practice in respect of recovery planning issued by the Commission in accordance with Article 19A of the Banking Business (Jersey) Law 1991.

(3) The Commission shall submit a copy of a recovery plan submitted to it by a bank under paragraph (1) to the Authority and the Authority may examine the recovery plan with a view to identifying any actions in the recovery plan which may adversely impact the resolvability of the bank and to make recommendations to the Commission regarding those matters.

(4) The Minister may by Order provide for recovery planning by a bank.

(5) A bank that fails to comply with a requirement under paragraph (7) shall be guilty of an offence and liable to a fine of level 1 on the standard scale.

24 Resolution plan

(1) The Authority shall, as far as practicable and as it deems necessary, subject to Article 25 and after consultation with the Commission and the home resolution authority and intermediate home resolution authority of a bank, draw up a resolution plan for the bank which shall be proportionate to the systemic importance of the bank or bank's group.

(2) The Authority shall draw up a resolution plan in pursuit of the resolution objectives and in accordance with the general principles of resolution.

(3) The Authority shall submit a resolution plan for each bank to the Commission and the Commission shall examine the resolution plan with a view to identifying any actions in the resolution plan which may adversely impact the resolvability of the bank and make recommendations to the Authority with regard to those matters.

(4) Subject to Part 9, the Authority shall provide relevant information regarding the resolution plan for a bank to the resolution authorities in jurisdictions in which the bank operates branches or subsidiaries and to the home regulator and intermediate home regulator of the bank's group.

(5) Where the Authority is required under this Article to draw up a resolution plan which includes within its scope branches or subsidiaries of a bank in jurisdictions other than Jersey, the Authority shall, in drawing up the resolution plan, have regard to the potential impact of the resolution measures in such other jurisdictions.

(6) The Authority shall, as far as practicable, communicate to a home resolution authority or an intermediate home resolution authority of a bank any decision to deviate from that home resolution authority's, or intermediate home resolution authority's, resolution plan for the bank.

(7) The Authority may require a bank (whether directly or through the Commission) to cooperate, assist and provide the information specified in Part 1 of Schedule 2 for the purpose of drawing up, implementing and updating a resolution plan for the bank.

(8) Details of the resolution plan may be submitted by the Authority to the bank concerned.

(9) The Authority shall review, and where appropriate update, a resolution plan for a bank at least annually and after any material changes to the legal or organizational structure of the bank or to its business or its financial position that could have a material effect on the effectiveness of the resolution plan or otherwise necessitates a revision of the resolution plan.

(10) A resolution plan shall –

(a) outline the resolution actions which the Authority plans to take if the bank concerned meets the conditions for resolution;

(b) set out the options for applying a resolution tool and a resolution power to the bank concerned;

(c) take into consideration relevant scenarios including that the event of a bank failure may be unusual, occur at a time of broader financial instability or system-wide events;

(d) include procedures for informing and consulting employee representatives throughout the resolution process, where appropriate; and

(e) set out the information specified in Part 2 of Schedule 2.

(11) The Minister may by Order provide for resolution planning by the Authority.

(12) A bank that fails to comply with a requirement under paragraph (7) shall be guilty of an offence and liable to a fine of level 1 on the standard scale.

25 Resolvability

(1) In drawing up a resolution plan for a bank, the Authority shall, subject to paragraph (3), carry out an assessment to determine the extent to which the bank is resolvable and for that purpose shall consider the circumstances set out in Part 3 of Schedule 2.

(2) The Authority shall carry out a resolvability assessment in pursuit of the resolution objectives and in accordance with the general principles of resolution.

(3) A resolvability assessment shall be simplified (or may not be required) where the bank concerned is subject to a resolvability assessment in its home jurisdiction or intermediate home jurisdiction.

(4) Where a bank is a group entity, a simplified resolvability assessment under paragraph (3) shall take into account the proposed group-wide resolution plan and consider the resolvability of the elements of the bank's group which are relevant to the functions of the Authority.

(5) A resolvability assessment shall identify material impediments to resolvability which, once identified, shall be notified in writing to the bank and to the relevant resolution authorities in other jurisdictions in which the bank operates.

(6) A bank shall, within 4 months of the date of receipt of a notification under paragraph (5), propose to the Authority possible measures to address or remove the substantive impediments identified in the notification and the Authority shall, in consultation with the Commission, determine whether the measures referred to effectively address or remove the substantive impediments.

(7) If the Authority assesses that the measures proposed under paragraph (6) do not effectively reduce or remove the impediments, the Authority shall directly or indirectly through the Commission –

(a) subject to paragraph (9), require the bank to take alternative measures, including any measure specified in paragraph (8) that may achieve that objective, and notify bank in writing of those measures and propose a plan to comply with them; and

(b) explain to the bank how the measures proposed by the bank would not have adequately removed the impediments to resolvability and how the alternative measures are proportionate in removing them.

(8) The Authority may –

(a) if applicable, require the bank to review any intragroup financing agreements or review the absence of an intragroup financing agreement and may require the bank including by entering into agreements which provide for financial support to be given by the bank's parent undertaking in its home jurisdiction or intermediate home jurisdiction to its subsidiary in Jersey;

(b) require the bank to limit its maximum individual and aggregate exposures;

(c) impose specific or regular additional information requirements relevant for resolution purposes;

(d) require the bank to divest specific assets;

(e) require the bank to limit or cease specific existing or proposed activities;

(f) require the bank to restrict or prevent the development of new or existing business lines or sale of new or existing products;

(g) require changes to legal or operational structures of the bank or entities in its control so as to reduce complexity in order to ensure that critical functions may be legally and operationally separated from other functions through the application of a resolution tool; or

(h) require the bank to issue eligible liabilities or take other steps to meet minimum requirements for own funds and eligible liabilities set under Article 26,

as an alternative measure referred to in paragraph (7).

(9) The Authority's power to require a bank to take measures under paragraph (7) or (8) shall be limited to what is necessary in the public interest in order to simplify the structure and operations of the bank solely to improve its resolvability.

(10) A bank shall be deemed to be resolvable if it is feasible and credible for the Authority to liquidate it under normal insolvency proceedings or the bank winding up procedure under Part 7 or to resolve it by applying a stabilization tool to, and exercising resolution powers in respect of, the bank while avoiding to the maximum extent possible any significant adverse effect on the financial system, including in circumstances of broader financial instability or system-wide events, with a view to ensuring the continuity of critical functions carried out by the bank.

(11) A bank that fails to comply with paragraph (6) or a requirement under paragraph (7) or (8) shall be guilty of an offence and liable to a fine of level 1 on the standard scale.

26 Minimum requirements for own funds and eligible liabilities

(1) The Commission shall set for each bank a minimum requirement for own funds and eligible liabilities.

(2) A bank shall, at all times meet the minimum requirement for own funds and eligible liabilities set for that bank by the Commission under paragraph (1).

(3) The minimum requirement for own funds and eligible liabilities set for a bank under paragraph (1) shall be calculated as a percentage of the amount of own funds and total liabilities of the bank (including liabilities arising from derivatives expressed on a net basis giving full recognition of counterparty netting rights).

(4) The Authority shall review the minimum requirement for own funds and eligible liabilities and may make recommendations regarding the level of the requirement to the Commission and the Commission shall act in accordance with any such recommendations.

(5) The Minister may by Order make further provision relating to the minimum requirement for own funds and eligible liabilities of a bank.

(6) A bank that fails to comply with paragraph (2) shall be guilty of an offence and liable to a fine of level 1 on the standard scale.

27 Minimum capital requirements

(1) The Commission may require a bank to maintain at all times a minimum authorized share capital or other Common Equity Tier 1 instruments so that in the event of the Authority exercising a write down or conversion power in respect of the bank, the bank shall not be prevented from issuing sufficient new shares to ensure that the conversion of liabilities into shares can be carried out effectively.

(2) An assessment by the Commission as to whether to impose minimum capital requirements, or to what extent to impose minimum capital requirements under, paragraph (1) shall be carried out in conjunction with the development of a resolution plan under Article 24 in respect of that bank.

(3) A bank that fails to comply with paragraph (1) shall be guilty of an offence and liable to a fine of level 1 on the standard scale.

PART 5

RESOLUTION MATTERS

28 Requirement for notice

(1) The management of a bank shall notify the Commission if the management consider that the bank is failing or likely to fail.

(2) The Commission shall notify the Authority of any notifications received under paragraph (1) and of any early intervention actions that the Commission requires a bank to take to prevent its failure or likely failure.

(3) On receiving a notification under paragraph (2), the Authority shall determine whether the resolution conditions are met in respect of that

bank and shall record its decision together with reasons for the decision and the actions that the Authority intends to take as a result of it.

(4) Where the Authority determines that the resolution conditions are met in relation to a bank, the Authority shall give notice of that determination, the Authority's decision based on that determination, together with reasons for the decision and the actions that the Authority intends to take as a result of it, as soon as practicable, to the following –

(a) the Commission;

(b) the Jersey Bank Depositors Compensation Board;

(c) the Minister;

(d) the Minister for Treasury and Resources;

(e) the Viscount;

(f) the home resolution authorities and intermediate home resolution authorities in relation to the bank's group;

(g) the home regulatory supervisors and intermediate home regulatory supervisors in relation to the bank's group;

(h) the resolution authorities of any branches of the bank, if it is a bank incorporated in Jersey;

(i) the regulatory supervisors of any branches of the bank if it is a bank incorporated in Jersey;

(j) the central bank in the home jurisdiction and intermediate home jurisdiction of the bank's group; and

(k) the depositors guarantee scheme in the home jurisdiction and intermediate home jurisdiction of the bank's group.

29 General resolution powers

(1) The Authority shall have all the powers necessary to apply the resolution tools to a bank which meets the resolution conditions and, in particular, shall have the following general resolution powers which may be exercised, individually or in any combination, for the purpose of enabling the Authority to achieve the resolution objectives –

(a) the power to require any person to provide any information required for the Authority to decide upon and prepare a resolution action, including updates and supplements of information provided in the resolution plans and including requiring information to be provided through on-site inspections;

(b) the power to take control of a bank in resolution and exercise all the rights and powers conferred upon the shareholders, other owners and management of the bank in resolution, including control over the bank in resolution so as to –

(i) operate and conduct the activities and services of the bank in resolution with all the powers of its shareholders and management; and

(ii) manage and dispose of the assets and property of the bank in resolution,

whether directly by the Authority or indirectly by a person or persons appointed by the Authority;

(c) the power to take resolution action without taking control over the bank in resolution, if preferred, having regard to the resolution objectives and the general principles of resolution and the specific circumstances of the bank in resolution;

(d) the power to transfer to another entity, with the consent of that entity shares issued by a bank in resolution to another entity;

(e) the power to transfer to another entity, with the consent of that entity, rights, assets or liabilities of a bank in resolution;

(f) the write down and conversion power under Article 74;

(g) the power to amend or alter the maturity of debt instruments and other eligible liabilities issued by a bank in resolution or amend the amount of interest payable under such debt instruments and other eligible liabilities, or the date on which the interest becomes payable, including by suspending payment for a temporary period, except for secured liabilities referred to in Article 65(7);

(h) the power to close out and terminate financial contracts or derivatives contracts for the purposes of applying Article 69(4);

(i) the power to remove or replace the management of a bank in resolution;

(j) the power to require the Commission to assess the buyer of a qualifying holding in a timely manner by way of derogation from any applicable time limits;

(k) subject to Article 82, the power to provide for a transfer to take effect free from any liability or encumbrance affecting the financial instruments, rights, assets or liabilities transferred (and for these purposes any right of compensation in accordance with the resolution safeguards shall not be considered to be a liability or encumbrance);

(l) the power to remove rights to acquire further shares;

(m) the power to request that a relevant authority discontinue or suspend the admission to trading on a regulated market of financial instruments relating to a bank in resolution;

(n) the power to provide for the recipient of shares, assets, rights or liabilities under the sale of business tool or bridge bank tool to be treated as if it were the bank in resolution for the purposes of any rights or obligations of, or actions taken by, the bank in resolution, including, subject to the provisions relating to the application of the sale of business tool and the bridge bank tool, any rights or obligations relating to participation in market infrastructure;

(o) the power to require the bank in resolution or the recipient of transferred shares, assets, rights or liabilities to provide the other with information and assistance;

(p) the power to cancel or modify the terms of a contract to which the bank in resolution is a party or substitute a recipient as a party;

(q) the power to provide for continuity arrangements necessary to ensure that the resolution action is effective and that, where relevant, the business transferred may be operated by the recipient, including, in particular –

(i) the continuity of contracts entered into by the bank in resolution so that the recipient of shares, assets, rights or liabilities assumes the rights and liabilities of the bank in resolution relating to any financial instrument, right, asset or liability that has been transferred and is substituted for the bank in resolution, expressly or implicitly in all relevant contractual documents, and

(ii) the substitution of the recipient for the bank in resolution in any legal proceedings relating to any financial instrument, right, asset or liability that has been transferred;

(r) provide any services or facilities (that is, operational services and facilities, not financial support) that are necessary to enable the recipient of transferred shares, assets, rights or liabilities to operate the transferred business effectively, including where the provider of such services or facilities has entered into normal insolvency proceedings;

(s) the power to suspend any payment or delivery obligations pursuant to any contract to which a bank in resolution is party from the time notice is given, under Article 28(4), of that suspension (as an action the Authority intends to take) until midnight in Jersey at the end of the business day following the giving of the notice, except that –

(i) where a payment or delivery obligation would have been due during the suspension period the payment or delivery obligation shall be due immediately upon expiry of the suspension period,

(ii) where a payment or delivery obligation has been suspended the payment and delivery obligations of the counterparty under the contract shall also be suspended for the same period, and

(iii) any suspension under this provision shall not apply to –

(A) eligible deposits, or

(B) payment and delivery obligations owed to payment and securities settlement systems, central counterparties or central banks, and

when exercising this power, the Authority shall have regard to the impact the exercise of the power might have on the orderly functioning of financial markets;

(t) the power to restrict secured creditors of a bank in resolution from enforcing security interests in relation to any assets of that bank from the time notice is given, under Article 28(4), of that restriction (as an action the Authority intends to take) until midnight in Jersey at the end of the business day following that notice, except that –

(i) the Authority shall not exercise this power in relation to any security interest of payment and securities settlement

systems, central counterparties or central banks over assets pledged or provided by way of margin or collateral by the bank in resolution,

(ii) where Article 85 applies, the Authority shall ensure that any restrictions imposed under this power are consistent for all group entities in the same group in relation to which a resolution action is taken, and

(iii) when exercising this power, the Authority shall have regard to the impact the exercise of that power might have on the orderly functioning of financial markets.

(2) The services and facilities provided under paragraph (1)(r) shall be on the following terms –

(a) where the services and facilities were provided under an agreement to the bank in resolution immediately before the resolution action was taken and for the duration of that agreement, on the same terms; or

(b) where there is no agreement for provision of the services and facilities or where the agreement has expired, on reasonable terms.

(3) The exercise of the general resolution powers set out in this Article shall be without prejudice to –

(a) the right of an employee of the bank in resolution to terminate a contract of employment; or

(b) subject to paragraph (1)(s) and (t) and Article 75(1), any right of a party to a contract to exercise rights under the contract, including the right to terminate, where entitled to do so in accordance with the terms of the contract by virtue of an act or omission by the bank in resolution prior to the relevant transfer, or by the recipient after the relevant transfer.

(4) Except as otherwise provided in this Law, the following requirements do not apply to the application of a resolution tool –

(a) subject to any requirements set out in this Law to seek the approval of another public authority in Jersey, the requirement to obtain approval or consent from any person either public or private, including the shareholders or creditors of the bank in resolution; and

(b) prior to the application of a resolution tool, procedural requirements to notify any person including any requirement to publish any notice or prospectus or to file or register any document with any other authority.

(5) The Authority may exercise the resolution powers irrespective of any restriction on, or requirement to obtain consent for, the transfer of the financial instruments, rights, assets or liabilities in question that might otherwise apply.

(6) The Authority may exercise a general resolution power under this Article without –

(a) the approval of third party in advance of a transfer;

(b) complying with any applicable equitable or mandatory bid rule;

(c) consent of shareholders.

30 Creditor hierarchy

(1) For the purposes of resolution, the following shall have the same priority ranking which is higher than the ranking provided for the claims of ordinary unsecured, non-preferred creditors –

(a) the part of an eligible deposit which exceeds the covered deposit; and

(b) a deposit that would be an eligible deposit of a bank incorporated in Jersey if it was not made through a branch located outside Jersey; and

(2) The following shall have the same priority ranking which is higher than the ranking provided for under paragraph (1) –

(a) a covered deposit; and

(b) the Depositors Compensation Fund.

31 Early intervention

(1) Where the Commission is satisfied that a bank infringes or is likely, in the near future, to infringe –

(a) any of the minimum capital requirements placed on it by the Commission under Article 27; or

(b) the requirement that it is a fit and proper person to be registered to undertake deposit-taking business in accordance with Article 10(3)(a) of the Banking Business (Jersey) Law 1991;

the Commission or the Authority may take any one or more of the early intervention measures set out in paragraph (4).

(2) An infringement referred to in paragraph (1) may occur due, among other things, to a rapidly deteriorating financial condition and may include one or more of the following –

(a) a deteriorating liquidity situation;

(b) an increasing level of leverage;

(c) an increasing level of nonperforming loans; or

(d) a concentration of exposures.

(3) The Commission shall notify the Authority forthwith as soon as it believes that a condition in paragraph (1)(a) or (b) exists.

(4) Early intervention measures include, where applicable, the power of the Commission or the Authority to –

(a) require the management of the bank to –

(i) implement one or more of the arrangements or measures set out in its recovery plan, or

(ii) update its recovery plan where the circumstances that led to the early intervention are different from the assumptions in

the recovery plan and implement one or more of the arrangements or measures set out in the updated recovery plan,

within a specified timeframe and in order to ensure that the conditions for early intervention no longer apply;

(b) require the management of the bank to examine the situation, identify measures to overcome any problems identified and draw up an action programme to overcome those problems and a timeframe for its implementation;

(c) require the management of the bank to convene, or if the management fails to comply with that requirement, convene directly a meeting of shareholders of the bank, and in both cases set the agenda and require certain decisions to be considered for adoption by the shareholders;

(d) require one or more members of the management of the bank to be removed or replaced if those persons are deemed by the Authority or the Commission to be unfit to perform their duties;

(e) require the management of the bank to draw up a plan for negotiation on restructuring of debt with some or all of its creditors according to the recovery plan, where applicable;

(f) require changes to the bank's strategy;

(g) require changes to the legal or operational structures of the bank;

(h) require, including through on-site inspections, if necessary, the provision to the Authority or Commission of all information necessary in order to update the resolution plan and prepare for the possible resolution of the bank and for a pre-resolution valuation to be conducted in accordance with Article 44; or

(i) require the bank to contact potential purchasers in order to prepare for the resolution of the bank, subject to the procedural requirements relating to the sale of business tool.

(5) For each of the early intervention measures set out in paragraph (4), the Authority or the Commission, as the case may be, shall set out an appropriate deadline for completion to enable it to evaluate the effectiveness of the measure.

32 Temporary administrator

(1) Subject to paragraph (2), where the Authority or the Commission deems the replacement of the management of a bank, as an early intervention measure, to be insufficient to remedy the situation, the Authority may, in consultation with the Commission, or the Commission may, in consultation with the Authority, as the case may be, appoint one or more temporary administrators to the bank.

(2) Before appointing a person as a temporary administrator, the appointing authority must be satisfied that the person has the qualifications, ability and knowledge required to carry out the functions of a temporary administrator and does not have a conflict of interest in relation to bank.

(3) The appointing authority may appoint the temporary administrator under paragraph (1) either to –

(a) replace the management of the bank temporarily; or

(b) work temporarily with the management of the bank.

(4) If the appointing authority appoints a temporary administrator under paragraph (3), the appointing authority shall, at the time of such an appointment, specify in the instrument of appointment –

(a) the role of the temporary administrator in accordance with paragraph (3)(a) or (b);

(b) subject to paragraph (6), the functions and powers of the temporary administrator which may include –

(i) ascertaining the financial position of the bank,

(ii) some or all of the powers of the management of the bank under the bank's articles of association, including the power to exercise some or all of the administrative functions of the management of the bank, and

(iii) managing the business or part of the business of the bank with a view to preserving or restoring the financial position of the bank and taking measures to restore the sound and prudent management of the business of the bank;

(c) any limits on the role, functions and powers of the temporary administrator under paragraph (a) or (b);

(d) any requirements for the management of the bank to consult or to obtain the consent of the temporary administrator prior to taking decisions or actions specified in the instrument of appointment;

(e) subject to paragraph (7), any requirement that certain acts of the temporary administrator are to be subject to the prior consent of the appointing authority.

(5) The appointing authority shall, in such manner as the appointing authority considers appropriate, publish the appointment of any temporary administrator except where the temporary administrator does not have the power to represent the bank.

(6) The powers of a temporary administrator specified in an instrument of appointment under paragraph (4) –

(a) shall be based on what is proportionate in the circumstances;

(b) need not comply with the Companies (Jersey) Law 1991.

(7) The temporary administrator may convene a general meeting of the shareholders of the bank and set the agenda of such a meeting only with the prior consent of the appointing authority.

(8) The appointing authority may require that a temporary administrator draw up reports on the financial position of the bank and on the acts performed in the course of its appointment, at intervals set by the appointing authority and at the end of the temporary administrator's appointment.

(9) The term of appointment of a temporary administrator shall not exceed one year, subject to renewal of the appointment where the conditions under paragraph (1) for appointing the temporary administrator continue

to be met and the appointing authority determines that the conditions are appropriate to maintain a temporary administrator.

(10) Subject to paragraphs (1) to (9), the appointment of a temporary administrator shall not prejudice the rights of the shareholders of the bank under the Companies (Jersey) Law 1991.

(11) A temporary administrator shall not be liable in damages for anything done or omitted in the discharge or purported discharge of his or her functions as temporary administrator under this Law unless it is shown that the act or omission was in bad faith.

(12) A temporary administrator shall not be deemed to be a shadow director or de facto director of the bank.

(13) The appointing authority shall, after consultation with the Commission or the Authority, as the case may be, have the exclusive power to appoint, remove, or vary the terms of engagement of, a temporary administrator, and may do so at any time.

(14) In this Article "appointing authority" means –

(a) if the Authority appoints a temporary administrator under paragraph (1), the Authority; or

(b) if the Commission appoints a temporary administrator under paragraph (1), the Commission.

33 Resolution objectives

(1) The Authority shall, in exercising the resolution powers and in applying, or considering the application of, resolution tools in respect of a bank, have regard to the resolution objectives specified in paragraph (2) and shall choose resolution tools and resolution powers that best achieve the resolution objectives that are relevant in the circumstances.

(2) The resolution objectives are as follows –

(a) to ensure the continuity of banking services in Jersey and the provision of critical functions in Jersey;

(b) to protect and enhance the stability of the financial system in Jersey, including by preventing contagion (including contagion to market infrastructures such as investment exchanges, clearing houses and central counterparties) and maintaining market discipline;

(c) to protect and enhance public confidence in the stability of the financial system in Jersey;

(d) to protect public funds, including by minimizing reliance on extraordinary public financial support;

(e) to protect eligible depositors to the extent that they have covered deposits; and

(f) to protect client assets.

(3) The resolution objectives are each of equal significance and not listed in any order of significance in paragraph (2) and are to be balanced as appropriate in each case.

(4) A person exercising a resolution function under this Law shall have regard to the resolution objectives if they are relevant to that function.

(5) In pursuing the resolution objectives, the Authority shall seek to minimize the cost of resolution and avoid destruction of value unless reasonable to achieve the resolution objectives.

34 Resolution conditions

(1) A resolution power may be exercised, or a resolution tool applied, in respect of a bank only if the Authority is satisfied that the following conditions are met –

(a) the bank is failing or is likely to fail;

(b) having regard to timing and other relevant circumstances, it is not reasonably likely that any action (except the exercise of the resolution power) will be taken by or in respect of the bank that will prevent the failure or likely failure of the bank within a reasonable timeframe; and

(c) the application of a stabilization tool is in the public interest of Jersey.

(2) The application of a stabilization tool shall be in the public interest of Jersey for the purposes of paragraph (1)(c) if it is necessary for the achievement of and is proportionate to one or more of the resolution objectives and winding up the bank under Part 7 would not meet those objectives to the same extent.

(3) The prior adoption of an early intervention measure with regard to a bank shall not be taken as indicative that the resolution conditions are met.

(4) Despite paragraph (1), where a bank is a group entity, a resolution power may be exercised in respect of the bank if the Authority is satisfied that –

(a) although the bank does not in isolation meet the resolution conditions, the resolution conditions are met in relation to another group entity in the bank's group (whether or not the other group entities in the group also meet the resolution conditions); and

(b) the failure or likely failure of the group entity that meets the resolution conditions would have adverse consequences for the bank which would cause the bank to meet the resolution conditions in the future.

35 General principles of resolution

The Authority shall, in applying a resolution tool to a bank, take appropriate measures to ensure that resolution action is taken in accordance with the following general principles of resolution –

(a) the shareholders of a bank in resolution shall bear first losses;

(b) the creditors of a bank in resolution shall bear losses after the shareholders in accordance with the ordinary priority of their claims in normal insolvency proceedings, except as otherwise expressly provided for in this Law or the Regulations;

(c) the management of the bank in resolution shall be replaced, except in those cases when the retention of the management of the bank, in whole or in part, is considered appropriate in the circumstances or necessary for the achievement of the resolution objectives;

(d) the management of the bank in resolution shall provide all necessary assistance for the achievement of the resolution objectives;

(e) individuals and legal persons shall be made liable, in accordance with the Law in force in Jersey, for their responsibility for the failure of the bank;

(f) except where otherwise provided under this Law or the Regulations, creditors of the same class shall be treated in an equitable manner;

(g) no creditor shall incur greater losses than would have been incurred had the bank been wound up under normal insolvency proceedings unless it is in the public interest;

(h) covered deposits shall be fully protected;

(i) resolution action shall be taken in accordance with the resolution safeguards; and

(j) the costs of the resolution of a bank shall be minimized.

36 Conditions for application of a resolution tool

(1) When applying a resolution tool to a bank, the Authority shall take into account the measures provided in the bank's resolution plan unless the Authority assesses that, in the circumstances, the resolution objectives may be achieved more effectively by taking actions that are not provided in the resolution plan.

(2) If the Authority decides to apply a resolution tool to a bank and the application of the resolution tool would result in loss being borne by the creditors or their claims being converted, the Authority shall exercise the write down or conversion power to convert capital instruments immediately before, or contemporaneously to, applying the resolution tool.

(3) The Authority may apply the resolution tools individually or in any combination, except that the asset separation tool may only be applied in combination with another resolution tool.

(4) Where only the sale of business tool and the bridge bank tool are used in combination to transfer only part of the assets, rights or liabilities of the bank in resolution, the residual bank from which those assets, rights or liabilities have been transferred shall be wound up in accordance with the bank winding up procedure under Part 7.

(5) In accordance with the bank winding up procedure under Part 7, such winding up shall be done within a reasonable time, having regard, if relevant, to the need for that entity to provide services in order to enable

the recipient of the transferred assets, rights or liabilities to carry out the activities or services acquired by virtue of that transfer, and any other reason that the continuation of the residual bank is necessary to achieve the resolution objectives or comply with the general principles of resolution.

37 Manner of recovery by Authority of expenses

The Authority shall recover from a bank in resolution any reasonable expenses properly incurred that have been paid out of the Fund in connection with the application of a resolution tool or exercise resolution power, including the bank winding up procedure under Part 7 in one or more of the following ways –

(a) as a deduction from any consideration paid by a recipient to the bank in resolution, or as the case may be, to the owners of the shares;

(b) from the bank in resolution as a preferred creditor; or

(c) from any proceeds generated as a result of the termination of the operation of the bridge bank or the asset management vehicle, as a preferred creditor.

38 Alternative financing

(1) In the case of an extraordinary situation of a systemic crisis, the Authority may seek funding from alternative financing sources through the application of a government financial assistance tool, provided that the contribution to loss absorption and recapitalization equal to the amount not less than 8% of the total liabilities including own funds of the bank in resolution, measured by the pre-resolution valuation, has been made by shareholders, holders of relevant capital instruments and other eligible liabilities through write down, conversion or otherwise.

(2) The amount referred to in paragraph (1) may be amended by an Order made by the Minister.

(3) In this Article "systemic crisis" means a disruption in the financial system with the potential to have serious negative consequences for Jersey's internal market and the real economy of Jersey.

39 Assessment by the Commission

(1) Where there is a requirement to notify the Commission of a change in the level of ownership of a person by another person by virtue of the application of a stabilization tool or the taking of resolution action that would result in the acquisition of a qualifying holding or holding which crosses an applicable threshold, the Commission shall carry out a relevant assessment related to that notification in a timely manner that does not delay the application of the stabilization tool or prevent the resolution action.

(2) Where the Commission has not completed an assessment required under paragraph (1) or given any relevant approval of a transfer or conversion

by the date that the stabilization is made effective by the Authority, the following shall apply –

(a) such a transfer or conversion shall have immediate legal effect;

(b) during the assessment period and during any divestment period, an acquirer's voting rights attached to such shares shall be suspended and vested solely in the Authority, which shall have no obligation to exercise any such voting rights and which shall have no liability whatsoever for exercising or refraining from exercising any such voting rights;

(c) during the assessment period and during any divestment period, the penalties and other measures for failing to comply with the requirements for acquisitions or disposals of qualifying or significant shareholdings under Article 14 or 25 of the Banking Business (Jersey) Law 1991 or under any other enactment shall not apply to such a transfer or conversion;

(d) promptly upon completion of the assessment by the Commission, the Commission shall notify the Authority and the acquirer in writing of whether the Commission approves or, on the grounds referred to in Article 10 of the Banking Business (Jersey) Law 1991 or any other enactment, opposes such a transfer of shares to the acquirer or the acquisition of shares by the acquirer as a result of conversion;

(e) if the Commission approves such a transfer of shares to the acquirer (or the acquisition of shares by the acquirer as a result of conversion), then the voting rights attached to such shares shall be deemed to be fully vested in the acquirer immediately upon receipt by the Authority and the acquirer of such approval notice from the Commission;

(f) if the Commission opposes such a transfer of shares to the acquirer (or the acquisition of shares by the acquirer as a result of conversion), then –

(i) the voting rights attached to such shares as provided by paragraph (b) shall remain in full force and effect,

(ii) the Authority may require the acquirer to divest such shares within a divestment period determined by the Authority having taken into account prevailing market conditions, and

(iii) if the acquirer does not complete such divestment within the divestment period established by the Authority, then the Commission, with the consent of the Authority, may impose on the purchaser penalties and other measures for failing to comply with the requirements for acquisitions or disposals of qualifying or significant shareholdings under Article 14 or 25 of the Banking Business (Jersey) Law 1991 or any other enactment.

40 Authority to have regard to Competition (Jersey) Law 2005

The Authority shall, in exercising its powers and carrying out its functions under this Law, have regard to, and shall comply with, the Competition (Jersey) Law 2005 except where a derogation from the Competition (Jersey) Law 2005 is required in order to achieve the resolution objectives (including where the resolution objectives would not be met if additional delay were caused by the requirement to have regard to the Competition (Jersey) Law 2005.

41 Authority to consult with employee representatives

The Authority shall, where appropriate in exercising the resolution powers and applying a resolution tool in respect of a bank, inform and consult with employee representatives of the bank's employees.

42 Special management

(1) The Authority may appoint a special manager to replace the management of a bank in resolution.

(2) A special manager appointed under paragraph (1) must have the qualifications, ability and knowledge necessary to carry out his or her functions under this Law.

(3) The term of appointment of a special manager shall be for a period not exceeding one year, except that the Authority may, in exceptional circumstances, renew the appointment for a further period not exceeding one year if the Authority determines that the conditions for appointment of a special manager continue to be met.

(4) The Authority shall, in such manner as it considers appropriate, publish notice of the appointment of a special manager.

(5) A special manager shall have all the powers of the shareholders and management of the bank in resolution, except that –

(a) the exercise of that power shall be under the control of the Authority; and

(b) the Authority may set limits to the action of a special manager or require that certain acts of the special manager be subject to the Authority's prior consent.

(6) A special manager shall have a duty to take all measures necessary to promote the resolution objectives and to implement resolution actions in accordance with decisions of the Authority.

(7) The duty specified in paragraph (6) may, where necessary, override any other duty placed upon a director under the Companies (Jersey) Law 1991 and the bank's constitutional documents in so far as they are inconsistent.

(8) The measures referred to in paragraph (6) may include –

(a) an increase of the bank's capital;

(b) the reorganization of the ownership structure of the bank;

(c) the takeover of the bank by another bank that is financially and organizationally sound by applying a resolution tool.

(9) In appointing a special manager to a bank that is a group entity, the Authority shall consider whether it is appropriate to appoint the same special manager that is appointed to another entity in the bank's group.

43 Authority not to be treated as a director of a bank

Nothing in this Law shall cause the Authority to be treated as a director (shadow or de facto) of a bank.

44 Pre-resolution valuation

(1) Subject to Article 48 and prior to taking resolution action or exercising a write down or conversion power in respect of a bank, the Authority shall cause a pre-resolution valuation of the assets and liabilities of the bank to be carried out or rely on a pre-resolution valuation carried out in the home resolution authority or the intermediate home resolution authority of the bank.

(2) The Authority shall, in accordance with an Order made under Article 49, appoint an independent valuer to carry out a pre-resolution valuation.

(3) The objective of a pre-resolution valuation shall be to assess the value of the assets and liabilities of a bank that meets the resolution conditions.

(4) The purpose of a pre-resolution shall be –

(a) to inform the decision of whether the resolution conditions or the conditions for the write down or conversion power are met;

(b) if the resolution conditions are met, to inform the decision on which resolution tool should be applied;

(c) if the write down or conversion power is to be applied, to inform the decision on the extent of the cancellation or dilution of shares and the extent of the write down or conversion;

(d) if the bail-in tool is to be applied, to inform the decision on the extent of the write down or conversion of eligible liabilities;

(e) if the bridge bank tool or asset separation tool is to be applied, to inform the decision on the assets, rights, liabilities or shares to be transferred and the decision on the value of any consideration to be paid to the bank in resolution or, as the case may be, to the owners of the shares;

(f) if the sale of business tool is to be applied, to inform the decision on the assets, rights, liabilities or shares to be transferred and to inform the Authority's understanding of what constitutes commercial terms for the purpose of the application of the tool; and

(g) in all cases, to ensure that any losses on the assets of the bank are fully recognized at the moment a resolution tool is applied or the write down or conversion power is exercised.

(5) In carrying out a pre-resolution valuation, the person carrying out the valuation shall –

(a) make prudent assumptions, including as to the rates of defaults and severity of losses;

(b) disregard any potential future provision of extraordinary public financial support;

(c) take into account the fact that, if any resolution tool is applied –

(i) the Authority and the Fund may recover any reasonable expenses properly incurred from the bank in resolution in accordance with the general principles of resolution, and

(ii) the Authority may charge interest or fees in respect of any loans provided to the bank in resolution.

(6) A valuation shall be supplemented by the following information as appearing in the accounting books and records of the bank –

(a) a balance sheet of the bank as at the date of the valuation;

(b) a report on the financial position of the bank;

(c) an analysis and estimate of the accounting value of the assets and liabilities of the bank;

(d) an analysis and estimate of the market value of the assets and liabilities of the bank where required to inform a decision relating to the bridge bank tool, asset separation tool or sale of business tool;

(e) a list of outstanding liabilities of the bank (including any off balance sheet liabilities), with the creditors subdivided into classes according to the priority their claims would have under normal insolvency proceedings;

(f) an estimate of the amount each class of creditors and shareholders might be expected to receive if the bank were to be wound up under normal insolvency proceedings; and

(g) an estimate of the amount that would be payable under the Bank Depositors Compensation (Jersey) Law 20- if the bank were to be wound up under normal insolvency proceedings.

45 Provisional valuation

(1) Subject to Article 48, where the Authority considers that the urgency of the case makes it appropriate for resolution action to be taken or for a write down or conversion power to be exercised in respect of a bank before a pre-resolution valuation can be carried out by an independent valuer appointed under Article 44(2), the Authority may cause a provisional valuation of the assets and liabilities of the bank that is a provisional valuation to be carried out.

(2) Where a provisional valuation is carried out –

(a) Article 44(3) and (4) shall be applicable to the provisional valuation;

(b) the Authority shall comply with Article 44(5) and (6) so far as it is reasonable to do so in the circumstances; and

(c) the provisional valuation must make provision in respect of additional losses by the bank that are reasonably foreseeable;

(d) the provisional valuation shall be a valid basis on which a decision to exercise a resolution power may be taken.

46 Definitive valuation

(1) Subject to Article 48, where the Authority has caused a provisional valuation to be carried out under Article 45, the Authority shall, in accordance with an Order made under Article 49, appoint an independent valuer to carry out a definitive valuation of the assets and liabilities of the bank as soon as practicable.

(2) The purpose of the definitive valuation is to –

(a) ensure the full extent of any losses on the assets of the bank is recognized in the accounting records of the bank; and

(b) inform a decision by the Authority as to whether –

(i) additional consideration should be paid by a bridge bank or asset management vehicle for any property, rights, liabilities or shares transferred under a sale of business tool, bridge bank tool or asset separation tool, or

(ii) to increase or reinstate any liability which has been reduced or cancelled by a resolution instrument.

(3) Where a definitive valuation is carried out, Article 44(3) and (4) shall be applicable to the definitive valuation and the Authority shall comply with Article 44(5) and (6).

(4) A definitive valuation may be carried out separately from the difference of treatment valuation or simultaneously with, and by, the same independent valuer who carries out the difference of treatment valuation, but the definitive valuation and the difference of treatment valuation shall be distinct from each other.

(5) A person who participates in any manner in a provisional valuation of a bank shall not, regardless of the capacity in which the person participated, by reason only of that participation be deemed to be ineligible for appointment as an independent valuer for the purpose of carrying out a definitive valuation of that bank.

47 Consequences of a higher valuation being produced by definitive valuation

(1) Where a definitive valuation produces a higher valuation of the net asset value of a bank in resolution than the provisional valuation, the Authority may –

(a) instruct a purchaser, bridge bank or asset management vehicle to pay additional consideration for any assets, rights, liabilities or shares transferred under the sale of business tool, bridge bank tool or asset separation tool; or

(b) modify any liability of the bank in resolution which has been reduced, deferred or cancelled pursuant to the write down or

conversion power or a resolution instrument so as to increase or reinstate that liability.

(2) A power under paragraph (1) –

(a) shall not be exercised so as to increase the value of the liability of the bank in resolution beyond the value it would have had if the resolution instrument which reduced, cancelled or deferred it had not been made; and

(b) shall be exercised by the issue by the Authority of a mandatory reduction instrument in accordance with Article 74 or a supplemental resolution instrument (whether or not that instrument contains any other provisions authorized by this paragraph or paragraph (1)).

48 Technical standards

(1) The Authority may set or adopt standards for the purpose of a pre-resolution valuation or definitive valuation.

(2) A pre-resolution valuation or definitive valuation shall be carried out in accordance with the technical standards set or adopted by the Authority under paragraph (1).

49 Eligibility criteria for independent valuer

The Minister may by Order specify the eligibility criteria for appointment of a person as an independent valuer for the purposes of Article 44, 46 or 77.

50 Ancillary powers of an independent valuer

(1) Subject to the resolution safeguards, an independent valuer may do anything necessary or desirable for the purposes of, or in connection with, the performance of the independent valuer's functions under this Law.

(2) The Authority may confer on an independent valuer such ancillary powers as the Authority thinks necessary for the purposes of, or in connection with, the exercise of the independent valuer's functions under this Law, or the exercise or performance of any power or duty conferred or imposed on the independent valuer under this Law.

PART 6

STABILIZATION TOOLS AND RESOLUTION SAFEGUARDS

Chapter 1 – Sale of business tool

51 Application of sale of business tool

(1) The Authority may apply the sale of business tool to a bank that meets the resolution conditions by effecting a sale of all or part of the business

of the bank in resolution to one or more purchasers that are not bridge banks by making –

(a) one or more share transfer instruments for the transfer of all or part of the shares of the bank;

(b) one or more property transfer instruments for the transfer of all or any assets, rights or liabilities of the bank.

(2) Subject to the resolution safeguards, the Authority may apply the sale of business tool to a bank without –

(a) the consent of the shareholders of the bank or any third party other than the purchaser; and

(b) complying with any procedural requirements under any other enactment or the constitutional documents of the bank other than those procedural requirements specified in this Law or Regulations or an Order made under this Law.

(3) The Authority shall ensure that a transfer made by applying the sale of business tool under this Article is made on commercial terms having regard to the circumstances.

(4) The Authority shall take reasonable measures to obtain, on the basis of a pre-resolution valuation, commercial terms for the transfer made under the sale of business tool under this Article, including the following measures –

(a) making arrangements for the marketing of the bank in resolution or part of the bank's business in an open, transparent, non-discriminatory process, while aiming as far as possible to maximize the sale price;

(b) where for reasons of urgency the process specified in sub-paragraph (a) is not possible, the Authority shall take reasonable steps within its capabilities and resources of the Fund to redress detrimental effects on competition on Jersey's internal financial market.

(5) Subject to the Article 37, the net proceeds of consideration paid by the purchaser on the transfer made under the sale of business tool under this Article shall be applied for the benefit of –

(a) the owners of the shares, where the sale of business tool has been effected by transferring shares issued by the bank in resolution from the holders of those shares or instruments to the purchaser;

(b) the bank in resolution, where the sale of business tool has been effected by transferring some or all of the assets or liabilities of the bank in resolution to the purchaser, including where the bank in resolution is then subject to the bank winding up procedure under Part 7.

(6) When applying the sale of business tool to a bank, the Authority may exercise the transfer power more than once in order to make supplemental transfers of shares issued by the bank or, as the case may be, assets, rights or liabilities of the bank.

(7) A transfer made under the sale of business tool shall be subject to the resolution safeguards.

(8) The Authority shall immediately notify the Commission or other competent authority of its non-compliance with any procedural requirements under paragraph (2)(b).

52 Power to transfer assets, rights, liabilities or shares transferred to the purchaser back to bank in resolution or to original owners

Subject to the resolution safeguards, after the application of the sale of business tool, the Authority may, with the consent of the purchaser, transfer –

(a) the assets, rights, or liabilities transferred to the purchaser back to the bank in resolution, or

(b) the shares back to their original owners,

and the bank in resolution or the original owners shall be obliged to take back any such assets, rights or liabilities, or shares.

53 Bank in resolution entitled to exercise rights after transfer

Where a transfer under the sale of business tool is effected by way of a transfer of shares of the bank in resolution, the bank in resolution may exercise any rights following the transfer that it was entitled to exercise prior to the transfer.

54 Rights of purchaser under the sale of business tool

(1) A purchaser shall acquire the deposit-taking business and any other (relevant business of the bank of a bank in resolution as a continuation of the deposit-taking business being conducted prior to the transfer to the purchaser under the sale of business tool and may continue to operate the deposit-taking business of the bank in resolution for a period not exceeding 6 months within which period an application for registration under the Banking Business (Jersey) Law 1991, registration under the Financial Services (Jersey) Law or authorization under any other enactment shall be made.

(2) Where a transfer under the sale of business tool has been effected by way of a transfer of assets, rights, and liabilities, the purchaser shall be entitled to exercise any rights following the transfer that the bank in resolution was entitled to exercise prior to the transfer, including membership rights, access to payment, clearing and settlement systems, securities exchanges and the Depositors Compensation Scheme, provided that the purchaser meets the criteria for such membership or participations in such systems.

(3) Where a purchaser does not meet the membership or participation criteria for a relevant payment, clearing or settlement system, securities exchange or the Depositors Compensation Scheme, the rights transferred under the sale of business tool shall be exercised for such period as may be specified by the Authority, not exceeding 24 months, subject to renewal on application by the purchaser to the Authority.

(4) Without prejudice to the resolution safeguards, shareholders and creditors of a bank in resolution and other third parties whose assets, rights and liabilities are not transferred under the sale of business tool shall not have any rights over or in relation to the assets, rights or liabilities transferred.

55 Marketing of assets, rights, liabilities or shares

(1) Subject to the exceptions in paragraph (4) and Article 56, when applying the sale of business tool to a bank –

(a) the Authority shall market or make arrangements for the marketing of the assets, rights, liabilities or shares of the bank that the Authority intends to transfer; and

(b) pools of assets, rights, liabilities or shares of the bank may be marketed separately under sub-paragraph (a).

(2) Marketing under paragraph (1) shall be carried out in accordance with the following principles–

(a) it shall be as transparent as possible and shall not materially misrepresent the assets, rights, liabilities or shares of the bank in resolution, having regard to the circumstances and in particular the need to maintain financial stability;

(b) it shall not unduly favour or discriminate between potential purchasers;

(c) it shall be free from conflicts of interest;

(d) it shall not confer any unfair advantage on a potential purchaser;

(e) it shall take account of the need to effect a rapid resolution action; and

(f) it shall aim at maximising, as far as possible, the sale price for the shares, assets, rights or liabilities involved.

(3) Subject to paragraph (2)(b), the principles in paragraph (2) shall not prevent the Authority from soliciting particular potential purchasers.

(4) The Authority may apply the sale of business tool to a bank without complying with the requirement to market the bank under paragraph (1)(a) if the Authority determines that compliance with the requirement to market the bank would be likely to undermine one or more of the resolution objectives and, in particular, the Authority considers that –

(a) there is a material threat to the financial stability of Jersey arising from or aggravated by the failure or likely failure of the bank in resolution; and

(b) compliance with requirement would be likely to undermine the effectiveness of the sale of business tool in addressing the threat referred to in sub-paragraph (a) or achieving the resolution objectives.

56 Delay of disclosure of information to the public on application of the sale of business tool

On application of the sale of business tool to a bank –

(a) disclosure of information to the public which would as a matter of law be required in relation to the sale of the bank may be delayed for the time necessary to plan and structure the resolution of the bank; and

(b) disclosure to the public of the marketing of a bank which would as a matter of law be required may be delayed where all of the following conditions are met –

(i) immediate disclosure is likely to prejudice the legitimate interests of the bank in resolution;

(ii) delay of disclosure is not likely to mislead the public;

(iii) delay of disclosure is in the public interest; and

(iv) the disclosure of the marketing information entails a risk of undermining the financial stability of the bank in resolution and the financial system in Jersey.

57 Residual bank to be wound up

If the sale of business tool has been used to transfer systemically important services or viable business of a bank to a private sector purchaser, the residual bank shall be liquidated using the bank winding up procedure under Part 7, or under foreign insolvency proceedings in respect of a branch, within an appropriate timeframe, having regard to any need for the residual bank to provide services or support to enable the purchaser to carry on the activities or services acquired by the virtue of that transfer.

Chapter 2 – Bridge bank tool

58 Application of bridge bank tool

(1) For the purposes of this Article, the Authority shall cause to be registered a company (a "bridge bank") that –

(a) is wholly or partially owned by the Authority;

(b) is controlled by the Authority; and

(c) is created for the purpose of receiving a transfer of the shares or business of the bank in resolution by virtue of the utilization of such transfer power under the bridge bank tool with a view to maintaining access to critical functions and in due course selling the bank or its business.

(2) The Authority may apply the bridge bank tool to a bank that meets the resolution conditions by transferring to a bridge bank –

(a) by making one or more share transfer instruments, one or more shares issued by of one or more banks under resolution; or

(b) by making one or more property transfer instruments, all or any assets, rights or liabilities of one or more banks in resolution.

(3) Subject to the resolution safeguards, the Authority may apply the bridge bank tool to a bank that meets the resolution conditions without –

(a) the consent of the shareholders of the bank in resolution or any third party other than the bridge bank; and

(b) complying with any procedural requirements under any other enactment or the constitutional documents of the bank other than those procedural requirements specified in this Law or the Regulations or an Order made under this Law.

(4) The application of the bail-in tool for the purpose of converting to equity or reducing the principal amount of claims or debt instruments that are referred to a bridge bank with a view to providing capital for that bridge bank shall not interfere with the ability of the Authority to control the bridge bank.

(5) When applying the bridge bank tool to a bank, the Authority shall ensure that the total value of liabilities transferred to the bridge bank does not exceed the total value of the rights and assets transferred from the bank provided by other sources.

(6) Subject to Article 37, any consideration paid by the bridge bank shall be applied for the benefit of –

(a) the owners of the shares, where the transfer of the bridge bank has been effected by transferring shares issued by the bank in resolution from the holders of those shares to the bridge bank; or

(b) the bank in resolution, where the transfer to the bridge bank has been effected by transferring some or all of the assets or liabilities of the bank in resolution to the bridge bank.

(7) When applying the bridge bank tool to a bank in resolution, the Authority may exercise its power to transfer under Article 59(2) more than once in order to make supplemental transfers of shares issued by the bank in resolution, or as the case may be, assets, rights or liabilities of the bank in resolution.

59 Power to transfer assets, rights, liabilities or shares transferred to the bridge bank back to bank or to original owners

(1) After the application of the bridge bank tool, the Authority may –

(a) transfer assets, rights or liabilities transferred to the bridge bank back to the bank in resolution, or shares transferred to the bridge bank back to their original owners, and the bank in resolution or the original owners shall take back any such assets, rights or liabilities or shares; or

(b) transfer shares, assets, rights or liabilities from the bridge bank to a third party.

(2) Subject to complying with any other conditions in the instrument of transfer, the Authority may transfer shares, assets, rights or liabilities back from the bridge bank in any of the following circumstances –

(a) where the possibility that the specific shares, assets, rights or liabilities will be transferred back is stated expressly in the

instrument of transfer by which the transfer was made to the bridge bank; or

(b) where the specific shares, assets, rights or liabilities do not in fact fall within the classes of, or meet the conditions for transfer of, shares, assets, rights or liabilities specified in the instrument of transfer by which the transfer to the bridge bank was made.

(3) A transfer on application of the bridge bank tool between –

(a) the bank in resolution or the original owners of shares; and

(b) the bridge bank,

shall be without prejudice to the resolution safeguards.

60 Bank in resolution entitled to exercise rights after transfer

Where a transfer under the bridge bank tool is effected by way of a transfer of shares of the bank in resolution, the bank in resolution may exercise any rights following the transfer that it was entitled to exercise prior to the transfer.

61 Rights of bridge bank

(1) A bridge bank shall acquire the deposit-taking business of a bank in resolution as a continuation of the deposit-taking business being conducted prior to the transfer to the bridge bank under the bridge bank tool.

(2) Where a transfer under the bridge bank tool has been effected by way of a transfer of assets, rights, and liabilities, the bridge bank shall be entitled to exercise any rights following the transfer that the bank in resolution was entitled to exercise prior to the transfer, including membership rights, access to payment, clearing and settlement systems, securities exchanges and the Depositors Compensation Scheme, provided that the bridge bank meets the criteria for such membership or participation in such systems.

(3) Where a bridge bank does not meet the membership or participation criteria for a relevant payment, clearing or settlement system, securities exchange or the Depositors Compensation Scheme, the rights transferred under the bridge bank tool shall be exercised for such period as may be specified by the Authority, not exceeding 24 months, subject to renewal on application by the bridge bank to the Authority.

(4) Without prejudice to the resolution safeguards, shareholders and creditors of the bank in resolution and other third parties whose assets, rights and liabilities are not transferred to the bridge bank under the bridge bank tool shall not have any rights over or in relation to the assets, rights or liabilities transferred to the bridge bank or its management.

(5) A bridge bank or a member of its senior management shall not be liable in damages to shareholders or creditors for anything done or omitted in the discharge or purported discharge of any functions under this Law unless it is shown that the act or omission was in bad faith.

62 Operation of bridge bank

(1) The Authority shall ensure that the operation of a bridge bank complies with the following requirements –

(a) the contents of a bridge bank's constitutional documents are approved by the Authority;

(b) subject to the bridge bank's ownership structure, the Authority appoints or approves the bridge bank's management board;

(c) the Authority approves the remuneration of the members of the management body of the bridge bank and determines their appropriate responsibilities;

(d) the Authority approves the strategy and risk profile of the bridge bank; and

(e) the bridge bank is –

(a) registered under the Banking Business (Jersey) Law 1991 to undertake deposit-taking business,

(b) registered under the Financial Services (Jersey) Law 1998, or

(c) authorized under any other relevant enactment to undertake such other relevant financial services business,

in order to carry out the activities or services that it acquires by virtue of a transfer made to facilitate the bridge bank tool in accordance with the resolution powers and the bridge bank complies with the requirements under those enactments.

(2) Despite paragraph (1)(e), where necessary to meet the resolution objectives, the bridge bank may be established and authorized without complying with the requirements for registration under the Banking Business (Jersey) Law 1991 to undertake deposit-taking business, and registration under the Financial Services (Jersey) Law 1998 or authorization under any other enactment to undertake such other relevant financial services business for a period not exceeding six months in accordance with paragraph (4).

(3) The Authority may submit a request to the Commission to permit the bridge bank to carry on the activities referred to in paragraph (1)(e) beyond the period referred to in paragraph (2) without meeting the requirements set out in paragraph (2).

(4) If the Commission decides to grant a permission under paragraph (3), it shall indicate the additional period for which the requirements set out in paragraph (2) are waived.

(5) Subject to any restrictions imposed under the Competition (Jersey) Law 2005, the management of the bridge bank shall operate the bridge bank with a view to maintaining access to critical functions and selling the bank, or its assets, rights or liabilities, to one or more private sector purchasers when conditions are appropriate and within the time limit set out in paragraph (8) or any extension granted under paragraph (9), as the case may be.

(6) The Authority shall determine that the bridge bank is no longer a bridge bank if any of the following outcomes occur, whichever occurs first –

(a) the bridge bank merges with another entity;

(b) the bridge bank ceases to meet the requirements of a bridge bank set out at paragraph (1);

(c) the sale of all or substantially all of the bridge bank's assets, rights and liabilities to a third party;

(d) the bridge bank's assets are completely wound down and its liabilities are completely discharged;

(e) the expiry of the two-year time limit set out in paragraph (8) or any extension granted under paragraph (9), as the case may be.

(7) Where the Authority seeks to sell the bridge bank or its assets, rights or liabilities, the Authority shall market the bridge bank or assets, rights or liabilities openly and transparently, and the sale shall not materially misrepresent assets, rights or liabilities or unduly favour or discriminate between potential purchasers and must be made on commercial terms having regard to the circumstances.

(8) Where none of the outcomes referred to in paragraph (6)(a), (b), (c) or (d) apply, the Authority shall terminate the operation of the bridge bank as soon as possible and in any event 2 years after the date on which the last transfer from a bank in resolution was made to it pursuant to the bridge bank tool.

(9) The Authority may extend the time limit for termination of the bridge bank under paragraph (8) for one or more additional one year periods where such an extension –

(a) supports an outcome referred to in paragraph (6)(a), (b), (c) or (d); or

(b) is necessary to ensure the continuity of essential banking or financial services.

(10) The Authority must give reasons for any decision to extend the period for termination of the bridge bank, and a detailed assessment of the situation including the market conditions and outlook, that justifies the extension.

(11) Where the operations of a bridge bank have been terminated as a result of the sale of all or substantially all of its assets, rights or liabilities, or as a result of the expiry of the time limit set out in paragraph (8) or any extension granted under paragraph (9), the bridge bank shall be wound up in accordance with the bank winding up procedure under Part 7.

(12) Subject to Article 37, any proceeds generated as a result of the termination of the operation of the bridge bank shall be applied for the benefit of the shareholders of the bridge bank.

(13) In paragraph (2) "authorized" includes, licensed, registered and approved.

Chapter 3 – Asset separation tool

63 Application of asset separation tool

(1) The Authority may apply the asset separation tool to a bank in resolution by effecting a transfer of the assets, rights and liabilities of –

(a) the bank in resolution;

(b) a bridge bank to which shares or assets, rights and liabilities have been transferred under the bridge bank tool,

to an asset management vehicle.

(2) For the purposes of the transfer referred to in paragraph (1), the Authority may make one or more instruments of transfer.

(3) The asset separation tool shall be used only in conjunction with another stabilization tool to prevent an undue competitive advantage for a bank in resolution.

(4) Where assets, rights or liabilities of a bank in resolution are transferred to an asset management vehicle by application of the asset separation tool, the Authority may make one or more supplementary instruments of transfer transferring any of those assets, rights or liabilities to one or more other asset management vehicles.

(5) Subject to the resolution safeguards, the Authority may apply the asset separation tool to a bank in resolution without –

(a) the consent of the shareholders of the bank in resolution or any third party; and

(b) complying with any procedural requirements under any other enactment or the constitutional documents of the bank other than those procedural requirements specified in this Law or Regulations or an Order made under this Law.

(6) An asset management vehicle shall manage the assets transferred to it under paragraph (1) with a view to maximizing their value through eventual sale or orderly liquidation under the winding up of a bank.

(7) The Authority may only apply the asset separation tool to a bank in resolution if –

(a) the situation of the particular market for the assets of the bank in resolution is of such a nature that the liquidation of those assets under the winding up of a bank could have an adverse effect on one or more financial markets;

(b) such a transfer is necessary to ensure the proper functioning of the bank in resolution or bridge bank; or

(c) such a transfer is necessary to maximize liquidation proceeds.

(8) Subject to Article 37, any consideration paid by the asset management vehicle in the form of debt issued by the asset management vehicle in respect of the assets, rights or liabilities acquired directly from the bank in resolution shall be applied for the benefit of the bank in resolution.

(9) Where a bridge bank tool has been applied to a bank in resolution, an asset management vehicle may, subsequent to the application of the bridge bank tool, acquire assets, rights and liabilities from the bridge bank.

(10) The Authority may transfer assets, rights or liabilities from the bank in resolution to one or more asset management vehicles more than once, and transfer assets, rights or liabilities back from one or more asset management vehicles to the bank in resolution if any of the circumstances in paragraph (12) are satisfied.

(11) Where the Authority transfers assets, rights or liabilities back to the bank in resolution under paragraph (10), the bank in resolution shall take back any such assets, rights or liabilities.

(12) The Authority may, subject to complying with any other conditions in the instrument of transfer, transfer assets, rights or liabilities back from the asset management vehicle to the bank in resolution in one of the following circumstances –

(a) where the possibility that the specific assets, rights or liabilities will be transferred back is stated expressly in the instrument of transfer by which the transfer was made; or

(b) where the specific assets, rights or liabilities do not in fact fall within the classes of, or meet the conditions for transfer of assets, rights or liabilities specified in the instrument of transfer by which the transfer was made.

(13) A transfer between the bank in resolution and the asset management vehicle shall be without prejudice to the resolution safeguards for partial property transfers under Article 80.

(14) Without prejudice to the resolution safeguards, shareholders or creditors of the bank in resolution and other third parties whose assets, rights or liabilities are not transferred to the asset management vehicle shall not have any rights over or in relation to the assets, rights or liabilities transferred to the asset management vehicle or its management.

(15) An asset management vehicle and its senior management shall not be liable in damages to the bank in resolution or its shareholders or creditors for anything done or omitted in the discharge or purported discharge of any functions under this Law unless it is shown that the act or omission was in bad faith.

64 Operation of asset management vehicle

The Authority shall ensure that the operation of an asset management vehicle complies with the following requirements –

(a) the contents of an asset management vehicle's constitutional documents are approved by the Authority;

(b) subject to the asset management vehicle's ownership structure, the Authority appoints or approves the asset management vehicle's management board;

(c) the Authority approves the remuneration of the members of the management body of the asset management vehicle and determines their appropriate responsibilities; and

(d) the Authority approves the strategy and risk profile of the asset management vehicle.

Chapter 4 – Bail-in tool

65 Application of bail-in tool

(1) The Authority may apply the bail-in tool to meet the resolution objectives, in accordance with the general principles of resolution, for any of the following purposes –

(a) to recapitalize a bank that meets the resolution conditions to the extent sufficient to restore the bank's ability to –

(i) satisfy the Commission that it is a fit and proper person to be registered to undertake deposit-taking business in accordance with Article 10(3)(a) of the Banking Business (Jersey) Law 1991; and

(ii) continue to carry out the activities for which the bank is registered under the Banking Business (Jersey) Law 1991, registered under the Financial Services (Jersey) Law 1998 or authorized under any other enactment, and to sustain sufficient market confidence in the bank; or

(b) in accordance with Article 74, to exercise the Authority's write down or conversion power to convert to equity or reduce the principal amount of claims or debt instruments that are transferred –

(i) to a bridge bank with a view to providing capital for the bridge bank, or

(ii) under the sale of business tool or the asset separation tool.

(2) The Authority may, in order to apply the bail-in tool to a bank under paragraph (1) make one or more resolution instruments.

(3) The Authority may apply the bail-in tool for the purposes referred to in paragraph (1)(a) only if there is a reasonable prospect that the application of the bail-in tool together with other relevant measures will, in addition to achieving the relevant resolution objectives, restore the bank to financial soundness and long-term viability.

(4) Where there is no such reasonable prospect as referred to in to paragraph (3), the Authority may apply the bail-in tool for the purposes referred to in paragraph (1)(b) together with sale of business tool, bridge bank tool or asset separation tool.

(5) The Authority may apply the bail-in tool to a bank under paragraph (1), while respecting, in each case, the legal form of the bank or while changing the legal form of the bank if the Authority is of the view that changing the legal form is necessary to achieve the resolution objectives.

(6) The bail-in tool may be applied in respect of any liability of a bank that are not excluded from the scope of the bail-in tool under paragraph (7) or (8).

(7) The Authority shall not exercise the write down or conversion power in relation to the following liabilities whether they are governed by the law of Jersey or by the law of another jurisdiction –

(a) covered deposits;

(b) secured liabilities including covered bonds and liabilities in the form of financial instruments used for hedging purposes which form an integral part of the cover pool and which according to Jersey law are secured in a way similar to covered bonds;

(c) any liability that arises by virtue of the holding by the bank of client assets including client assets held on behalf of a recognized fund (within the meaning of Article 1 of the Collective Investment Funds (Jersey) Law 1988) or an AIF (within the meaning of the Alternative Investment Funds (Jersey) Regulations 2012), provided that such client assets are protected under Jersey insolvency law.

(d) any liability that arises by virtue of a fiduciary relationship between the bank (as fiduciary) and another person (as beneficiary) provided that such beneficiary's interests are protected under Jersey insolvency law;

(e) liabilities to a credit institution, excluding entities that are part of the same group, with an original maturity of less than 7 days;

(f) liabilities with a remaining maturity of less than 7 days, owed to payment and securities settlement systems or their participants and arising from the participation in any such system; or

(g) a liability to any one of the following –

(i) an employee, in relation to accrued salary, pension benefits or other fixed remuneration, except for the variable component of remuneration that is not regulated by a collective bargaining agreement,

(ii) a commercial or trade creditor arising from the provision to the bank in resolution of goods and services that are critical to the daily functioning of its operations, including information technology services, utilities and rental, servicing and upkeep of premises,

(iii) tax and social security services in Jersey, or

(iv) the Depositors Compensation Fund.

(8) In exceptional circumstances, where the bail-in tool is applied, the Authority may exclude or partially exclude certain liabilities from the application of the write down or conversion powers where –

(a) it is not possible to bail-in that liability within a reasonable time despite the good faith efforts of the Authority;

(b) the exclusion is strictly necessary and is proportionate to achieve the continuity of critical functions and core business lines in a manner that maintains the ability of the bank in resolution to continue key operations, services and transactions;

(c) the exclusion is strictly necessary and proportionate to avoid giving rise to widespread contagion, in particular as regards eligible deposits which would severely disrupt the functioning of financial markets, including financial market infrastructures, in a manner that could cause broader financial instability; or

(d) the application of the bail-in tool to those liabilities would cause a destruction of value such that the losses borne by other creditors would be higher than if those liabilities were excluded from bail-in.

(9) Where the Authority decides to exclude or partially exclude an eligible liability or class of eligible liabilities under paragraph (8), the level of write down or conversion applied to other eligible liabilities may be increased to take account of such exclusions, provided that the level of write down or conversion applied to other eligible liabilities complies with the general principle of resolution specified in Article 35(g).

(10) Where the Authority decides to exclude or partially exclude an eligible liability or class of eligible liabilities under paragraph (8) and the losses that would have been borne by those liabilities have not been passed on fully to other creditors, a contribution may, subject to paragraph (11), be made out of the Fund to the bank in resolution to do one or more of the following –

(a) cover any losses which have not been absorbed by eligible liabilities and restore the net asset value of the bank in resolution to zero in accordance with Article 66(1); and

(b) purchase shares in the bank in resolution in order to recapitalize the bank in accordance with Article 66(2).

(11) A contribution may be made from the Fund under paragraph (10) only where –

(a) a contribution to loss absorption and recapitalization equal to an amount not less than 8% of the total liabilities including own funds of the bank in resolution, measured by the pre-resolution valuation, has been made by the shareholders, the holders of relevant capital instruments and other eligible liabilities through write down, conversion or otherwise; and

(b) the contribution of the Fund does not exceed 5% of the total liabilities including own funds of the bank in resolution, measured by the pre-resolution valuation.

(12) In extraordinary circumstances, where the bail-in tool is applied the Authority may seek further funding from alternative financing sources.

(13) In exercising its discretion under paragraph (8), the Authority shall give due consideration to –

(a) the principle that losses shall be borne first by shareholders and next, in general, by creditors of the bank in resolution in order of preference;

(b) the level of loss absorbing capacity that would remain in the bank in resolution if the liability or class of liabilities were excluded; and

(c) the need to maintain adequate resources for resolution financing.

(14) In paragraph (7)(e), "credit institution" means a bank or an entity that is carrying on deposit-taking business (whether or not incorporated, or carrying on business, in Jersey).

66 Assessment of amount of bail-in

(1) In applying the bail-in tool under Article 65, the Authority shall assess for the purposes of paragraph (2), on the basis of the pre-resolution valuation, the aggregate of –

(a) where relevant, the amount by which eligible liabilities must be written down in order to ensure that the net asset value of the bank in resolution is equal to zero; and

(b) where relevant, the amount by which eligible liabilities must be converted into shares or other types of capital instruments in order to restore the Common Equity Tier 1 capital ratio of either –

(i) the bank in resolution, or

(ii) the bridge bank.

(2) The assessment referred to in paragraph (1) shall establish the amount by which eligible liabilities need to be written down and converted in order –

(a) to restore the Common Equity Tier 1 capital ratio of the bank in resolution or, where applicable, establish the ratio of the bridge bank, taking into account any contribution of capital by the Fund under Article 22(5)(d)(iv);

(b) to sustain sufficient market confidence in the bank in resolution or the bridge bank; and

(c) to enable the bank to continue to satisfy the Commission, for at least one year, that it is a fit and proper person to be registered to undertake deposit-taking business in accordance with Article 10(3)(a) of the Banking Business (Jersey) Law 1991.

(3) Where the Authority intends to apply the asset separation tool together with the bail-in tool to a bank in resolution, the amount by which eligible liabilities need to be reduced shall take into account a prudent estimate of the capital needs of the asset management vehicle as appropriate.

(4) Where capital has been written down in accordance with the write down or conversion power, and the bail-in tool has been applied, and the level of write down based on the pre-resolution valuation is found to exceed requirements when assessed against the definitive valuation, a write up mechanism may be applied to reimburse creditors and then shareholders to the extent necessary.

67 Treatment of shareholders in bail-in or write down or conversion

(1) When applying the bail-in tool or the write down or conversion power, the Authority shall take, in respect of shareholders of the bank in resolution, one or both of the following actions –

(a) cancel existing shares or transfer them to bailed-in creditors;

(b) provided that, in accordance with the pre-resolution valuation (or provisional valuation, if applicable), the bank in resolution has a positive net value and dilute existing shareholders as a result of the conversion into shares using the write down or conversion power of –

(i) relevant capital instruments, or

(ii) eligible liabilities,

issued by the bank in resolution.

(2) The Authority shall take the actions referred to in paragraph (1) in respect of shareholders where the shares were issued or conferred in the following circumstances –

(a) pursuant to the conversion of debt instruments to shares in accordance with the contractual terms of the original debt instruments on the occurrence of an event that preceded or occurred at the same time as the assessment by the Authority that the bank met the resolution conditions; or

(b) pursuant to the conversion of relevant capital instruments to Common Equity Tier 1 instruments under the write down or conversion power.

(3) In considering which action to take in accordance with paragraph (1), the Authority shall have regard to –

(a) the pre-resolution valuation (or provisional valuation, if applicable);

(b) the amount by which the Authority has assessed that Common Equity Tier 1 items must be reduced and relevant capital instruments must be written down or converted pursuant to the write down or conversion power; and

(c) the aggregate amount assessed by the Authority under Article 66(1).

68 Sequence of write down or conversion

(1) Subject to any exclusions set out in Article 65(7) and (8), the Authority, in exercising the write down or conversion power when applying the bail-in tool, shall meet the following requirements –

(a) the Authority shall reduce the Common Equity Tier 1 items in accordance with Article 74(6);

(b) if the total reduction under sub-paragraph (a) is less than the sum of the amounts referred to in Article 67(3)(b) and (c), the Authority shall reduce the principal amount of Additional Tier 1 instruments to the extent required and to the extent of their capacity;

(c) if the total reduction pursuant to sub-paragraphs (a) and (b) is less than the sum of the amounts referred to in Article 67(3)(b) and (c), the Authority shall reduce the principal amount of Tier 2 instruments to the extent required and to the extent of their capacity;

(d) if the total reduction of shares and relevant capital instruments pursuant to sub-paragraphs (a), (b) and (c) is less than the sum of the amounts referred to in Article 67(3)(b) and (c), the Authority shall reduce to the extent required the principal amount of subordinated debt that is not Additional Tier 1 or Tier 2 capital in accordance with the hierarchy of claims that would apply if the bank were to be wound up under normal insolvency proceedings, in conjunction with the write down pursuant to sub-paragraphs (a), (b) and (c) to produce the sum of the amounts referred to in Article 67(3)(b) and (c);

(e) if the total reduction of shares, relevant capital instruments and eligible liabilities pursuant to sub-paragraphs (a) to (d) is less than the sum of the amounts referred in Article 67(3)(b) and (c), the Authority shall reduce to the extent required the principal amount of, or outstanding amount payable in respect of, the rest of eligible liabilities in accordance with the hierarchy of claims that would apply if the bank were to be wound up under normal insolvency proceedings, including the ranking of deposits provided for in Article 30, pursuant to the bail-in tool, in conjunction with the write down pursuant to sub-paragraphs (a) to (d) to produce the sum of the amounts referred to in Article 67(3)(b) and (c).

(2) When applying the write down or conversion power, the Authority shall allocate the losses represented by the sum of the amounts referred to in Article 67(3)(b) and (c) equally between shares and eligible liabilities of the same rank by reducing the principal amount of, or outstanding amount payable in respect of, those shares and eligible liabilities to the same extent pro rata to their value, except where a different allocation of losses amongst liabilities of the same rank is allowed in the circumstances specified in Article 65(8).

(3) Paragraph (2) shall not prevent liabilities which have been excluded from bail-in in accordance with Article 65(7) and (8) from receiving more favourable treatment than eligible liabilities which are of the same rank under the bank winding up procedure under Part 7.

(4) Before applying the write down or conversion, the Authority shall convert or reduce the principal amount on instruments referred to in paragraph (1)(b), (c) and (d) when those instruments contain the following terms and have not been fully converted –

(a) terms that provide for the principal amount of the instrument to be reduced on the occurrence of any event that refers to the financial situation, solvency or levels of own funds of the bank; or

(b) terms that provide for the conversion of the instrument to shares on the occurrence of any such event.

(5) Where the principal amount of an instrument has been reduced, but not reduced to zero, in accordance with terms referred to in paragraph (4)(a), before the application of the bail-in pursuant to paragraph (1), the Authority shall apply the write down or conversion power to the residual amount of that principal amount in accordance with paragraph (1).

(6) In deciding on whether liabilities are to be written down or converted into equity, the Authority shall not convert one class of liabilities while a class

of liabilities that is subordinated to that class remains substantially unconverted into equity or not written down, unless otherwise permitted under paragraphs Article 65(7) and (8).

69 Derivatives

(1) The Authority shall exercise the write down or conversion power in relation to a liability arising from a derivative contract only upon or after closing-out that derivate contract.

(2) The Authority may terminate and close out any derivative contract upon a bank's entry into resolution for the purpose of the entry into resolution.).

(3) Where a derivate contract has been excluded from the application of the bail-in tool pursuant to Article 65(8), the Authority shall not be under any obligation to terminate or close out the derivative contract.

(4) Where a derivative contract is subject to a netting agreement, the value of the liability for the purposes of the pre-resolution valuation (or provisional valuation, if applicable) shall be determined on a net basis in accordance with the terms of the agreement.

(5) The Authority shall determine the value of liabilities arising from derivative contracts in accordance with the following –

(a) appropriate methodologies for determining the value of classes of derivative contracts, including contracts that are subject to netting agreements;

(b) principles for establishing the relevant point in time at which the value of a derivative position shall be established; and

(c) appropriate methodologies for comparing the destruction of value that would arise from the close out and bail-in of derivatives with the amount of losses that would be borne by derivatives in bail-in.

(6) When the write down or conversion power is used, the Authority may apply a different conversion rate to different classes of capital instruments and liabilities in accordance with one or both of the following principles –

(a) the conversion rate shall represent appropriate compensation to the affected creditor for any loss incurred by virtue of the exercise of the write down or conversion power;

(b) when different conversion rates are applied, the conversion rate applicable to liabilities that are considered to be senior under Jersey insolvency law shall be higher than the conversion rate applicable to subordinated liabilities.

70 Business reorganization plan

(1) Where the bail-in tool has been used, the Authority shall ensure that a business reorganization plan is drawn up and implemented in accordance with this Article.

(2) The implementation of a business reorganization plan may include the appointment by the Authority of persons (pursuant to its general power to

exercise control over a bank in resolution under Article 29(1)(b)) for the purpose of drawing up and implementing the business reorganization plan.

(3) Within one month after the application of the bail-in tool to a bank, the management of the bank shall draw up and submit to the Authority a business reorganization plan setting out measures to restore the long-term viability of the bank within a reasonable timescale, on the basis of realistic assumptions as to the economic and financial market conditions under which the bank will operate.

(4) Where a group resolution has been carried out, including where a foreign resolution instrument has been made, a group level business reorganization plan may be accepted by the Authority for the purpose of this Article.

(5) In exceptional circumstances, and if it is necessary for achieving the resolution objectives, the Authority may extend the period in paragraph (3) up to a maximum of 2 months from the date of the application of the bail-in tool.

(6) A business reorganization plan shall contain at least the following –

(a) a detailed diagnosis of the factors and problems that caused the bank to fail or to be likely to fail and the circumstances that led to its difficulties;

(b) a description of the measures aiming to restore the long-term viability of the bank that are to be adopted; and

(c) a timescale for the implementation of those measures.

(7) Measures aiming to restore the long-term viability of the bank under paragraph (6) may include –

(a) the reorganization of the activities of the bank;

(b) changes to the operational systems and infrastructure within the bank;

(c) the withdrawal from loss-making activities;

(d) the restructuring of existing activities that can be made competitive; and

(e) the sale of assets or business lines.

(8) Within one month of the submission of the business reorganization plan, the Authority together with the Commission, shall assess the likelihood that the business reorganization plan, if implemented, will restore the long-term viability of the bank.

(9) If on assessment under paragraph (8), the Authority and the Commission are satisfied that the business reorganization plan will restore the long-term viability of the bank, the Authority shall approve the plan.

(10) If on assessment the Authority or the Commission are not satisfied that the business reorganization plan would restore the long-term viability of the bank, , the Authority, in agreement with the Commission shall notify the management of its concerns and require the amendment of the business reorganization plan in a way that will address those concerns.

(11) Within 2 weeks of receiving a notification by the Authority under paragraph (10), the management of the bank shall submit an amended business reorganization plan to the Authority.

(12) The Authority, together with the Commission, shall assess the amended business reorganization plan submitted under paragraph (11) and the Authority, in agreement with the Commission shall notify the management of the bank within one week as to whether the Authority is satisfied that the amended business reorganization plan addresses the concerns notified or whether further amendment is required.

(13) The management of the bank shall implement the business reorganization plan and shall submit a report to the Authority at least every 6 months on the progress of the implementation of the business reorganization plan until such time as the Authority may determine.

(14) A business reorganization plan may be further amended following its initial implementation if the Authority is of the view that changes to the plan are required to achieve the long-term viability of the bank.

71 Ancillary provisions relating to bail-in

(1) Where the Authority exercises the write down or conversion power, such write down or conversion shall take effect and be immediately binding on the bank in resolution and affected creditors and shareholders of the bank in resolution.

(2) The Authority may complete or cause the completion of all administrative and procedural tasks necessary to give effect to the write down or conversion power including –

(a) the amendment of all relevant registers;

(b) the delisting or removal from trading of shares or debt instruments;

(c) the listing or admission to trading of new shares; and

(d) the relisting or readmission of any debt instruments which have been written down, without the requirement for a prospectus if a prospectus would in normal circumstances be required.

(3) Where the Authority reduces to zero the principal amount of, or outstanding amount payable in respect of, a liability by means of the write down or conversion power, that liability and any obligations or claims arising in relation to it that are not accrued at the time when the power is exercised shall be discharged for all purposes, and shall not be provable in any subsequent proceedings in relation to the bank in resolution or any successor entity in any subsequent winding up.

(4) Where the Authority reduces in part, but not in full, the principal amount of, or outstanding amount payable in respect of, a liability by means of the write down or conversion power –

(a) such liability shall be discharged to the extent of the amount reduced; and

(b) the relevant instrument or agreement that created the original liability shall continue to apply in relation to the residual principal amount of, or outstanding amount payable in respect of the

liability, subject to any modification of the amount of interest payable to reflect the reduction of the principal amount, and any further modification of the terms that the Authority might make by means of the write down or conversion power.

(5) Procedural impediments to the conversion of liabilities to shares by virtue of their instruments of incorporation or of any other law of Jersey, including pre-emption rights for shareholders or requirements for the consent of shareholders to an increase in capital, shall not prevent the application of a stabilization tool, in particular the write down or conversion power.

72 Contractual recognition of bail-in

(1) Subject to paragraph (2), a bank shall include in its contractual documents a contractual term by which the creditor or party to an agreement creating an eligible liability recognizes that that liability may be subject to the write down or conversion power and agrees to be bound by any reduction of the principal or outstanding amount due, conversion or cancellation that is effected by the exercise of that power by the Authority, provided that such liability is –

(a) not excluded under Article 65(7);

(b) not a covered deposit;

(c) governed by the law of another jurisdiction; and

(d) issued or entered into after the date on which this Law comes into force.

(2) Paragraph (1)(a) shall not apply where the Authority determines that the liability referred to in paragraph (1) can be subject to write down or conversion powers by the resolution authority of another jurisdiction or pursuant to a binding agreement concluded with that other jurisdiction.

(3) A failure to include the terms as are referred to under paragraph (1) shall not prevent the Authority from exercising the write down or conversion power in relation to that liability.

(4) A bank that fails to comply with paragraph (1) shall be guilty of an offence and liable to a fine of level 1 on the standard scale.

Chapter 5 – Government financial assistance tool

73 Application of government financial assistance tool

(1) The Authority, acting in agreement with and under the direction of the Minister, may apply the government financial assistance tool to a bank that meets the conditions specified in paragraph (4) by providing extraordinary public financial support to the bank in accordance with this Article for the purpose of resolving the bank, including by intervening directly to avoid its winding up, with a view to meeting the resolution objectives.

(3) The Authority may only apply the government financial assistance tool in respect of a bank –

(a) as a last resort after having assessed and exploited the other stabilization tools to the maximum extent practicable whilst maintaining financial stability; and

(b) if the resolution conditions are met, and the Minister and the Authority both determine that either or both of the following conditions are met –

(i) the application of the other resolution tools would not suffice to avoid significant adverse effect on the financial system in Jersey; or

(ii) the application of the other resolution tools would not suffice to protect the public interest where extraordinary liquidity assistance has already been given to the bank.

(4) Where the conditions referred to in paragraph (3) are met, the Authority may apply the government assistance financial tool by –

(a) while complying with the Companies (Jersey) Law 1991, participating in the recapitalization of a bank in resolution by providing capital in exchange for the Common Equity Tier 1 instruments, Additional Tier 1 instruments or Tier 2 instruments provided that the Authority shall ensure –

(i) to the extent that its shareholding of the bank permits, that the bank is managed on a commercial and professional basis,

(ii) that its holding in the bank is transferred to the private sector as soon as commercial and financial circumstances allow, or

(b) taking the bank in resolution into temporary public ownership, provided that the bank is managed on a commercial and professional basis and that it is transferred to the private sector as soon as commercial and financial circumstances allow.

(5) For the purposes of taking a bank into temporary public ownership under paragraph (3), the Authority may make one or more share transfer orders in which the transferee is –

(a) nominee of the Authority; or

(b) a company wholly owned by the Authority.

Chapter 6 – Write down and conversion power

74 Write down or conversion power

(1) Subject to paragraph (2), the Authority shall have the power to issue a mandatory reduction instrument to write down or convert relevant capital instruments or other liabilities of a bank in resolution into shares of the bank including –

(a) to reduce (including to zero) the principal amount of, or outstanding amount due, in respect of eligible liabilities of a bank in resolution;

(b) to cancel the debt instruments issued by a bank in resolution except secured liabilities;

(c) to reduce, including reducing to zero, the nominal amount of shares of a bank in resolution and to cancel such shares;

(d) to require a bank in resolution to issue new shares or other capital instruments, including preference shares and contingent convertible instruments.

(2) The Authority may only exercise the write down or conversion power after the carrying out a pre-resolution valuation (or a provisional valuation if applicable).

(3) For the purpose of paragraph (2), a pre-resolution valuation or a provisional valuation, as the case may be, shall form the basis of the calculation of the write down to be applied to the relevant capital instruments in order to absorb losses and the level of conversion to be applied to the relevant capital instruments in order to recapitalize the bank.

(4) The Authority may exercise the write down or conversion power –

(a) independently of a resolution action; or

(b) in combination with a resolution action, where resolution conditions are met.

(5) The Authority shall exercise the write down or conversion power in accordance with this Article without delay in relation to relevant capital instruments issued by a bank in resolution, when one or more of the following circumstances apply –

(a) the determination has been made that the resolution conditions have been met, before any resolution action has been taken;

(b) the Authority determines that unless the write down or conversion power is exercised in relation to relevant capital instruments, the bank will no longer be viable;

(c) in the case of relevant capital instruments issued by a bank that is a subsidiary, and where those capital instruments are recognized for the purposes of meeting the minimum requirements for own funds under Article 26, the Authority determines that unless the write down or conversion power is exercised the bank's group would no longer be viable;

(d) in the case of relevant capital instruments issued by a bank that is a parent, and where those capital instruments are recognized for the purposes of meeting the minimum requirements for own funds under Article 26, the Authority determines that unless the write down or conversion power is exercised the bank's group would no longer be viable; or

(e) government financial assistance is required by the bank except in the circumstances set out Article 2(2)(e).

(6) In complying with the requirements under paragraph (5), the Authority shall exercise the write down or conversion power in accordance with the priority of claims that would apply if the bank in resolution were to be

wound up under normal insolvency proceedings, in a way that produces the following results –

(a) Common Equity Tier 1 items are reduced first in proportion to the losses and to the extent of their capacity and the Authority takes one or both of the actions specified in Article 67(1) in respect of the holders of Common Equity Tier 1 instruments;

(b) the principal amount of Additional Tier 1 instruments is written down or converted into Common Equity Tier 1 instruments or both, to the extent required to achieve the resolution objectives or to the extent of the capacity of the relevant capital instruments, whichever is lower; and

(c) the principal amount of Tier 2 instruments is written down or converted into Common Equity Tier 1 instruments or both, to the extent required to achieve the resolution objectives or to the extent of the capacity of the relevant capital instruments, whichever is lower.

(7) Where the principal amount of a relevant capital instrument is written down –

(a) the reduction of that principal amount shall be permanent, subject to any write up in accordance with Article 66(4);

(b) no liability to the holder of the relevant capital instrument shall remain under or in connection with that amount of the instrument which has been written down, except for any liability already accrued, and any liability for damages that may arise as a result of an appeal against the exercise of the write down or conversion power (but this shall not prevent the provision of Common Equity Tier 1 instruments to a holder of relevant capital instruments in accordance with paragraph (8);

(c) no compensation is paid to any holder of the relevant capital instruments other than in accordance with paragraph (8).

(8) In order to effect a conversion of relevant capital instruments under paragraph (6)(b), the Authority or the Commission may require banks to issue Common Equity Tier 1 instruments to the holders of the relevant capital instruments and the relevant capital instruments may only be converted where the following conditions are met –

(i) those Common Equity Tier 1 instruments are issued by the bank with the agreement of the Authority or the Commission,

(ii) those Common Equity Tier 1 instruments are issued prior to any issuance of shares by that bank for the purposes of provision of own funds by a public authority,

(iii) those Common Equity Tier 1 instruments are awarded and transferred without delay following the exercise of the write down or conversion power, and

(iv) the conversion rate that determines the number of Common Equity Tier 1 instruments that are provided in respect of each relevant capital instrument complies with the principles set out in Article 69(6).

(9) For the purposes of the provision of Common Equity Tier 1 instruments that are provided in accordance with paragraph (8), the Jersey Resolution Authority or the Commission may require banks to maintain at all times the necessary prior authorisation to issue the relevant number of Common Equity Tier 1 instruments.

Chapter 7 – Default Event Provisions

75 Default event provisions

(1) The following shall be disregarded in determining whether a default event provision applies –

(a) a crisis prevention measure, crisis management measure or recognized foreign resolution action taken in relation to a bank in resolution (or any member of the bank's group); and

(b) the occurrence of any event directly linked to the application of such measure or action,

provided that the substantive obligations under the contract, including payment and delivery obligations and the provision of collateral, continue to be performed.

(2) Paragraph (1) applies where a contract or other agreement –

(a) is entered into by a bank or foreign bank;

(b) is entered into by a subsidiary undertaking of a bank or foreign bank, whose obligations are guaranteed by another group entity in the bank's group or foreign bank's group; or

(c) is entered into by another group entity in the bank's group or foreign bank's group,

and the substantive obligations provided for in the contract or agreement (including payment and delivery obligations and provision of collateral) continue to be performed.

(3) A resolution instrument or share transfer order may make provision for paragraph (4) or (5) to apply in circumstances where paragraph (1) would not apply.

(4) If this paragraph applies, the resolution instrument or share transfer order shall be disregarded in determining whether a default event provision applies.

(5) If this paragraph applies, the resolution instrument or share transfer order shall be disregarded in determining whether a default event provision applies except so far as the resolution instrument or share transfer order provides otherwise.

(6) A reference paragraph (3), (4) or (5) to a resolution instrument or share transfer order is a reference to –

(a) the making of the resolution instrument or share transfer order;

(b) anything to be done by the resolution instrument or share transfer order or is to be, or may be, done under the resolution instrument or share transfer order; and

(c) any action or decision taken or made under this Law or another enactment in so far as it resulted in, or was connected to, the making of the resolution instrument or share transfer order.

(7) A provision in a resolution instrument or share transfer order under paragraph (6) may apply paragraph (4) or (5) –

(a) generally or only for specified purposes, cases or circumstances, or

(b) differently for different purposes, cases or circumstances.

(8) A thing is not done by virtue of a resolution instrument or a share transfer order for the purposes of paragraph (6)(b) merely by virtue of being done under a contract or other agreement rights or obligations which have been affected by the resolution instrument or share transfer order.

(9) In this Article –

"default event provision" means a provision of a contract or other agreement –

(a) that has the effect that if a specified event or situation arises –

(i) the agreement is terminated, modified, replaced or suspended;

(ii) rights or duties under the agreement are terminated, modified, replaced or suspended;

(iii) a right accrues to terminate, modify or replace the agreement;

(iv) a right accrues to terminate, modify or replace rights or duties under the agreement;

(v) a set-off or netting right accrues under the contract;

(vi) a sum becomes payable or ceases to be payable;

(vii) delivery of anything becomes due or ceases to be due;

(viii) a right to claim a payment or delivery accrues, changes or lapses,

(ix) any other right accrues, changes or lapses, or

(x) an interest is created, changes or lapses; or

(b) that has the effect that a provision of the contract or agreement –

(i) takes effect only if a specified event occurs or does not occur,

(ii) takes effect only if a specified situation arises or does not arise,

(iii) has effect only for so long as a specified event does not occur,

(iv) has effect only while a specified situation lasts,

(v) applies differently if a specified event occurs,

(vi) applies differently if a specified situation occurs, or

(vii) applies differently while a specified situation lasts;

"specified", in relation, to a contract or agreement means specified in the contract or other agreement.

Chapter 8 – Resolution Safeguards

76 Treatment of shareholders in the case of partial transfers and application of the bail in tool

Where one or more of the resolution tools have been applied –

(a) except where sub-paragraph (b) applies, where the Authority transfers only part of the assets, rights and liabilities of the bank in resolution, the shareholders and creditors whose claims have not been transferred shall receive in satisfaction of their claims at least as much as they would have received if the bank in resolution had been wound up under normal insolvency proceedings at the time when the decision was taken to stabilize the bank; and

(b) where the Authority applies the bail-in tool, the shareholders and creditors whose claims have been written down or converted to equity shall not incur greater losses than they would have incurred if the bank in resolution had been wound up under normal insolvency proceedings immediately at the time when the decision was taken to stabilize it.

77 Difference of treatment valuation

(1) For the purpose of assessing whether shareholders and creditors would have received better treatment if a bank in resolution had been wound up under normal insolvency proceedings, the Authority shall, in accordance with an Order made under Article 49, appoint an independent valuer to carry out a valuation as soon as practicable after the application of a resolution action.

(2) A difference of treatment valuation shall be distinct from any pre-resolution valuation, provisional valuation or definitive valuation.

(3) A difference of treatment valuation shall determine –

(a) the treatment that shareholders, creditors and the Depositors Compensation Fund would have received if normal insolvency proceedings in respect of the bank in resolution had commenced at the time when the decision was taken to stabilize the bank;

(b) the actual treatment that shareholders, creditors and the Depositors Compensation Fund have received;

(c) if there is any difference between the treatment referred to in paragraphs (a) and (b).

(4) A difference of treatment valuation shall –

(a) assume that normal insolvency proceedings in respect of the bank in resolution would have commenced on the date on which the decision was taken to stabilize it;

(b) assume that the bank in resolution would, if it had entered normal insolvency proceedings in accordance with subparagraph (a), been liquidated in full on the date on which normal insolvency proceedings in respect of the bank in resolution would have commenced;

(c) assume that the stabilization action has not been effected; and

(d) disregard any provision of extraordinary public financial support to the bank in resolution.

(5) The Authority may set or adopt technical standards for the purpose of a difference of treatment valuation.

(6) A difference of treatment valuation shall be carried out in accordance with technical standards set or adopted by the Authority under paragraph (5).

78 Safeguard for shareholders and creditors

If the difference of treatment valuation determines that any shareholder or creditor would incur greater losses than it would incur in a winding up under normal insolvency proceedings contrary to the general principle of resolution under Article 35(g), the shareholder or creditor shall be entitled to the payment of the difference as compensation from the Fund.

79 Procedural requirements after creation of a resolution instrument or share transfer order

(1) As soon as is reasonably practicable after the creation of a resolution instrument or a share transfer order by which a resolution action is taken (including a foreign resolution instrument), the Authority shall publish or procure the publication of a copy of the resolution instrument or share transfer order or a notice summarizing the key terms of the resolution instrument or share transfer order by the following means –

(a) by sending it to –

(i) the Commission,

(ii) the Minister,

(iii) the Jersey Bank Depositors Compensation Board, and

(iv) the Viscount;

(b) by publishing it on the website of –

(i) the Commission,

(ii) the States, and

(iv) the bank in resolution,

(c) by publishing it –

(i) in the Jersey Gazette, and

(ii) on any other national or international newspaper or other publication which in the opinion of the Authority would maximise the likelihood of the resolution instrument coming to the attention of affected persons;

(d) by requesting that the Minister lay a copy before the States Assembly (and the Minister shall lay such copy before the States Assembly at the earliest opportunity); and

(e) if securities issued by the bank in resolution have been admitted to trading on a regulated market, by means of a relevant regulatory information service.

(2) In paragraph (1) "relevant regulatory information service" means a service approved by the Authority to disseminate information in accordance with this Law.

80 Safeguard for partial transfers

(1) Where the Authority –

(a) transfers some but not all of the assets, rights or liabilities of a bank in resolution to another entity or, in the application of a resolution tool, from a bridge bank or asset management vehicle to another person; or

(b) exercises the power in Article 29(1)(p) to cancel or modify the terms of a contract to which the bank in resolution is a party or substitute a recipient as a party,

the arrangements specified in paragraph (2) and the counterparties of such arrangements shall, subject to paragraph (4), be protected.

(2) The arrangements protected under paragraph (1) are as follows –

(a) security arrangements, under which a person has by way of security an actual or contingent interest in the assets or rights that are subject to transfer, irrespective of whether that interest is secured by specific assets or rights or by way of a floating charge or similar arrangement;

(b) title transfer financial collateral arrangements under which collateral to secure or cover the performance of specified obligations is provided by a transfer of full ownership of assets from the collateral provider to the collateral taker, on terms providing for the collateral taker to transfer assets if those specified obligations are performed;

(c) set-off arrangements under which 2 or more claims or obligations owed between the bank in resolution and a counterparty can be set off against each other;

(d) netting arrangements;

(e) covered bonds; or

(f) structured finance arrangements, including securitisations and instruments used for hedging purposes which form an integral part of the cover pool and which according to Jersey law are secured in a way similar to the covered bonds which involve the granting and holding of security by a party to the arrangement or a trustee, agent or nominee.

(3) Paragraph (2) shall apply irrespective of the number of parties involved in the arrangements or whether the arrangements –

(a) are created by contract, trusts or other means, or arise automatically by operation of law; or

(b) arise under or are governed in whole or in part by the law of another jurisdiction.

(4) The form of protection that is appropriate for the classes of arrangements specified in paragraph (2) shall be as provided in Article 81, 82, 83, 84, or 85, as the case may be.

81 Protection for title transfer financial collateral, set-off and netting arrangements

To protect title transfer financial collateral arrangements referred to in Article 80(2)(b), set-off arrangements referred to in Article 80(2)(c) and netting arrangements referred to in Article 80(2)(d), the transfer of some, but not all, of the rights and liabilities that are protected under any such arrangement between the bank in resolution and another person, and the modification or termination of rights and liabilities that are protected under any such arrangement through the exercise of ancillary powers, shall not be permitted.

82 Protection for security arrangements

To protect liabilities secured under security arrangements referred to in Article 80(2)(a), the following shall not be permitted –

(a) the transfer of assets against which a liability is secured, unless that liability and the benefit of the security are also transferred;

(b) the transfer of a secured liability, unless the benefit of the security is also transferred;

(c) the transfer of the benefit of the security, unless the secured liability is also transferred; or

(d) the modification or termination of a security arrangement through the exercise of ancillary powers, if the effect of that modification or termination is that the liability ceases to be secured.

83 Protection for structured finance arrangements and covered bonds

To protect structured finance arrangements and covered bonds referred to in Article 80(2)(e) and (f), the following shall not be permitted –

(a) the transfer of some, but not all, of the assets, rights and liabilities which constitute or form part of a structured finance arrangement or covered bond; or

(b) the termination or modification, through the exercise of ancillary powers, of the assets, rights and liabilities which constitute or form part of a structured finance arrangement or covered bond,

to which the bank in resolution is party.

84 Transfer or modification of covered deposits and other assets, rights or liabilities

Despite Articles 81, 82 and 83, where necessary in order to ensure availability of the covered deposits, the Authority may –

(a) transfer covered deposits which are part of any of the arrangements referred to in those Articles without transferring other assets, rights or liabilities that are part of the same arrangements; or

(b) transfer, modify or terminate the assets, rights or liabilities referred to in paragraph (a) without transferring the covered deposits.

85 Protection of trading, clearing and settlement systems

The application of a resolution tool shall not prejudice the operation of payment and settlement systems where the Authority –

(a) transfers some but not all of the assets, rights or liabilities of a bank in resolution to another entity; or

(b) exercises its general resolution power under Article 29(1)(p) to cancel or modify the terms of a contract to which the bank in resolution is a party or to substitute a recipient as a party.

Chapter 9 – Miscellaneous

86 International obligations

(1) The Authority shall not exercise a resolution power in respect of a bank if the Minister, the Commission or the Attorney General serves a notice on the Authority stating that the exercise of that resolution power would be likely to contravene an international obligation of the United Kingdom or Jersey.

(2) The Authority may request that the Minister, Commission or Attorney General to serve an international obligation notice on the Authority where the Authority believes that it is at risk of exercising a resolution power that may contravene an international obligation of the United Kingdom or Jersey.

(3) An international obligation notice shall –

(a) be in writing;

(b) state the reasons that the Minister, the Commission or the Attorney General (as the case may be) believes that the exercise of a resolution power would cause Jersey to contravene an international obligation of the United Kingdom or Jersey;

(c) state any actions that the Authority must take or must not take in order to comply with an international obligation of the United Kingdom or Jersey; and

(c) may be withdrawn (generally, partially or conditionally).

(4) If the Authority receives an international obligation notice, the Authority shall consider the alternative courses of action that achieve the resolution

objectives but shall avoid the objections on which the international obligations notice is based.

87 No requirement for advice or opinion on technical area

Nothing in Article 86(1) or (2) shall require the Minister, Commission, Attorney General, Authority or other person to give advice or an opinion on a technical area that is outside of that person's scope, jurisdiction or technical expertise.

88 Post resolution report

(1) The Authority shall submit a report to the Minister with respect to any resolution action taken in respect of a bank more than 12 months after the resolution action has been concluded.

(2) A report under paragraph (1) shall include –

(a) a summary of the financial information relating to the resolution of the bank, including the findings of each of the valuations carried out, in particular, outlining the findings of the valuations in relation to the position of creditors, the general principle of resolution under Article 35(g) and the resolution safeguard in Article 78;

(b) an outline of the other information available to the Authority based upon which it made the decision to take resolution action;

(c) if relevant, a review of the quality of the information under sub-paragraph (a) or (b);

(d) an outline of relevant information which has subsequently come into the possession of the Authority highlighting the extent to which that information has changed from the information which formed the basis of its decision to take resolution action;

(e) a review of the decision to take resolution action, including an assessment of the extent to which the information which has subsequently come into the possession of the Authority might have led the Authority to have made a different decision had that information been in its possession at the time that the decision was made;

(f) an assessment of the effect of the resolution action and the extent to which that effect is consistent with the intended effect of the resolution action;

(g) an assessment of lessons learned, including practical hurdles encountered and any fundamental deficiencies identified as a result of the resolution action; and

(h) proposals, if any, for any changes to address the lessons learned.

(3) The Minister shall lay before the States a copy of report submitted to him or her under paragraph (2) as soon as practicable after it is submitted to him or her.

89 Recognition of foreign resolution actions

(1) Subject to the approval of the Minister and to paragraph (2), where the Authority is notified of a foreign resolution action in respect of a foreign bank, the Authority shall make an instrument –

(a) recognizing the foreign resolution action;

(b) refusing to recognize the foreign resolution action; or

(c) recognizing part of the foreign action and refusing to recognize the remainder of the foreign resolution action.

(2) The Authority may refuse to recognize a foreign resolution action if it is satisfied that one or more of the following conditions are met –

(a) recognition would have an adverse effect on financial stability in Jersey;

(b) the taking of resolution action by the Authority in relation to a branch located in Jersey of a foreign bank is necessary to achieve one or more of the resolution objectives;

(c) under the foreign resolution action, creditors (including, in particular, depositors) located or payable in Jersey would not, by reason of being located in Jersey, receive the same treatment, and have similar legal rights, as creditors (including depositors) who are located or payable in the foreign jurisdiction concerned;

(d) recognition of, and taking action in support of, the foreign resolution action (or the relevant part) would have material fiscal implications for Jersey; or

(e) recognition would be unlawful under Article 7(1) of the Human Rights (Jersey) Law 2000.

(3) The recognition of a foreign resolution action (or any part of it) shall not prejudice any normal insolvency proceedings unless the normal insolvency proceedings conflict with the recognized foreign resolution action, in which case the recognized foreign resolution action shall take precedence.

(4) Where a foreign resolution instrument has been made by the Authority under this Article which recognizes a foreign resolution (or part of it), such foreign resolution action (or part of it) shall produce the same legal effects in Jersey as it would have produced had it been made under the law of Jersey.

(5) For the purposes of supporting, or giving full effect to, a recognized foreign resolution action, the Authority may exercise one or more stabilization tools, or one or more stabilization powers.

(6) The Authority may make a foreign resolution instrument which has effect in respect of a bank which is a subsidiary of a foreign bank which both recognizes a group resolution action and carries out certain resolution actions under this Law on the entity in Jersey.

(7) A foreign resolution instrument may include incidental, consequential or transitional provisions which may be general or for specified purposes, cases or circumstances and may make different provision for different purposes, cases or circumstances.

(8) As soon as reasonably practicable after the making of a foreign resolution instrument under this Article the requirements of the foreign resolution instrument shall be complied with by the Authority.

(9) Any decision (including appropriate rationale for such decision) to refuse to recognize a foreign resolution action, to recognize a foreign resolution action only in part or to take independent actions to resolve a bank which is a subsidiary of a foreign bank, shall be communicated by the Authority clearly to the group concerned and to the resolution authority in the group's home jurisdiction (and intermediate home jurisdiction, if appropriate).

PART 7

BANK WINDING UP

90 Grounds for application for bank winding up order

An application for a bank winding up order may be made under Article 91 in respect of a bank on any of the following grounds which will be considered by the Court in determining the application in accordance with Articles 95 and 96 –

(a) the bank is unable, or likely to become unable, to pay its debts;

(b) the winding up of the bank would be in the public interest; or

(c) the winding up of the bank would be fair.

91 Application for bank winding up order

(1) An application for a bank winding up order or may be made to the Court by –

(a) the Authority;

(b) the Commission; or

(c) the Minister.

(2) An application for a bank winding up order under paragraph (1) –

(a) shall be made in the form prescribed;

(b) shall be accompanied by an affidavit of a representative of the applicant setting out the grounds for the application;

(c) may, where relevant, be accompanied by an affidavit of a representative of the Commission giving the opinion of the Commission in relation to the bank continuing, or failing to continue, to satisfy the Commission that it is a fit and proper person to be registered to undertake deposit-taking business in accordance with Article 10(3)(a) of the Banking Business (Jersey) Law 1991; and

(d) shall nominate one or more persons to be appointed as a bank liquidator of the bank being wound up.

92 Notice of application

Where an application for a bank winding up order is made under Article 91, the applicant shall, not less than 48 hours before the making of the application, give notice of the application to –

(a) the Authority (if the Authority is not the applicant) ;

(b) the bank;

(c) the Commission (if the Commission is not the applicant);

(d) the Minister(if the Minister is not the applicant);

(e) the Jersey Bank Depositors Compensation Board; and

(f) the Viscount.

93 Right to be heard

The Authority, the Commission, the Minster, the Viscount, the bank or its shareholders and, on application, other interested parties, shall have the right to be heard (or to make representations) at the proceedings for the granting of a bank winding up order.

94 Restriction of other insolvency or winding up proceedings

(1) Despite any other enactment to the contrary, the commencement of bank winding up proceeding against a bank under this Part bars the right to commence any normal insolvency proceedings or winding up proceedings under Article 155 of the Companies (Jersey) Law 1991 against the bank.

(2) Where an application for normal insolvency proceedings or winding up proceedings under Article 155 of the Companies (Jersey) Law 1991 is made in respect of a bank –

(a) the applicant shall, within 48 hours after the making of the application, give notice of the application to –

(i) the Authority,

(ii)| the bank,

(iii) the Commission,

(iv) the Minister,

(v) the Jersey Bank Depositors Compensation Board, and

(vi) the Viscount; and

(b) the following persons shall have a right to be heard (or to make representations) in the normal insolvency proceedings –

(i) the Authority,

(ii) the Commission,

(iii) the Minster,

(iv) the Viscount,

(v) the bank or its shareholders, or

(vi) upon notice to the Court, other interested parties.

(c) in accordance with Articles 90, 91 and 92, within 7 days of the notice being given under paragraph (a), an application may be made for a bank winding up order to be made in lieu of an order for normal bankruptcy proceedings ; and

(d) the Court shall not make an order for normal insolvency proceedings or winding up proceedings under Article 155 of the Companies (Jersey) Law 1991, except with the consent of the Authority.

95 Decision of the Court

If an application for a bank winding up order is made to the Court in accordance with this Part, the Court may –

(a) in accordance with Articles 96 and 97, grant the application and make the bank winding up order;

(b) adjourn the application (either *sine die* or to a specified date); or

(c) dismiss the application.

96 Grant of bank winding up order

(1) The Court may grant an application for a bank winding up order made to the Court in accordance with this Part and make a bank winding order –

(a) if the Court is satisfied that –

(i) the ground specified in Article 90(a) or 90(c) applies; and

(ii) having regard to the timing and other relevant circumstances, it is not reasonably likely (ignoring the stabilization powers), any action will be taken by or in respect of a bank that will prevent its failure or likely failure;

(b) if the Court is satisfied that the ground specified in Article 90(b) applies.

(2) If an application is made to the Court by the Authority for a bank winding up order in accordance with this Part, the Court may grant the application and make a bank winding order if the Court is satisfied that –

(a) the ground referred to in Article 90(a) is applies;

(b) the Authority has or intends to make a property transfer instrument in respect of a bank under the sale of business tool or bridge bank tool; and

(c) the residual bank is unable to pay its debts as they fall due or would become so as a result of the property transfer instrument that the Authority intends to make.

97 Contents of bank winding up order

A bank winding up order –

(a) shall name the persons appointed as the bank liquidator in accordance with Article 98;

(b) shall specify the powers of the bank liquidator set out in Article 104 and specify which of those powers –

(i) may be exercised by the bank liquidator without further reference to the Court or the bank liquidation committee,

(ii) may only be exercised by the bank liquidator with the prior sanction of the bank liquidation committee, and

(iii) may only be exercised by the bank liquidator with the prior sanction of the Court.

(c) may direct the manner in which the winding up of the bank is to be conducted (to the extent that such direction is required in addition to the provisions of this Law);

(d) shall specify matters which may be referred to the bank liquidation committee by the bank liquidator, including how often such matters must be reported on; and

(e) may make such orders as the Court sees fit to ensure that the winding up of the bank is conducted in an orderly manner.

98 Appointment of bank liquidator

(1) The Court may, in accordance with this Article, upon a nomination being made in an application under Article 91, appoint one or more persons as bank liquidators and may, upon reason being given, remove a person appointed as a bank liquidator in a bank winding up and may appoint another.

(2) A person shall not be appointed as a bank liquidator unless that person has consented to such appointment.

(3) Subject to paragraph (5), a person is not qualified for appointment as a bank liquidator unless the person is an individual and is a member of –

(a) the Institute of Chartered Accountants in England and Wales;

(b) the Institute of Chartered Accountants of Scotland; or

(c) the Institute Chartered Accountants in Ireland,

and is a licensed insolvency practitioner in England and Wales, Scotland or Northern Ireland.

(4) The Viscount is by virtue of the Viscount's office qualified for appointment as a bank liquidator.

(5) A person is disqualified from appointment as a bank liquidator if the person is –

(a) an officer, employee or auditor of the bank, or a partner or employee of such a person; or

(b) a person against whom an order under Article 78 of the Companies (Jersey) Law 1991 is in force.

(6) A person is disqualified from appointment as a bank liquidator if the person is disqualified under paragraph (5) for appointment as a liquidator

of any subsidiary or holding company of the bank or a subsidiary of the bank's holding company.

(7) A bank liquidator shall vacate office if the bank liquidator ceases to be a person qualified to act as a bank liquidator.

(8) A person who acts as a bank liquidator when not qualified to do so shall be guilty of an offence and shall be liable to imprisonment for a term of 2 years and to a fine.

99 Objectives of a bank liquidator in exercising his or her duties

(1) In exercising his or her duties under this Law, the objectives of a bank liquidator shall be –

(a) to work with the Jersey Bank Depositors Compensation Board to ensure that as soon as reasonably practicable each eligible depositor –

(i) has the relevant account transferred to another bank, or

(ii) receives payment from (or on behalf of) the Depositors Compensation Fund or from the bank liquidator, if applicable, or from the deposit guarantee system of another jurisdiction in which the bank has branches, as applicable;

(b) in circumstances where part of the business of the bank has been sold to a private sector purchaser using the sale of business tool, or transferred to a bridge bank using the bridge bank tool, to support the transferee by ensuring the supply of such services and facilities by the residual bank as are required to enable the transferee, in the opinion of the Authority, to operate the transferred business effectively; and

(c) to wind up the affairs of the bank so as to achieve the best result for the bank's creditors as a whole.

(2) For the purposes of paragraph (1)(c), "so as to achieve the best result for the bank's creditors as a whole" shall not necessarily be construed as meaning that the bank must be wound up quickly for the benefit of its creditors.

(3) The objective –

(a) in paragraph (1)(a) shall take precedence over the objectives in paragraph (1)(b), (c) and (d),

(b) the objective in paragraph (1)(b) shall take precedence over the objectives in paragraph (1)(c) and (d); and

(c) the objective in paragraph (1)(c) shall take precedence over the objective in paragraph (1)(d),

but the bank liquidator shall be under a duty to begin working towards all of the objectives, so far as practicable, immediately upon appointment.

100 Persons appointed as bank liquidator to act jointly and severally

Where more than one bank liquidator is appointed in respect of a bank under Article 98, the powers and obligations granted to or imposed on a bank liquidator under this Part shall be exercisable by them jointly and severally such that they may act together or one may act without the other (and by doing so will bind the other) in the exercise of their powers and obligations.

101 Bank liquidation committee

(1) On the making of a bank winding up order, a bank liquidation committee shall be established, for the purpose of ensuring that the bank liquidator properly exercises the functions of a bank liquidator in accordance with this Part.

(2) The bank liquidation committee shall comprise a representative nominated by and representing each of –

(a) the Authority;

(b) the Commission;

(c) the Jersey Bank Depositors Compensation Board;

(d) the Minister; and

(e) the Viscount.

(3) A body nominating a person as its representative on the bank liquidation committee under paragraph (2) may replace its representative at any time.

(4) The bank liquidator shall report to the bank liquidation committee about any matter –

(a) on request;

(b) which the bank liquidator thinks is likely to be of interest to the bank liquidation committee; or

(c) generally, at such intervals as may be agreed between the bank liquidator and the bank liquidation committee.

(5) A meeting of the bank liquidation committee may be summoned –

(a) by any member of the bank liquidation committee; or

(b) by the bank liquidator,

and in any event a meeting shall be held at least every 28 days from the date of the winding up order until the final meeting of the bank under Article 141.

(6) A meeting of the bank liquidation committee shall be quorate only if a representative of each of the Authority, the Commission and the Minister are present (including by delegated authority, by telephone or any other media) and the participants must be able to hear each other.

(7) As soon as reasonably practicable after its establishment, the bank liquidation committee shall recommend the bank liquidator to pursue –

(a) the objective specified in Article 99(1)(a)(i);

(b) the objective specified in Article 99(1)(a)(ii); or

(c) the objective specified in Article 99(1)(a)(i) for a specified class of case and the objective specified in Article 99(1)(a)(ii) for another.

(8) In making a recommendation the bank liquidation committee shall consider –

(a) the desirability of achieving the objective specified in Article 99(1)(a) as quickly as possible;

(b) the need for the provision of services and facilities in circumstances where the objective (specified in Article 99(1)(b)) is relevant; and

(c) the objective specified in Article 99(1)(c).

(9) If the bank liquidation committee thinks that the bank liquidator is failing to comply with the bank liquidation committee's recommendation, the bank liquidation committee may apply to the Court for directions seeking confirmation, reversal or modification of the acts or decisions of the bank liquidator (and the Court may make such consequential order as it thinks fit).

(10) If the bank liquidation committee has not made a recommendation, the bank liquidator may apply to the Court under paragraph (17) and the Court may, in particular, give a direction, in lieu of a recommendation, if the bank liquidation committee fails to make one within a period set by the Court.

(11) The bank liquidator shall –

(a) keep the bank liquidation committee informed of progress towards the objective specified in Article 99(1)(a);

(b) notify the bank liquidation committee when, in the bank liquidator's opinion, the objective specified in Article 99(1)(a) has been achieved entirely so far as reasonably practicable, as the case may be ("full payment notification");

(c) keep the bank liquidation committee appraised of the ongoing provision of services and facilities in accordance with the objective specified in Article 99(1)(b) and seek to agree an appropriate timeline for the continuation, winding down or transfer to a third party of the maintenance and provision of such services and facilities;

(d) notify the bank liquidation committee when, in the bank liquidator's opinion, the objective specified in Article 99(1)(b) is no longer relevant because –

(i) the services and facilities which were previously being provided to the transferee in accordance with the objective specified in Article 99(1)(b) are no longer required by the transferee, or

(ii)

(i) the provision of such services and facilities has been transferred to a third party, (an "Article 99(1)(b) notification"); and

(e) report to the bank liquidation committee in respect of any other matters which specified by the Court in the bank winding up order under Article 97(d).

(12) The bank liquidation committee shall oversee –

(a) each of the matters specified in paragraph (11); and

(b) the bank liquidator generally.

(13) As soon as reasonably practicable after receiving a full payment notification under paragraph (11)(b), the bank liquidation committee shall –

(a) resolve that the objective specified in Article 99(1)(a) has been achieved entirely or so far as reasonably practicable, as the case may be, (a "full payment resolution"); or

(b) apply to the Court for confirmation, reversal or modification of the acts or decisions of the bank liquidator with respect to the objective specified in Article 99(1)(a) and the Court may make such consequential order as it thinks fit.

(14) As soon as reasonably practicable after receiving a notification under paragraph (11)(d), the bank liquidation committee shall –

(a) resolve that the objective specified in Article 99(1)(b) is no longer relevant because of the reasons set out at paragraph (11)(d) (an "Article 99(1)(b) resolution"); or

(b) apply to the Court for confirmation, reversal or modification of the acts or decisions of the bank liquidator with respect to the objective specified in Article 99(1)(b),

and the Court may make such consequential order as it thinks fit.

(15) Where a bank liquidation committee passes a full payment resolution –

(a) the bank liquidator shall summon a meeting of creditors;

(b) subject to sub-paragraph (c) the meeting of creditors shall elect 1 or 3 individuals as new members of the bank liquidation committee to represent the interests of creditors; and

(c) The person representing the Jersey Bank Depositors Compensation Board may, if that person considers it fit, resign from the bank liquidation committee (in which case, 1 or 3 new members may be elected under sub-paragraph (b).

(16) Where a bank liquidation committee passes an Article 99(1)(b) resolution –

(a) the bank liquidator shall summon a meeting of creditors;

(b) the meeting may elect such number of additional individuals as the meeting sees fit as new members of the bank liquidation committee to represent the interests of creditors;

(c) the representatives of the Authority, Commission, Minister and Viscount may, if they each individually consider fit, resign from the bank liquidation committee; and

(d) at the end of the meeting the number of members of the bank liquidation committee must be uneven.

(17) A person aggrieved by any action of the bank liquidation committee before it has passed a full payment resolution may apply to the Court, and the Court may make any order as it thinks fit (including an order for the repayment of money).

(18) The Court may (whether on an application under paragraph (17), on the application of the bank liquidator or otherwise) make an order that the bank liquidation committee is to be treated as having passed a full payment resolution;

(19) If a bank liquidation committee fails to comply with paragraphs (13) or (14), the bank liquidator shall apply to the Court –

(a) for an order under paragraph (17); or

(b) for directions seeking confirmation, reversal or modification of the acts or decisions of the bank liquidation committee, and the Court may make such order as it thinks fit.

102 Commencement of bank winding up order

(1) A bank winding up order shall take effect from the date that the bank winding up order is made.

(2) Unless the Court directs otherwise on proof of fraud or mistake, proceedings taken in a bank winding up, during the period for which the bank winding up order is treated as having had effect under paragraph (1) shall be treated as having been taken validly.

103 Effects of bank winding up order

(1) A bank winding up order shall have the following general effects –

(a) In the circumstances where the objective in Article 99(1)(b) is relevant, the bank liquidator shall, at the request of the Authority, enter into an agreement for the residual bank to provide services or facilities to the transferee, and –

(i) in pursuing the objective in Article 99(1)(b) the bank liquidator shall have regard to the terms of that or any other agreement entered into between the residual bank and the transferee,

(ii) the bank liquidator shall avoid action that is likely to prejudice performance by the residual bank of its obligations in accordance with the terms referred to in clause (i),

(iii) the bank liquidator shall seek to ensure that such an agreement provides for consideration to be paid at market rate, although this shall not prevent the bank liquidator from entering into an agreement on any terms that the bank liquidator thinks necessary in pursuit of the objective in Article 99(1)(b),

(iv) if in doubt about the effect of those terms or their interplay with the bank winding up in general, the bank liquidator may apply to the Court for directions; and

(v) the transferee may apply to the Court for directions about any dispute or disagreement with the residual bank;

(b) a lien or other right to retain possession of a record of the bank being wound up shall be unenforceable to the extent that its enforcement would deny possession of the record to the bank liquidator;

(c) all the powers of the directors of the bank shall cease, except so far as the liquidation committee sanction their continuance;

(d) no action shall be taken or proceeded with against the bank or its property except by leave of the Court and subject to such terms as the Court may impose;

(e) despite anything to the contrary in the Judgments (Reciprocal Enforcement) (Jersey) Law 1960, no application shall be made for a judgement, against a bank that is being wound up, to be registered in the Court under that Law and if made, shall not be registered or enforceable under that Law;

(f) no execution in Jersey of any existing judgment in Jersey or outside of Jersey against a bank that is being wound up shall be made;

(g) the corporate state and capacity of the bank in the bank winding up procedure under this Part shall continue until the bank is dissolved;

(h) subject to paragraph (3), any transfer of shares, not being a transfer made to or with the sanction of the bank liquidator, and any alteration in the status of the bank's members made after the commencement of the bank winding up procedure under this Part shall, unless the Court otherwise orders, be void;

(i) any disposition of the bank's property made after the commencement of the bank winding up procedure shall, unless the Court otherwise orders, be void, excluding any disposition made with the consent of the bank liquidator;

(j) any attachment, sequestration, distress or execution put in force against the estate or effects of the bank after the commencement of the bank winding up procedure under this Part, shall be void.

(2) Paragraph (1)(b) shall not apply to a lien on a document that gives a title to property and is held as such.

(3) Paragraph (1)(h) shall not prohibit transfer of shares made pursuant to a power under the Security Interests (Jersey) Law 1983 or Part 7 of the Security Interests (Jersey) Law 2012, even if such transfer is not made to, or with the sanction of, the bank liquidator.

104 Powers of bank liquidator

Subject to Article 97(1)(b), the bank liquidator, with the approval of the Court or the bank liquidation committee as specified in the bank winding up order, shall have the power –

(a) to do anything reasonably necessary or expedient for the pursuit of the objectives specified in Article 99;

(b) to call a meeting of creditors;

(c) to publish such notices as the bank liquidator deems necessary or expedient with a view to inviting claims;

(d) to require the bank or any of its officers, employees or auditors to provide the bank liquidator with such information, including by inspection of books, papers and records, and to give such other assistance to the bank liquidator, as the bank liquidator may reasonably require for the purposes of carrying out his or her functions in relation to the bank winding up;

(e) to require directors, senior managers and officers, and former directors, former senior managers and former officers of the bank to make a statement as to the affairs of the bank and, if requested, to verify the same by affidavit;

(f) to apply the rules referred to in Article 111;

(g) to pay a class of creditors in full (even if any other class is not repaid in full) and compromise any claim by or against the bank;

(h) to comply with a request of the Jersey Bank Depositors Compensation Board for the provision of information and to provide any information to the Jersey Bank Depositors Compensation Board which the bank liquidator thinks might be useful for the purpose of cooperating in pursuit of the objective specified in Article 99(1)(a);

(i) to exercise any of the powers of the bank as may be required for its orderly winding up, including but not limited to carrying on its business (including continuing to provide services and advice to clients), transferring its business to another legal person, the making of payments, assigning rights and interests, charging assets, incurring liabilities in the ordinary course of its business, settling litigation issues faced by the bank, and progressing litigation in which the bank is the pursuer;

(j) in circumstances where Article 99(1)(b) is of relevance, to support the transferee by continuing to supply such services and facilities as are required to enable the transferee, in the opinion of the Authority, to operate the transferred business effectively;

(k) to continue any other regulated activities undertaken by the bank and its subsidiary entities in conjunction with any existing professional advisers and employees of the bank as the bank liquidator considers appropriate for the bank's orderly winding up, having regard to the views and actions of the participants or clients of such activities and to the views of the Commission and any other interested party;

(l) to exercise all such powers as would ordinarily be exercisable by the directors of any regulated subsidiary entities or asset management entities of the bank being wound up, for the purposes of enabling such entity to continue managing or advising or acting as general partner of (as the case may be) any investments or regulated activities as the bank liquidator considers appropriate for the bank's orderly winding up;

(m) in consultation with the Commission and the Joint Financial Crimes Unit of the States Police Force, to investigate such matters that might be to the benefit of the creditors or shareholders, or in the public interest, subject to

applying to the Court for directions if a conflict of interest arises, as set out at Article 108;

(n) to settle a list of contributories (and the list of contributories is prima facie evidence of the persons named in it to be contributories);

(o) on application to, and with the approval of the Court, to order that a contributory identified in the list under paragraph (n) shall pay any money due from the contributory (or from the estate of the person who the contributory represents) to the bank, excluding any money payable by him or the estate by virtue of any call (without prejudice to any right of set-off available to the contributory, excluding any money due to him as a member of the bank in respect of any dividend or profit);

(p) to make calls;

(q) to summon a general meeting of the bank for the purpose of obtaining its sanction by special resolution or for any other purpose the bank liquidator may think fit;

(r) to disclaim onerous property under Articles 105 and 106 as the bank liquidator may think fit;

(s) to charge their remuneration and any reasonable costs, charges and expenses out of the bank's assets in priority of all other claims, in accordance with Article 108(7);

(t) to engage such professional advisers as the bank liquidator may deem appropriate or necessary and for the, cost and expenses for using such advisers to be payable in accordance with Article 108(8);

(u) to employ, retain, pay and manage employees of the bank;

(v) to effect and maintain insurances in respect of the business and property of the bank;

(w) to do all such things (including the carrying out of works) as may be necessary for the realisation of the property of the bank;

(x) to make any payment which is necessary or incidental to the performance of the bank liquidator's functions;

(y) to apply to the Court for the determination of a question arising in the bank winding up, or for the Court to exercise any of its powers in relation to the bank winding up;

(z) to apply to the Court for additional powers or amendment of the bank liquidator's powers and for the sanctioning or ratification of any of his or her acts or omissions; and

(aa) to exercise any other powers conferred on a bank liquidator under this Law.

105 Power to disclaim onerous property

(1) For the purpose of this Article "onerous property" means –

(a) movable property;

(b) a contract lease;

(c) immovable property if it is situated outside Jersey,

that is unsaleable or not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act, and includes an unprofitable contract.

(2) The bank liquidator may, within 6 months after the commencement of a bank winding up, by the giving of notice signed by him or her and referring to this Article and Article 107 to each person who is interested in or under any liability in respect of the property disclaimed, disclaim on behalf of the bank any onerous property of the bank.

(3) A disclaimer under this Article shall –

(a) operate so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the bank in or in respect of the property disclaimed; and

(b) discharge the bank from all liability in respect of the property as from the date of the commencement of the bank winding up,

but shall not, except so far as necessary for the purpose of releasing the bank from liability, affect the rights or liabilities of any other person.

(4) A person sustaining loss or damage in consequence of the operation of a disclaimer under this Article shall be deemed to be a creditor of the bank to the extent of the loss or damage and accordingly may prove for the loss or damage in the winding up.

106 Disclaimer of contract leases

(1) The disclaimer of a contract lease does not take effect unless a copy of the disclaimer has been served (so far as the bank liquidator is aware of their addresses) on every person claiming under the bank as a hypothecary creditor or under lessee and either –

(a) no application under Article 107 has been made with respect to the contract lease before the end of the period of 14 days beginning with the day on which the last notice under this paragraph was served; or

(b) where an application referred to in sub-paragraph (1) has been made, the Court directs that the disclaimer is to have effect.

(2) Where the Court gives a direction under paragraph (1)(b) it may also, instead of or in addition to any order it makes under Article 107, make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it thinks fit.

107 Powers of court in respect of disclaimed property

(1) This Article applies where the bank liquidator of a bank has disclaimed property under Article 105.

(2) An application may be made to the Court under this Article by –

(a) any person who claims an interest in the disclaimed property (which term shall be taken to include, in the case of the disclaimer

of a contract lease, a person claiming under the bank as a hypothecary creditor or an under lessee); or

(b) any person who is under any liability in respect of the disclaimed property (which term shall be taken to include a guarantor), not being a liability discharged by the disclaimer.

(3) Subject to paragraph (4), the Court may, on an application under this Article, make an order on such terms as it thinks fit for the vesting of the disclaimed property in, or for its delivery to –

(a) a person entitled to it or a trustee for such a person; or

(b) a person subject to a liability mentioned in paragraph (2)(b) or a trustee for such a person.

(4) The Court shall not make an order by virtue of paragraph (3)(b) except where it appears to the Court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.

(5) The effect of an order under this Article shall be taken into account in assessing for the purpose of Article 105(4) the extent of loss or damage sustained by a person in consequence of the disclaimer.

108 General provisions relating to bank winding up

(1) If the bank liquidator finds himself or herself in a position of conflict in the course of a bank winding up as between the interests of (in no particular order of priority) –

(a) the creditors;

(b) the shareholders;

(c) the depositors;

(d) the investors in any investment business activities, or the settlors or beneficiaries of any trust company business activities, conducted by the bank or its subsidiaries;

(e) the States;

(f) the Depositors Compensation Fund;

(g) the Commission;

(h) the Joint Financial Crimes Unit of the States Police Force; or

(i) any other interested parties,

the bank liquidator may apply to the Court for further directions upon giving notice to all interested parties.

(2) A bank winding up order shall be delivered by the bank liquidator to the Registrar within 14 days after it is made, and the Registrar shall record the bank winding up order in the file of the bank so that it may be publicly accessible when he or she receives it.

(3) Where a bank liquidator fails to comply with the requirement to deliver a bank winding up order to the Registrar within 14 days, the bank liquidator shall be guilty of an offence.

(4) In circumstances where the objective specified in Article 99(1)(b) is applicable, the bank winding up order shall provide guidance in relation to the extent of the support that the liquidator must give to the transferee.

(5) The objective specified in Article 99(1)(b) shall cease to apply where the Authority notifies the bank liquidator that the residual bank is no longer required in connection with the sale of business tool or the bridge bank tool.

(6) If the bank liquidator is of the view that the objective specified in Article 99(1)(b) has ceased, they may apply to Court for directions, and the Court may direct the Authority to notify the bank liquidator that the residual bank is no longer required.

(7) A bank liquidator shall receive such remuneration as is agreed between the bank liquidator and the liquidation committee or, failing agreement between the bank liquidator and the bank liquidation committee, as is fixed by the Court.

(8) All the costs, charges and expenses properly incurred in a bank winding up, including the remuneration of the bank liquidator shall be payable out of the bank's assets in priority of all other claims, and such costs, charges and expenses shall be agreed with the bank liquidation committee or, failing agreement between the bank liquidator and the bank liquidation committee, shall be fixed by the Court.

(9) All monies due and payable to employees of the bank being wound up for services so rendered after the commencement of the bank winding up in accordance with their respective contracts of employment as varied, with effect from the date of the bank winding up order, shall be deemed to be expenses of the bank winding up and shall be paid by the bank liquidator as it thinks fit.

109 Termination of office of bank liquidator

(1) A bank liquidator appointed by a bank winding up order shall remain in office until vacating office –

(a) by resigning under paragraph (2);

(b) by being removed by the Court under paragraph (3)(a) or by the creditors of the bank under paragraph (4);

(c) on disqualification under paragraph (5);

(d) on being replaced;

(e) on completing the final dissolution of the bank;

(f) if the bank liquidator is unable by reason of illness or other reason to fulfil his duties under this Law for more than 3 months, or

(g) on death.

(2) A bank liquidator may resign by giving one months' notice to the Court.

(3) The applicant for the bank winding up order, or the liquidation committee, may at any time apply to the Court for, and the Court may at any time make an, order –

(a) for the removal of a bank liquidator (and, if appropriate, the appointment of another bank liquidator); or

(b) if a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator, to fill the vacancy.

(4) A bank liquidator may be removed by resolution of the creditors provided that the following conditions are met –

(a) the bank liquidation committee has passed a full payment resolution;

(b) the notice given to the creditors of the meeting includes notice of intention to move a resolution for the removal of one or more bank liquidators; and

(c) the applicant of the bank winding up order and the bank liquidation committee –

(i) receive notice of the meeting; and

(ii) are given an opportunity to make representations to it,

and a bank liquidator who is so removed under this paragraph shall be released with effect from the time at which the Court is informed of his or her removal.

(5) A bank liquidator shall be deemed to have vacated his or her office immediately if he or she ceases to be qualified to hold the office.

(6) A person who gives or agrees to give to any person any valuable benefit with a view to securing his or her own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself or herself, as the bank's liquidator, shall be guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.

110 Notification by bank liquidator of resignation

(1) A bank liquidator who resigns, is removed or for any other reason vacates office shall, within 14 days after the resignation, removal or vacation of office give notice thereof, signed by the bank liquidator, to the Registrar and the applicant for the bank winding up order.

(2) A bank liquidator who fails to comply with paragraph (1) shall be guilty of an offence and liable to a fine.

111 Application of the law relating to désastre

(1) In a bank winding up the same rules prevail with regard to the respective rights of secured and unsecured creditors, to debts provable, to the time and manner of proving debts, to the admission and rejection of proofs of debts, to the order of payment of debts and to setting off debts as are in force for the time being with respect to persons against whom a declaration has been made under the Bankruptcy (Désastre) (Jersey) Law 1990, with the substitution of references to the bank winding up for references to the *désastre* and references to the bank liquidator for references to the Viscount.

(2) Any surplus remaining after payment of the debts proved in the bank winding up, before being applied for any other purpose, shall be applied in paying interest on those debts which bore interest prior to the commencement of the bank winding up in respect of the period during which they have been outstanding since the commencement of the bank winding up and at the rate of interest applicable apart from the bank winding up.

112 Bank liquidator to pay debts and adjust rights of contributories

The bank liquidator shall pay the bank's debts and adjust the rights of the contributories among the contributories.

113 Rescission of contracts by the Court

(1) On the application of a person who is, as against the bank liquidator, entitled to the benefit or subject to the burden of a contract made with the bank, the Court may make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the Court thinks just.

(2) Any damages payable, under the order made under paragraph (1), to such a person may be proved by the person as a debt in the bank winding up.

114 Transactions at an undervalue

(1) If a bank has at a relevant time entered into a transaction with a person at an undervalue the Court may, on the application of the bank liquidator in a bank winding up, make such an order as the Court thinks fit for restoring the position to what it would have been if the bank had not entered into the transaction.

(2) The Court shall not make an order under paragraph (1) if it is satisfied –

(a) that the bank entered into the transaction in good faith for the purpose of carrying on its business; and

(b) that, at the time it entered into the transaction, there were reasonable grounds for believing that the transaction would be of benefit to the bank.

(3) Without prejudice to the generality of paragraph (1) but subject to paragraph (5), an order made under paragraph (1) may do all or any of the following things, namely –

(a) require property transferred as part of the transaction to be vested in the bank;

(b) require property to be so vested if it represents in a person's hands the application either of the proceeds of sale of property so transferred or of money so transferred;

(c) release or discharge (in whole or in part) security given by the bank;

(d) require a person to pay, in respect of a benefit received by him or her from the bank, such sum to the bank as the Court directs;

(e) provide for a surety or guarantor, whose obligation to a person was released or discharged (in whole or in part) under the transaction, to be under such new or revived obligation to that person as the Court thinks appropriate;

(f) provide –

(i) for security to be provided for the discharge of an obligation imposed by or arising under the order,

(ii) for the obligation to be secured on any property, and

(iii) for the security to have the same priority as the security released or discharged (in whole or in part) under the transaction;

(g) provide for the extent to which a person –

(i) whose property is vested in the bank by the order, or

(ii) on whom an obligation is imposed by the order,

is to be able to prove in the bank winding up for debts or other liabilities that arose from, or were released or discharged (in whole or in part) under or by, the transaction.

(4) Except to the extent provided by paragraph (5), an order made under paragraph (1) may affect the property of, or impose an obligation on, any person, whether or not he or she is the person with whom the bank entered into the transaction.

(5) An order made under paragraph (1) –

(a) shall not prejudice an interest in property that was acquired from a person other than the bank and was acquired in good faith and for value, or prejudice any interest deriving from such an interest; and

(b) shall not require a person who in good faith and for value received a benefit from the transaction to pay a sum to the bank, except where the person was a party to the transaction.

(6) In considering for the purposes of this Article whether a person has acted in good faith, the Court may take into consideration –

(a) whether the person was aware –

(i) that the bank had entered into a transaction at an undervalue, and

(ii) that the bank was insolvent or would, as a likely result of entering into the transaction, become insolvent; and

(b) whether the person was an associate of or was connected with either the bank or the person with whom the bank had entered into the transaction.

(7) For the purposes of this Article, a bank enters into a transaction with a person at an undervalue if –

(a) it makes a gift to that person;

(b) it enters into a transaction with that person –

(i) on terms for which there is no cause, or

(ii) for a cause the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the cause provided by the bank.

(8) Subject to paragraphs (9) and (10), the time at which a bank entered into a transaction at an undervalue is a relevant time for the purpose of paragraph (1) if the transaction was entered into during the period of 5 years immediately preceding the date of commencement of the bank winding up.

(9) The time to which paragraph (8) refers is not a relevant time unless –

(a) the bank was insolvent when it entered into the transaction; or

(b) the bank became insolvent as a result of the transaction.

(10) If the transaction at an undervalue was entered into with a person connected with the bank or with an associate of the bank, paragraph (9) does not apply and the time to which paragraph (8) refers is a relevant time unless it is proved that –

(a) the bank was not insolvent when it entered into the transaction; and

(b) the bank did not become insolvent as a result of the transaction.

115 Giving of preferences

(1) If a bank has at a relevant time given a preference to a person, the Court may, on the application of the bank liquidator in a bank winding up, make such an order as the Court thinks fit for restoring the position to what it would have been if the preference had not been given.

(2) Without prejudice to the generality of paragraph (1), but subject to paragraph (4), an order made under paragraph (1) may do all or any of the following things, namely –

(a) require property transferred in connection with the giving of the preference to be vested in the bank;

(b) require property to be vested in the bank if it represents in any person's hands the application either of the proceeds of sale of property so transferred or of money so transferred;

(c) release or discharge (in whole or in part) security given by the bank;

(d) require a person to pay in respect of a benefit received by him or her from the bank such sum to the bank as the Court directs;

(e) provide for a surety or guarantor, whose obligation to a person was released or discharged (in whole or in part) by the giving of the preference, to be under such new or revived obligation to that person as the Court thinks appropriate;

(f) provide –

(i) for security to be provided for the discharge of any obligation imposed by or arising under the order,

(ii) for such an obligation to be secured on any property, and

(iii) for the security to have the same priority as the security released or discharged (in whole or in part) by the giving of the preference;

(g) provide for the extent to which a person –

(i) whose property is vested by the order in the bank, or

(ii) on whom obligations are imposed by the order,

is to be able to prove in the winding up of the bank for debts or other liabilities that arose from, or were released or discharged (in whole or in part) under or by the giving of the preference.

(3) Except as provided by paragraph (4), an order made under paragraph (1) may affect the property of, or impose an obligation on, any person whether or not he or she is the person to whom the preference was given.

(4) An order made under paragraph (1) shall not –

(a) prejudice an interest in property that was acquired from a person other than the bank and was acquired in good faith and for value, or prejudice any interest deriving from such an interest; or

(b) require a person who in good faith and for value received a benefit from the preference to pay a sum to the bank, except where the payment is in respect of a preference given to that person at a time when he or she was a creditor of the bank.

(5) In considering for the purpose of this Article whether a person has acted in good faith, the Court may take into consideration –

(a) whether the person had notice –

(i) of the circumstances that amounted to the giving of the preference by the bank, and

(ii) of the fact that the bank was insolvent or would, as a likely result of giving the preference, become insolvent; and

(b) whether the person was an associate of or was connected with either the bank or the person to whom the bank gave the preference.

(6) For the purposes of this Article, a bank gives a preference to a person if –

(a) the person is a creditor of the bank or a surety or guarantor for a debt or other liability of the bank; and

(b) the bank –

(i) does anything, or

(ii) suffers anything to be done,

that has the effect of putting the person into a position which, in the event of the winding up of the bank, will be better than the position he or she would have been in if that thing had not been done.

(7) The Court shall not make an order under this Article in respect of a preference given to a person unless the bank, when giving the preference, was influenced in deciding to give the preference by a desire to put the person into a position which, in the event of the winding up of the bank, would be better than the position in which the person would be if the preference had not been given.

(8) A bank that gave a preference to a person who was, at the time the preference was given, an associate of or connected with the bank (otherwise than by reason only of being the bank's employee) shall be presumed, unless the contrary is shown, to have been influenced in deciding to give the preference by the desire mentioned in paragraph (7).

(9) Subject to paragraphs (10) and (11), the time at which a bank gives a preference is a relevant time for the purpose of paragraph (1) if the preference was given during the period of 12 months immediately preceding the commencement of the bank winding up.

(10) The time to which paragraph (9) refers is not a relevant time unless –

(a) the bank was insolvent at the time the preference was given; or

(b) the bank became insolvent as a result of giving the preference.

(11) If the preference was given to a person connected with the bank or to an associate of the bank, paragraph (10) does not apply and the time to which paragraph (9) refers is a relevant time unless it is proved that –

(a) the bank was not insolvent at the time the preference was given; and

(b) the bank did not become insolvent as a result of the preference being given.

116 Definitions relating to transactions at an undervalue and preferences

(1) For the purposes of Articles 114 and 115, a person is connected with a bank if –

(a) he or she is a director of the bank;

(b) he or she is an associate of a director of the bank; or

(c) he or she is an associate of the bank.

(2) For the purposes of Articles 114 and 115 and of this Article –

(a) a person is an associate of an individual if that person is the individual's husband or wife or civil partner, or is a relative, or the husband or wife or civil partner of a relative, of the individual or of the individual's husband or wife or civil partner;

(b) a person is an associate of any person with whom he or she is in partnership, and of the husband or wife or civil partner or a relative of any individual with whom he or she is in partnership;

(c) a person is an associate of any person whom he or she employs or by whom he or she is employed;

(d) a person in his or her capacity as a trustee of a trust is an associate of another person if –

(i) the beneficiaries of the trust include that other person or an associate of that other person, or

(ii) the terms of the trust confer a power that may be exercised for the benefit of that other person or an associate of that other person;

(e) a bank is an associate of another bank –

(i) if the same person has control of both banks, or a person has control of one bank and either persons who are his or her associates, or he or she and persons who are his or her associates, have control of the other bank, or

(ii) if each bank is controlled by a group of 2 or more persons and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person of whom he or she is an associate;

(f) a bank is an associate of another person if that person has control of the bank or if that person and persons who are his or her associates together have control of the bank; and

(g) a provision that a person is an associate of another person shall be taken to mean that they are associates of each other.

(3) For the purposes of this Article, a person is a relative of an individual if he or she is that individual's brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant, for which purpose –

(a) any relationship of the half-blood shall be treated as a relationship of the whole blood and the stepchild or adopted child of a person as his or her child; and

(b) an illegitimate child shall be treated as the legitimate child of his or her mother and reputed father.

(4) References in this Article to a husband or wife or civil partner include a former husband or wife or civil partner and a reputed husband or wife or civil partner.

(5) For the purposes of this Article, a director or other officer of a bank shall be treated as employed by the bank.

(6) For the purposes of this Article, a person shall be taken as having control of a bank if –

(a) the directors of the bank or of another person that has control of it (or any of them) are accustomed to act in accordance with his or her directions or instructions; or

(b) he or she is entitled –

(i) to exercise, or

(ii) to control the exercise of,

more than one third of the voting power at any general meeting of the bank or of another person which has control of it,

and where 2 or more persons together satisfy either of the above conditions, they shall be taken as having control of the bank.

117 Responsibility of persons for wrongful trading

(1) Subject to paragraph (3), if in the course of a bank winding up it appears that paragraph (2) applies in relation to a person who is or has been a director of the bank, the Court on the application of the bank liquidator may, if he or she thinks it proper to do so, order that that person shall be

personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the bank arising after the time referred to in paragraph (2).

(2) This paragraph applies in relation to a person if at a time before the date of commencement of the bank winding up that person was a director of the bank –

(a) knew that there was no reasonable prospect that the bank would avoid normal insolvency proceedings; or

(b) on the facts known to him or her was reckless as to whether the bank would avoid such normal insolvency proceedings.

(3) The Court shall not make an order under paragraph (1) with respect to a person if it is satisfied that after either condition specified in paragraph (2) was first satisfied in relation to him or her the person took reasonable steps with a view to minimising the potential loss to the bank's creditors.

(4) On the hearing of an application under this Article, the bank liquidator may himself or herself give evidence or call witnesses.

118 Responsibility for fraudulent trading

(1) If, in the course of a bank winding up, it appears that any business of the bank has been carried on with intent to defraud creditors of the bank or creditors of another person, or for a fraudulent purpose, the Court may, on the application of the bank liquidator, order that persons who were knowingly parties to the carrying on of the business in that manner are to be liable to make such contributions to the bank's assets as the Court thinks proper.

(2) On the hearing of the application, the bank liquidator may himself or herself give evidence or call witnesses.

(3) Where the Court makes an order under this Article or Article 117, it may give such further directions as it thinks proper for giving effect to the order.

(4) Where the Court makes an order under this Article or Article 117 in relation to a person who is a creditor of the bank, it may direct that the whole or part of a debt owed by the bank to that person and any interest thereon shall rank in priority after all other debts owed by the bank and after any interest on those debts.

(5) This Article and Article 117 have effect whether or not that the person concerned may be criminally liable in respect of matters on the ground of which the order under paragraph (1) is to be made.

119 Extortionate credit transactions

(1) This Article applies in a bank winding up where the bank is, or has been, a party to a transaction for, or involving, the provision of credit to the bank.

(2) The Court may, on the application of the bank liquidator, make an order with respect to the transaction referred to in paragraph (1) if the transaction –

(a) is or was extortionate; and

(b) was entered into in the period of 3 years ending with the commencement of the bank winding up.

(3) For the purposes of this Article, a transaction is extortionate if, having regard to the risk accepted by the person providing the credit –

(a) the terms of it are such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit; or

(b) it otherwise grossly contravened ordinary principles of fair dealing.

(4) It shall be presumed, unless the contrary is proved, that a transaction with respect to which an application is made under this Article is or, as the case may be, was extortionate.

(5) An order under this Article with respect to a transaction may contain one or more of the following as the Court thinks fit –

(a) a provision setting aside the whole or part of an obligation created by the transaction;

(b) a provision otherwise varying the terms of the transaction or varying the terms on which a security for the purposes of the transaction is held;

(c) a provision requiring a person who is or was a party to the transaction to pay to the bank liquidator sums paid to that person, by virtue of the transaction, by the bank;

(d) a provision requiring a person to surrender to the bank liquidator property held by them as security for the purposes of the transaction;

(e) a provision directing accounts to be taken between any persons.

120 Delivery and seizure of property

(1) Where a person has in his or her possession or control property or records to which a bank appears in a bank winding up to be entitled, the bank liquidator may require that person forthwith (or within a period which bank liquidator may direct) to pay, deliver, convey, surrender or transfer the property or records to the bank liquidator.

(2) Where –

(a) the bank liquidator seizes or disposes of property that is not property of the bank; and

(b) at the time of seizure or disposal the bank liquidator has reasonable grounds to believe, that he or she is entitled (whether in pursuance of an order of the Court or otherwise) to seize or dispose of that property,

the bank liquidator –

(i) is not liable to any person in respect of loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by the negligence of the bank liquidator; and

(ii) has a lien on the property, or the proceeds of its sale, for expenses incurred in connection with the seizure or disposal.

121 Liability in respect of purchase or redemption of shares

(1) This Article applies where a bank is being wound in a bank winding up and –

(a) it has within 12 months before the commencement of the winding up made a payment under Article 55 or Article 57 of the Companies (Jersey) Law 1991 or under Regulations made under Article 59 of that Law in respect of the redemption or purchase of its own shares;

(b) the payment was not made lawfully; and

(c) the aggregate realisable value of the bank's assets and the amount paid by way of contribution to its assets (apart from this Article) is not sufficient for the payment of its liabilities and the expenses of the bank winding up.

(2) In this Article, the amount of a payment that has not been made lawfully for the purpose of the redemption or purchase is referred to as the "relevant payment".

(3) Subject to paragraphs (5) and (6), the Court on the application of the bank liquidator may order –

(a) a person from whom the shares were redeemed or purchased; or

(b) a director,

to contribute in accordance with this Article to the bank's assets so as to enable the insufficiency to be met.

(4) A person from whom any shares were redeemed or purchased may be ordered to contribute an amount not exceeding so much of the relevant payment as was made in respect of his or her shares.

(5) A person from whom shares were redeemed or purchased shall not be ordered to contribute under this Article unless the Court is satisfied that, when he or she received payment for his or her shares –

(a) he or she knew; or

(b) he or she ought to have concluded from the facts known to him or her,

that immediately after the relevant payment was made the bank would be unable to discharge its liabilities as they fell due, and that the realisable value of the bank's assets would be less than the aggregate of its liabilities.

(6) A director who has expressed an opinion under Article 55(9) of the Companies (Jersey) law 1991 may be ordered, jointly and severally with any other person who is liable to contribute under this Article, to

contribute an amount not exceeding the relevant payment, unless the Court is satisfied that the director had grounds for the opinion expressed.

(7) Where a person has contributed an amount under this Article, the Court may direct any other person who is jointly and severally liable to contribute under this Article to pay to him or her such amount as the Court thinks just and reasonable.

(8) Article 131 does not apply in relation to liability accruing by virtue of this Article.

122 Resolutions passed at adjourned meetings

Any resolution passed at an adjourned meeting of a bank's creditors shall be treated for all purposes as having been passed on the date on which it was in fact passed, and not as having been passed on any earlier date.

123 Duty to co-operate with bank liquidator

(1) In a bank winding up each of the persons mentioned in paragraph (2) shall –

(a) give the bank liquidator information concerning the bank and its promotion, formation, business, dealings, affairs or property which the bank liquidator may, at any time after the commencement of the bank winding up order, reasonably require;

(b) attend on the bank liquidator at reasonable times and on reasonable notice when requested to do so; and

(c) notify the bank liquidator in writing of any change of his or her address, employment, or name.

(2) The persons referred to in paragraph (1) are –

(a) those who are, or have at any time been, officers of, or the secretary to, the bank;

(b) those who have taken part in the formation of the bank at any time within 12 months before the commencement of the bank winding up;

(c) those who are in the employment of the bank, or have been in its employment within those 12 months, and are in the bank liquidator's opinion capable of giving information which the bank liquidator requires; and

(d) those who are, or within those 12 months have been, officers of, or in the employment of, a body corporate that is, or within those 12 months was, secretary to the bank and who are in the bank liquidator's opinion capable of giving information which the bank liquidator requires.

(3) For the purposes of paragraph (2) "employment" includes employment under a contract for services (*contrat de louage d'ouvrage*).

(4) A person who, without reasonable excuse, fails to comply with an obligation imposed by paragraph (1), is guilty of an offence and shall be liable to imprisonment for a term of 6 months and to a fine.

124 Bank liquidator to report possible misconduct

(1) The bank liquidator in a bank winding up shall take the action specified in paragraph (2) if it appears to the bank liquidator in the course of the winding up –

(a) that the bank has committed a criminal offence;

(b) that a person has committed a criminal offence in relation to the bank being wound up; or

(c) in the case of a director, that for any reason (whether in relation to the bank being wound up, or to a holding bank of the bank being wound up or to any subsidiary of such a holding bank) his or her conduct has been such that an order should be sought against him or her under Article 78 of the Companies (Jersey) Law 1991.

(2) The bank liquidator shall –

(a) forthwith report the matter to the Attorney-General; and

(b) furnish the Attorney-General with information and give the Attorney-General access to, and facilities for inspecting and taking copies of, documents (being information or documents in the possession or under the control of the bank liquidator and relating to the matter) as the Attorney-General requires.

(3) Where a report is made to the Attorney-General under paragraph (2), the Attorney-General may refer the matter to the Minister or the Commission for further enquiry.

(4) The Minister or the Commission –

(a) shall there upon investigate the matter; and

(b) for the purpose of the investigation may exercise any of the powers that are exercisable by inspectors appointed under Article 128 of the Companies (Jersey) Law 1991 to investigate a bank's affairs.

(5) If it appears to the Court in the course of a bank winding up –

(a) that the bank has committed a criminal offence;

(b) that a person has committed a criminal offence in relation to the bank being wound up; or

(c) in the case of a director of the bank being wound up, that for any reason (whether in relation to the bank being wound up, or to a holding bank of the bank being wound up or of any subsidiary of such a holding bank) his or her conduct has been such as to raise a question whether an order should be sought against him or her under Article 78 of the Companies (Jersey) Law 1991,

and that no report with respect to the matter has been made by the bank liquidator to the Attorney-General under paragraph (2), the Court may (on the application of a person interested in the winding up or of its own motion) direct the bank liquidator to make such a report.

125 Obligations arising under Article 124

(1) For the purpose of an investigation by the Minister or the Commission under Article 124, an obligation imposed on a person by a provision of the Companies (Jersey) Law 1991 to produce documents or give information to, or otherwise to assist, inspectors appointed as mentioned in that Law is to be regarded as an obligation similarly to assist the Minister in his or her, or the Commission in its, investigation under Article 124.

(2) For the purposes of the investigation under Article 124, the Minister or the Commission may examine on oath any such person as is mentioned in paragraph (1), and may administer an oath accordingly.

(3) An answer given by a person to a question put to him or her in exercise of the powers conferred by this Article may not be used in evidence against him or her in any criminal proceedings except –

(a) proceedings in which the person is charged with knowingly or recklessly making a false statement in the course of being examined on oath under paragraph (2);

(b) proceedings under Article 166; or

(c) proceedings for contempt of court under Article 149(2).

(3) Where criminal proceedings are instituted by the Attorney-General following a report or reference under Article 124, the bank liquidator and every officer, employee and agent of the bank past and present (other than the defendant) shall give the Attorney-General any assistance in connection with the prosecution which he or she is reasonably able to give.

(4) In paragraph (3) "agent" includes a banker, advocate or solicitor of the bank and a person employed by, or providing a service to, the bank as auditor, whether or not that person is an officer of the bank.

(5) If a person fails to give assistance as required by paragraph (3), the Court may, on the application of the Attorney-General –

(a) direct the person to comply with that paragraph; and

(b) if the application is made with respect to a bank liquidator, direct that the costs shall be borne by the bank liquidator personally unless it appears that the failure to comply was due to the fact that the bank liquidator did not have sufficient assets of the bank in his or her hands to enable him or her to do so.

126 Distribution of bank's property

(1) Subject to Article 30 and to any other enactment as to the order of payment of debts, a bank's property shall on a bank winding up be applied in satisfaction of the bank's liabilities *pari passu.*

(2) Unless the constitutional documents of the bank otherwise provide, any remaining property of the bank shall be distributed among the members according to their rights and interests in the bank.

(3) Despite the paragraphs (1) and (2), if, in the course of a bank winding up the bank liquidator is satisfied that the bank's assets will be sufficient to ensure that –

(a) the costs, charges and expenses properly incurred in the bank winding up and any other resolution actions may be paid; and

(b) the claims of all creditors (including any interest owing on debt) may be satisfied,

the bank liquidator may, before or after meeting some or all of those costs, charges and expenses and satisfying some or all of the claims of the creditors, to distribute to the members of the bank, proportional to their rights or interests, or otherwise as provided by the bank's constitutional documents, so much of the bank's assets as shall not be required to meet those costs, charges, expenses and claims.

(4) The Court may fix a time or times within which creditors of the bank are to prove their debts or claims or to be excluded from the benefit of any distribution made before those debts are proved.

127 Interest on debts

(1) In a bank winding up interest shall be payable in accordance with this Article on any debt proved in the bank winding up, including so much of any such debt as represents interest on the remainder.

(2) Any surplus remaining after the payment of the debts proved in the bank winding up shall, before being applied for any other purpose, be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the commencement of the bank winding up in respect of the bank.

(3) All interest payable under this Article shall rank equally, whether or not the debts on which it is payable rank equally.

(4) The interest payable under this Article in respect of any debt shall be whichever is the greater of –

(a) the interest calculated in accordance with the Interest on Debts and Damages (Jersey) Law 1996; and

(b) the interest calculated in accordance with the rate applicable to that debt apart from the bank winding up.

128 Enforcement of liquidator's duty to make returns, etc.

(1) If, in a bank winding up, the bank liquidator defaults in delivering a document or in giving any notice which the bank liquidator is by law required to deliver or give, and the defaulting bank liquidator fails to make good the default within 14 days after the service on the bank liquidator of a notice requiring the bank liquidator to do so, paragraphs (2), (3) and (4) shall apply.

(2) On an application made by a creditor or contributory of the bank, or by the Registrar, the Court may make an order directing the bank liquidator to make good the default within the time specified in the order.

(3) The Court's order may provide that costs of and incidental to the application shall be borne, in whole or in part, by the bank liquidator personally.

(4) Nothing in this Article shall prejudice the operation of any enactment imposing penalties on a bank liquidator in respect of a default mentioned in such an enactment.

129 References to the Court

(1) A bank liquidator may apply to the Court for a determination of any question arising in a bank winding up, or for the Court to exercise any of its powers in relation to a bank winding up.

(2) The Court, if satisfied that it will be just and beneficial to do so, may accede wholly or partially to an application under paragraph (1) on such terms and conditions as it thinks fit, or make such other order on the application as it thinks just.

(3) The Court may exercise all or any of the powers that would have been exercisable by it or by the Viscount if a declaration had been made in relation to a company under the Bankruptcy (Désastre) (Jersey) Law 1990.

130 Notification that the bank is in liquidation

(1) Every invoice, order for goods or services or business letter issued by or on behalf of a bank that is being wound up, or by the bank liquidator, being a document on or in which the name of the bank appears, shall contain a statement that the bank is in liquidation.

(2) In the event of failure to comply with paragraph (1), the bank, a person acting by or on behalf of the bank or the bank liquidator shall be guilty of an offence and liable to a fine.

131 Liability as contributories of present and past members

(1) Except as otherwise provided by this Article, where a bank is wound up, each present and past member of the bank is liable to contribute to its assets to an amount sufficient for payment of its liabilities, the expenses of the winding up, and for the adjustment of the rights of the contributories among themselves.

(2) A past member of a bank of a particular class is not, as a member of that class, liable to contribute –

(a) unless it appears to the Court that the present members of that class are unable to satisfy the contributions required to be made by them as such members;

(b) if he or she ceased to be a member of that class for 12 months or more before the commencement of the winding up; or

(c) in respect of a liability of the bank contracted after he or she ceased to be a member of that class.

(3) A past or present guarantor member of a bank is not liable in that capacity to contribute unless it appears to the Court that the past and present members in their capacity as the holders of limited shares are unable to satisfy the contributions required to be made by them as such members.

(4) A past or present member of a bank in his or her capacity as the holder of an unlimited share is not liable to contribute unless it appears to the Court that the past and present members in their capacities as the holders of limited shares or as guarantor members are unable to satisfy the contributions required to be made by them as such members.

(5) A contribution shall not be required from a past or present member of a bank, as such a member, exceeding –

(a) any amount unpaid on any limited shares in respect of which he or he is liable; or

(b) the amount undertaken to be contributed by him or her to the assets of the bank if it were to be wound up.

(6) A sum due to a member of the bank, in his or her capacity as a member, by way of dividends, profits or otherwise is not in a case of competition between himself or herself and any other creditor who is not a member of the bank, a liability of the bank payable to that member, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributors among themselves.

(7) In this Article "member" shall be construed in accordance with Article 25 of the Companies (Jersey) Law 1991.

132 Retention and disposal of records

(1) When a bank has been wound up and dissolved, its records and those of a bank liquidator and bank liquidation committee shall be retained by the bank, bank liquidator or bank liquidation committee or a person to whom the records have been committed for a period of at least 10 years after the bank's dissolution.

(2) After 10 years from the bank's dissolution no responsibility rests on the bank, a bank liquidator, the bank liquidation committee or a person to whom the custody of the records has been committed, by reason of any record not being forthcoming to a person claiming to be interested in it.

(3) A person who contravenes paragraph (1) shall be guilty of an offence and liable to a level 4 fine.

133 Disclosure of information by a bank liquidator

(1) A bank liquidator may only use information relating to the bank being wound up, its customers and its creditors for the purpose of achieving the objectives specified in Article 99(1) and, in the pursuit of those objectives, the bank liquidator may disclose such information to a person or entity as appropriate, including a purchaser or potential purchaser of all or part of the business of the bank, the Minister, the Commission, the

Jersey Bank Depositors Compensation Board, professional advisers, and as otherwise may be permitted by the Data Protection (Jersey) Law 2005.

(2) A bank liquidator shall seek the approval of the bank liquidation committee to disclose information referred to in paragraph (1) for any purpose other than a purpose referred to in paragraph (1), unless the disclosure of such information is routinely required to facilitate the ongoing conduct of business and the provision of services to depositors.

134 Inspection of bank's books etc. by court order

(1) The Court may at any time after making a bank winding up order, make such order for inspection of the bank's books and papers by creditors and contributories as the Court thinks just; and any books and papers in the bank's possession shall thereby be made available for inspection by creditors and contributories accordingly, but not further or otherwise.

(2) Nothing in this Article shall exclude or restrict any statutory rights of a government or public authority in Jersey or any person acting under such authority.

135 Bank's books to be evidence

Where a bank is being wound, all books and papers of the bank and of the bank liquidator are treated, as between the contributories of the bank, prima facie evidence of the truth of all matters purporting to be recorded in them.

136 Information as to pending liquidations

(1) If a bank winding up is not concluded within one year after its commencement, the bank liquidator shall, at such intervals as may be specified by the Court, until the bank winding up is concluded, send to the Registrar a progress report with respect to the position of the bank winding up, and the Registrar shall record such progress reports into the register.

(2) A bank liquidator who fails to comply with paragraph (1) shall guilty of an offence and liable to a fine.

137 Meetings to ascertain wishes of creditors or contributories

Subject to the objective specified in Article 99(1)(a), as to all matters relating to a bank winding up, the Court shall have regard to the wishes of the creditors or contributories (as proved to it by any sufficient evidence), and –

(a) if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Court directs, and appoint a person to act as chairman of any such meeting and report the result of it to the Court;

(b) in the case of creditors, shall have regard to the value of each creditor's debt; and

(c) in the case of contributories, shall have regard the number of votes conferred on each contributory.

138 Power of bank liquidator to act in respect of subsidiary

Where the bank liquidator exercises his or her power to act in respect of a subsidiary of a bank being wound up which is, by virtue of the insolvency of the bank being wound up, also insolvent, all of the provisions of this Part shall also apply to that subsidiary.

139 Order for Jersey insolvency law to apply

The Minister may by Order provide for any other provision of Jersey insolvency law to be applied to a bank winding up.

140 Termination of a bank winding up

(1) The bank liquidator may, with the authorization of the shareholders of the bank by special resolution, apply to the Court for an order terminating the bank winding up if the bank liquidator is satisfied that the grounds for the application under Article 90 are no longer met.

(2) The Authority, the Commission and the Minister, the Viscount and upon notice to the court, other interested parties, shall have a right to be heard (or to make representations) at the proceedings for the termination bank winding up order.

(3) The Court shall in determining an application for the termination bank winding up order have regard to such matters as it thinks fit including,

(a) whether or not –

(i) the bank has received any contribution from any present or past member pursuant to Article 131; or

(ii) the bank has, for the purposes of the bank winding up, distributed any of its assets among its shareholders; and

(b) the views of the Authority, the Commission and the Minister.

(4) The Court shall refuse the application unless it is satisfied that –

(a) the bank is able to discharge its liabilities in full as they fall due;

(b) the termination of the bank winding up is in the best interests of the creditors of the bank; and

(c) the termination of the bank winding up has been approved by the bank liquidation committee; and

(d) the applicant for the bank winding up order approves of the termination of the bank winding up.

(5) Subject to paragraph (4), the court may make an order granting or refusing the termination of the bank winding up and may make such other order as the Court thinks fit.

(6) Upon the termination of a bank winding up any bank liquidator appointed for the purpose of the bank winding up shall cease to hold that office.

(7) The termination of a bank winding up shall not affect the validity of anything done by any bank liquidator, director or other person, or by operation of law, before its termination.

141 Final dissolution

(1) As soon as the affairs of a bank are fully wound up, the bank liquidator shall make up an account and final report of the bank winding up, showing how it has been conducted and how the bank's property has been disposed of.

(2) The bank liquidator shall send a copy of the report under paragraph (1) to –

(a) the bank liquidation committee;

(b) the Authority;

(c) the Commission;

(d) the Minister;

(e) the Viscount; and

(f) the Jersey Bank Depositors Compensation Board,

and a copy of the report shall be made available to members, creditors and contributories on request.

(3) The bank liquidator shall upon sending a copy of the report to the bank liquidation committee under paragraph (2), summon a final meeting of the bank liquidation committee.

(4) At the meeting under paragraph (3) the bank liquidation committee shall –

(a) consider the report; and

(b) decide whether to approve its contents.

(5) If the bank liquidation committee approves the report under paragraph (4), the bank liquidator shall forthwith apply to the Court for an order for the dissolution of the bank.

(6) If the bank liquidation committee does not approve the report under paragraph (4), the bank liquidator shall address the concerns of the bank liquidation committee and submit the report to the bank liquidation committee again but, if the report is again not approved, the bank liquidator may, despite such disapproval, apply to the Court for an order for approval of the report, and for dissolution of the bank.

(7) The bank liquidator shall give the creditors of the bank not less than 21 days' notice of the Court hearing of the application for dissolution under paragraph (5), or approval and dissolution under paragraph (6), accompanied by a copy of the bank liquidator's report.

(8) Within 7 days after the date of the Court hearing, the bank liquidator shall deliver to the Registrar the order of the court under paragraph (5) or (6).

(9) If the bank liquidator fails to comply with paragraph (7) the bank liquidator shall be guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.

(10) The Registrar, on receiving the order under paragraph (8), shall register the order in the file of the bank so that it may be publicly accessible.

(11) At the end of the period of 3 months beginning with the day of registration of the order, the bank shall be dissolved and shall cease to exist.

(12) Upon the dissolution of a bank winding up under this Article, any bank liquidator appointed for the purpose of the bank winding up shall cease to hold that office.

(13) The dissolution of a bank winding up under this Article shall not affect the validity of anything duly done by any bank liquidator, director or other person, or by operation of law, before its dissolution.

142 Assistance for foreign authorities in insolvency matters

(1) The Court may, to the extent that it thinks fit, assist a court, resolution authority, bank regulator or bank liquidator of a relevant foreign jurisdiction, in matters relating to insolvency, and when doing so may have regard to the provisions for the time being of any model law on cross border insolvency prepared by the United Nations Commission on International Trade Law.

(2) In exercising its discretion for the purposes of this Article the Court shall have regard in particular to the rules of private international law.

(3) In granting assistance under this Article, the Court shall have regard to the general principles of resolution, the resolution objectives, the objectives specified in Article 99 and any other principles under this Law.

(4) In this this Article "relevant foreign jurisdiction" means –

(a) the home jurisdiction and intermediate home jurisdiction of a foreign bank; and

(b) such other country or territory as may be prescribed.

PART 8

INVESTIGATIONS

143 Appointment of inspectors

(1) The Authority may appoint one or more competent inspectors to investigate the affairs of a bank and to report on the bank as the Authority may direct.

(2) This Article applies whether or not the bank is in resolution or being wound up.

144 Powers of inspector

(1) If an inspector appointed under Article 143 to investigate the affairs of a bank thinks it is necessary for the purposes of his or her investigation to

investigate also the affairs of another entity which is or at any relevant time has been the bank's subsidiary or holding company, or a subsidiary of its holding company or a holding company of its subsidiary, the inspector shall have the power to do so; and the inspector shall also report on the affairs of the other entity so far as the inspector thinks that the results of investigation of its affairs are relevant to the investigation of the affairs of the bank.

(2) An inspector appointed under Article 143 may, at any time in the course of his or her investigation, without the necessity of making an interim report, inform the Authority and the Attorney-General of matters coming to the inspector's knowledge as a result of the investigation tending to show that an offence has been committed.

145 Production of records and evidence to inspector

(1) If an inspector appointed under Article 143 considers that any person is or may be in possession of information relating to a matter which the inspector believes to be relevant to the investigation, the inspector may require the person –

(a) to produce and make available to the inspector all records in the person's custody or power relating to that matter;

(b) at reasonable times and on reasonable notice, to attend before the inspector; and

(c) otherwise to give the inspector all assistance in connection with the investigation which the person is reasonably able to give,

and it is that person's duty to comply with the requirement.

(2) An inspector may for the purposes of the investigation examine on oath any such person as is mentioned in paragraph (1), and may administer an oath accordingly.

(3) Despite any other provision in this or any other enactment to the contrary, an answer given by a person to a question put to him or her in exercise of the powers conferred by this Article may not be used in evidence against him or her in any criminal proceedings except –

(a) proceedings for contempt of court under Article 149(2); or

(b) proceedings under Article 166.

146 Power of inspector to call for directors' bank accounts

If an inspector appointed under Article 143 has reasonable grounds for believing that a director, or past director, of the bank or other person whose affairs the inspector is investigating maintains or has maintained a bank account –

(a) of any description, whether alone or jointly with another person and whether in Jersey or elsewhere, and

(b) into or out of which there has been paid money which has been in any way connected with an act or omission, or series of acts or omissions, which constitutes misconduct (whether fraudulent or

not) on the part of that director towards the bank or other person or its members,

the inspector may require the director to produce and make available to the inspector all records in the director's possession or under the director's control relating to that bank account.

147 Authority for search

(1) An inspector appointed under Article 143 may, for the purpose of an investigation into the affairs of a bank, apply to the Bailiff for a warrant under this Article in relation to premises specified in the application.

(2) If the Bailiff is satisfied that the conditions in paragraph (3) are fulfilled the Bailiff may issue a warrant authorizing a police officer and any other person named in the warrant to enter the premises specified in the warrant (using such force as is reasonably necessary for the purpose) and to search those premises.

(3) The conditions referred to in paragraph (2) are –

(a) that there are reasonable grounds for suspecting that there is on the premises material (whether or not it can be particularized) which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made; and

(b) that the investigation for the purpose of which the application is made might be seriously prejudiced unless immediate entry can be secured to the premises.

(4) Where a person has entered premises in the execution of a warrant issued under paragraph (2), the person may seize and retain any material, other than items subject to legal professional privilege, which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the warrant was issued.

(5) In this Article, "premises" includes –

(a) any place;

(b) any vehicle, vessel, aircraft or hovercraft;

(c) any offshore installation; and

(d) any tent or movable structure.

148 Obstruction

Any person who wilfully obstructs any person acting in the execution of a warrant issued under Article 147 shall be guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.

149 Failure to co-operate with inspectors

(1) If any person –

(a) fails to comply with a requirement under Article 145 or 146; or

(b) refuses to answer any question put to the person by the inspectors for the purpose of the investigation,

the inspectors may certify the refusal in writing to the Court.

(2) The Court may thereupon inquire into the case and, after hearing any witness who may be produced against or on behalf of the alleged offender and any statement in defence, the Court may punish the offender as if the offender had been guilty of contempt of the Court and order him or her to comply.

150 Inspector's reports

(1) An inspector may, and if so directed by the Authority shall –

(a) make interim reports; and

(b) on conclusion of their investigation make a final report,

to the Authority as the case may be.

(2) The Authority may –

(a) forward a copy of any report made by an inspector in relation to a bank to the bank's registered office;

(b) furnish a copy on request and on payment of the prescribed or published fee to –

(i) any member of the bank or other person which is the subject of the report,

(ii) any person whose conduct is referred to in the report,

(iii) the auditors of the bank or the person which is the subject of the report,

(iv) the applicants for the investigation,

(v) a relevant resolution authority, or

(v) any person whose financial interests appear to the Minister or the Commission to be affected by the matters dealt with in the report, whether as a creditor of the company or as a body corporate, or otherwise; and

(c) cause the report to be printed and published in such form and in such manner as it considers appropriate.

(3) In this Article, "relevant resolution authority" means an authority discharging in a country or territory outside Jersey any function that is the same as, or similar to, a function of the Authority.

151 Expenses of investigating a bank's affairs

The expenses of and incidental to an investigation by an inspector shall be defrayed in the first instance by the Authority, but the bank shall be liable to make repayment to the Authority.

152 Inspectors' report to be evidence

(1) A copy of a report of an inspector certified by the Authority to be a true copy, is admissible in legal proceedings as evidence of the opinion of the inspector in relation to a matter contained in the report.

(2) A document purporting to be a certificate mentioned in paragraph (1) shall be received in evidence and be deemed to be such a certificate unless the contrary is proved.

153 Privileged information

Nothing in this Part requires the disclosure or production, to the Authority or to an inspector appointed by the Authority by a person of information or records which the person would in an action in the Court be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in the Court except, if the person is a lawyer, the name and address of his or her client.

PART 9

RESTRICTION ON DISCLOSURE OF INFORMATION

154 Restricted information

(1) Except as provided by Article 133, Part 8 and the subsequent provisions of this Part, a person who –

(a) under this Law receives information relating to the business or other affairs of any person; or

(b) obtains any such information directly or indirectly from a person who has received it under sub-paragraph (a),

shall not disclose the information without the consent of the person to whom it relates and (if different) the person from whom it was received.

(2) This Article shall not apply to information which at the time of the disclosure is or has already been made available to the public from other sources or to information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.

(3) A person who discloses information in contravention of this Article shall be guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.

155 Disclosure for facilitating discharge of functions of the Authority and specified persons

(1) Article 154 does not preclude the disclosure of information by or to any person in any case in which such disclosure is for the purpose of enabling or assisting any of the following –

(a) the Authority, or any person acting on their behalf;

(b) a person appointed under an enactment by any of the following –

(i) the Authority,

(ii) the Court, on the application of the Authority,

(iii) a Minister, where that Minister and the Authority are each specified in that enactment as having power to appoint that person,

to discharge the Authority's functions or that person's functions under this Law or under any other enactment.

(2) Article 154 does not preclude the disclosure of information by the Authority to the auditor of –

(a) a bank;

(b) a former bank; or

(c) a person who appears to the Authority to be acting or to have acted in contravention of Article 8 of the Banking Business (Jersey) Law 1991,

if it appears to the Authority that disclosing the information would be in the interests of depositors or potential depositors.

(3) Subject to paragraphs (4) to (6), Article 154 does not preclude the disclosure of information by the Authority to any of the following organizations or bodies –

(a) the ESAs

(b) ERSB; or

(c) a supervisor of a securities market.

(4) The Authority shall not disclose information under paragraph (3) unless satisfied that –

(a) the purpose of the disclosure is in order to assist the relevant organization or person to whom it is disclosed, in the exercise of any of its functions; and

(b) that organization or person will treat the disclosed information with appropriate confidentiality.

(5) In deciding whether to disclose information under paragraph (3), the Authority may take the following factors (among others) into account –

(a) whether corresponding disclosure of information would be given by the relevant organization or person, if such information were requested by the Authority;

(b) whether the case concerns the possible breach of a law, or other requirement, which has no close parallel in Jersey;

(c) the seriousness of the case and its importance in Jersey;

(d) whether the information could be obtained by other means; and

(e) whether it is otherwise appropriate in the public interest to disclose the information.

(6) The Authority may refuse to disclose information under paragraph (3) unless the relevant organization or person undertakes to make such

contribution towards the costs of the disclosure as the Authority considers appropriate.

(7) In this Article –

"ESAs" means the European Supervisory Authorities comprising –

(a) the European Banking Authority established by Regulation (EU) No. 1093/2010 of the European Parliament and of the Council of 24 November 2010 (O.J. No. L 331, 15.12.2010, p.12);

(b) the European Insurance and Occupational Pensions Authority established by Regulation (EU) No. 1094/2010 of the European Parliament and of the Council of 24 November 2010 (O.J. No. L 331, 15.12.2010, p.48); and

(c) the European Securities and Markets Authority established by Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 (O.J. No. L 331, 15.12.2010, p.84);

"ESRB" means the European Systemic Risk Board established by Regulation (EU) No. 1092/2010 of the European Parliament and of the Council of 24 November 2010 (O.J. No. L 331, 15.12.2010, p.1).

156 Disclosure for facilitating discharge of functions by other authorities

(1) Article 154 does not preclude the disclosure of information by the Authority to –

(a) the Commission

(b) the Viscount;

(c) the Minister;

(d) the Comptroller and Auditor General for the purpose of enabling or assisting the carrying out of any of the Comptroller and Auditor General's functions in relation to the Authority; or

(e) any person for the purpose of enabling or assisting that person to exercise that person's statutory functions in relation to any person or class of person in respect of whom the Authority has or had statutory functions.

(2) In paragraph (1)(e), "statutory functions" means functions conferred by or under an enactment on any person including any ancillary functions related thereto, for such purposes as may be prescribed or specified (as the case may be) under that enactment.

(3) Article 154 does not preclude the disclosure of information for the purpose of enabling or assisting a resolution authority to exercise any of its functions.

(4) Without prejudice to the generality of paragraph (1)(e), Article 154 does not preclude the disclosure of information by the Authority to the Office of the Financial Services Ombudsman or to an Ombudsman, within the meaning of the Financial Services Ombudsman (Jersey) Law 2014 for the purpose of enabling or assisting that Office or Ombudsman to exercise any function under that Law.

157 Other permitted disclosures

(1) Article 154 does not preclude the disclosure of information –

(a) with a view to the investigation of a suspected offence or the institution of, or otherwise for the purposes of, any criminal proceedings, whether under this Law or not;

(b) in connection with any other proceedings arising out of this Law.

(2) Article 154 does not preclude the disclosure by the Authority to the Attorney-General or to a police officer of –

(a) information obtained by virtue of Article 155 and 156; or

(b) information in the possession of the Authority as to any matter in relation to which the powers conferred by Article 155 or 156 are exercisable.

(3) Information disclosed under paragraph (2) may only be disclosed by the Attorney-General or a police officer for the purposes of an investigation into a suspected offence in Jersey or a prosecution in Jersey or, at the discretion of the Attorney General, a suspected offence or prosecution in a country or territory outside Jersey.

(4) Article 154 does not preclude the disclosure of information by the Authority to any person responsible for a compensation scheme in relation to one or more deposit-taking businesses (whether in Jersey or in a country or territory outside Jersey) if –

(a) it appears to the Authority that disclosing the information would enable or assist the recipient of the information or the Authority to discharge its functions; and

(b) the recipient of the information gives to the Authority prior to disclosure a written undertaking that the information will not be further disclosed without the prior consent of the Authority.

(5) Article 154 does not preclude the disclosure of information by the Authority to any person acting on behalf of an international body or organization where that body's or organization's functions include the assessment of Jersey's compliance with international standards relating to regulation of the financial sector and the disclosure is for the purpose of enabling or assisting that body or organization to discharge those functions.

(6) Article 154 does not preclude the disclosure of information by –

(a) the Authority;

(b) a person appointed under an enactment by any of the following –

(i) the Authority,

(ii) the Court, on the application of the Authority,

(iii) a Minister, where that Minister and the Authority are each specified in that enactment as having power to appoint that person,

to any person or body responsible for setting standards of conduct for any profession where that person or body has powers to discipline persons who fail to meet those standards if it appears to the Authority or the

appointed person that disclosing the information would enable or assist the person or body responsible for setting standards to discharge its functions in relation to a person who fails, or is alleged to have failed, to meet those standards.

(2) No information shall be disclosed under or by virtue of paragraph (5) or (6) or Article 155(1)(a) or (3), Article 156(1)(b), (c) or (d) or (2) or Article 160 unless the Authority or person, as the case requires, making the disclosure ('the disclosing party') is satisfied that the person or body to whom or which the disclosure is made complies with or will comply with any conditions to which the disclosing party may, in its discretion, subject such disclosure.

158 Regulation making power to amend disclosure provisions

The States may by Regulations amend Articles 155, 156 and 157 by –

(a) adding further persons or bodies to or by whom disclosure may be made and specifying in each case the purpose for which disclosure of information may be made; and

(b) amending the circumstances in which disclosure may be made to whom or by any person or body specified in those Articles, including the purposes for which and conditions in which such disclosure may be made.

159 Information supplied to Authority by resolution authority

Articles 154 to 157 apply also to information supplied to the Authority for the purposes of its functions under this Law by a resolution authority in the jurisdiction in which a bank operates branches or subsidiaries.

160 Co-operation with resolution authority

The Authority shall, if it considers it appropriate to do so, negotiate over and enter into binding and non-binding framework co-operation agreements with a resolution authority in another jurisdictions in which a bank's group conducts business, whether through separate entities or as a result of subsidiaries or branches in such other jurisdiction or of subsidiaries or branches in Jersey of an entity incorporated in such other jurisdiction.

161 Public statement

(1) The Authority may issue a public statement concerning a bank if it appears to the Authority to be desirable to issue the statement in the best interests of persons who have transacted or may transact deposit-taking business with the bank, or in the best interests of the public.

(2) If the Authority proposes to issue a public statement under paragraph (1), the Authority shall, subject to paragraphs (3) and Article 162, serve notice on the bank.

(3) A notice under paragraph (2) shall –

(a) give the reasons for issuing the statement;

(b) give the proposed date of issue of the statement;

(c) contain a copy of the statement;

(d) give particulars of the right of appeal under Article 163 in respect of the statement; and

(e) if the statement is issued, in accordance with a decision under Article 162(3), before the day specified in Article 162(1) in relation to the statement, give the reasons for issuing it before that day.

(4) Paragraph (3) shall not require the Authority –

(a) to specify any reason that would in the Authority's opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party; or

(b) to specify the same reasons, or reasons in the same manner, in the case of notices to different persons about the same matter.

162 Notice period

(1) The Authority shall not issue the public statement before the expiration of 14 days following the date of the service under Article 161.

(2) Paragraph (1) shall not apply if the bank in the public statement agrees with the Authority that the statement may be issued on a date earlier than the date that would apply under that paragraph; and the statement is in fact issued on or after the earlier date.

(3) Paragraph (1) shall not apply if –

(a) the Authority decides on reasonable grounds that the interests of –

(i) persons who have transacted or may transact deposit-taking business with the bank, or

(ii) the public,

in the issue of the public statement on a date earlier than the date that would apply under that paragraph outweighs the detriment to the persons identified in the public statement, being the detriment attributable to the issue of the public statement on the earlier date; and

(b) the public statement is in fact issued on or after the earlier date.

(4) In making a decision under paragraph (3), the Authority is not prevented from choosing as the date of issue of a public statement the date of service (if any) of notice of the public statement.

(5) If an appeal is made to the Court under Article 163(1), and the Court orders that the public statement shall not be issued before any specified date or event, the Authority shall not issue the public statement before the date or event so specified.

(6) In a case to which paragraph (1) applies, if an appeal is made under Article 163 to the Court against a decision to issue a public statement, the Authority shall not issue the public statement before the day on which that appeal is determined by the Court or withdrawn.

163 Appeals and orders about public statements

(1) A person aggrieved by a decision of the Authority –

(a) to issue a public statement under Article 161; or

(b) against a decision of the Authority under Article 162(3),

may appeal to the Court, in accordance with this Article, against the decision.

(2) An appeal under paragraph (1)(a) may be made only on the ground that the decision of the Authority was unreasonable having regard to all the circumstances of the case.

(3) An appeal under this Article shall be lodged with the Court no later than –

(a) if notice is served on the person under Article 162 in relation to the public statement, the day that is one month after the date of the last such service on the person in relation to the public statement; or

(b) if no such notice is served on the person, the day that is one month after the issue of the public statement.

(4) Nothing in paragraph (3) prevents the lodging of an appeal before a notice is served or a public statement is issued.

(5) On an appeal under this Article, the Court may make such interim or final order as it thinks fit, including an order that the Authority shall not issue the relevant public statement or, if the public statement has been issued, that the Authority issue a further public statement to the effect set out in the order or stop making the statement available to the public.

PART 10

MISCELLANEOUS

164 References to the Court

(1) The Authority may apply to the Court for the determination of a question arising in relation to the application of a resolution tool, exercise of a resolution power or the taking of resolution action.

(2) The Court, if satisfied that it will be just and beneficial to do so, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or make such other order on the application as it thinks just.

(3) An order made under paragraph (2) may specify that the Authority may apply a resolution tool, exercise a resolution power or take a resolution action specified in the Order.

165 Service of notices

(1) No notice or other document required by this law to be given to the Authority shall be regarded as so given until it is received.

(2) Subject to paragraph (1), any notice or other document required or authorized by or under these Regulations to be given to the Authority may be given by facsimile, electronic transmission or by any similar means that produces a document containing the text of the communication in legible form or is capable of doing so.

(3) Any notice, direction or other document required or authorized by or under this law to be given to or served on any person other than the Authority may be given or served on the person –

(a) by delivering it to the person;

(b) by leaving it at the person's proper address;

(c) by sending it by post to the person at that address; or

(d) by sending it to the person at that address by facsimile, electronic transmission or other similar means that produce a document containing the text of the communication in legible form or are capable of doing so.

(4) Any such notice, direction or other document may –

(a) in the case of a bank incorporated in Jersey, be served by being delivered to its registered office or principal office; or

(b) in the case of a partnership, bank incorporated outside Jersey or unincorporated association, be given to or served on a person who is a principal person in relation to it, or on the secretary or other similar officer of the partnership, bank or association or any person who purports to act in any such capacity, by whatever name called, or on the person having the control or management of the partnership business, as the case may be, or by being served on the latter person or delivered to the latter person's registered office or principal office.

(5) For the purposes of this Article and of Article 7 of the Interpretation (Jersey) Law 1954 in its application to this Article, the proper address of any person to or on whom a notice, direction or other document is to be given or served by post shall be the person's last known address, except that –

(a) in the case of a bank incorporated in Jersey, or its secretary, clerk or other similar officer or person, it shall be the address of the registered office or principal office of the bank in Jersey; or

(b) in the case of a partnership, or a person who is a principal person in relation to a partnership, it shall be that of its principal office in Jersey.

(6) If the person to or on whom any notice, direction or other document referred to in paragraph (3) is to be given or served has notified the Authority of an address within Jersey, other than the person's proper address within the meaning of paragraph (5), as the one at which the person or someone on the person's behalf will accept service of documents of the same description as that notice, direction or other document, that address is for the purposes of this Article and Article 7 of the Interpretation (Jersey) Law 1954 the person's proper address.

166 False or misleading information

(1) A person who makes a statement in any document, material, evidence or information which is required to be provided to the Authority or to any person entitled to the information under this Law that, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or that omits to state any material fact the omission of which makes the statement false or misleading, shall be guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.

(2) A person shall not be guilty of the offence if the person did not know that the statement was false or misleading and with the exercise of all due diligence could not have known that the statement was false or misleading.

167 Criminal liability of partners, directors and other officers

(1) Where an offence under this Law committed by a limited liability partnership, a separate limited partnership, any other partnership having separate legal personality or a body corporate is proved to have been committed with the consent or connivance of –

(a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the body corporate; or

(b) any person purporting to act in any such capacity,

the person is also guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to acts and defaults of a member in connection with the member's functions of management as if he or she were a director of the body corporate.

168 Appeal

(1) A person aggrieved by –

(a) a decision of the Authority to take a crisis prevention measure; or

(b) a decision under this Law of

(i) the Authority, other than a decision referred to in sub-paragraph (a) or Article 163,

(ii) the Commission, or

(iii) any other person exercising a function or power under this Law,

may, within 28 days of the decision being made, appeal to the Court in accordance with this Article against the decision.

(2) An appeal under paragraph (1) may be made only on the ground that the decision of the Authority, the Commission or other person was unreasonable having regard to all the circumstances of the case.

(3) The right of appeal under paragraph (1)(a) shall be subject to the following –

(a) the lodging of an appeal under paragraph (1)(a) shall not automatically suspend the effects of the decision against which the appeal is made;

(b) the decision of the Authority to take a crisis prevention measure shall be immediately enforceable and shall give rise to a rebuttable presumption that a suspension of its enforcement would be against the public interest.

(4) Where the decision against which an appeal is made is a crisis management measure, the right of appeal under paragraph (1)(b) shall be subject to the following –

the lodging of an appeal shall not suspend the effects of the decision;

the only remedy available shall limited to compensation for the loss suffered by the applicant as a result of the decision to act.

(5) On an appeal under this Article, the Court may make such interim or final order as it thinks fit.

(6) Where it is necessary to protect the interests of third parties acting in good faith who have acquired shares, assets, rights or liabilities of a bank in resolution by virtue the application of a resolution tool or the exercise of a resolution power by the Authority, the revocation of a decision of the Authority shall not affect any subsequent administrative acts or transactions concluded by the Authority which were based on the revoked decision and in that case the remedies for wrongful decision or action by the Authority shall be limited to compensation for the loss suffered by the applicant as a result of the decision to act.

169 Rules of Court

The power to make Rules of Court under the Royal Court (Jersey) Law 1948 shall include a power to make Rules for the purposes of this Law.

170 Customary Law

The rules of customary law applicable to a bank shall apply to a bank except in so far as they are inconsistent with the express provisions of this Law.

171 Regulations

The States may by Regulations –

(a) make such other provision as the States think fit for the purposes of carrying this Law into effect;

(b) amend Part 5 or 6;

(c) create offences, and specify penalties for such offences not exceeding imprisonment for 2 years and a fine; or

(d) make such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient, including provision making consequential amendments to this Law and any other enactment.

172 Orders

The Minister may by Order –

(a) prescribe any matter which is to be prescribed under this Law;

(b) amend Part 1;

(c) amend the Schedules.

(2) An Order made under this Law may make different provision for different cases and contain such incidental, supplemental and transitional provisions as appear to the Minister to be necessary or expedient.

(3) The Chief Minister shall consult the Authority and the Commission before making any Orders under this Law.

173 Amendments of other enactments

(1) In Article 8 of the Interpretation (Jersey) Law 1954 in the definition "bankrupt" –

(a) in paragraph (d) the word "or" shall be deleted;

(b) at the end of paragraph (e) for the comma there shall be substituted the word "; or"

(c) after paragraph (e) there shall be inserted the following paragraph –

"(f) in the case of a bank, the winding up of the bank by means of a bank winding up under the Bank (Recovery and Resolution) (Jersey) Law 201-;

(2) The States may by Regulations make transitional and savings provisions and may make amendments to any enactment as appear to the States to be expedient –

(a) for the general purposes, or any particular purpose, of this Law;

(b) in consequence of any provision made by or under this Law; or

(c) for giving full effect to this Law or any provision of it.

(3) The States may, by Regulations amend this or any other Law for any transitional matter connected with the coming into force of this Law.

174 Citation and commencement

This Law may be cited as the Bank (Recovery and Resolution) (Jersey) Law 201- and shall come into force on such day or days as the States may by Act appoint.

SCHEDULE 1

(Article 6(1))

APPOINTMENT OF MEMBERS AND PROCEEDINGS OF THE AUTHORITY

1 Terms of appointment of members

(1) Subject to sub-paragraphs (2) to (6), a member shall hold and vacate office in accordance with the terms of his or her appointment.

(2) A member shall be appointed by instrument in writing for a period not exceeding 5 years and upon expiry of such period shall be eligible for re-appointment.

(3) Where a member has been appointed, or re-appointed, for a period of less than 5 years, the States may extend his or her period of appointment, provided that the period, as extended, does not exceed 5 years.

(4) A debate on whether to extend a period of appointment shall be held *in camera*.

(5) A member may at any time resign his or her office by giving not less than one month's notice.

(6) If the Minister is satisfied that a member –

(a) has been absent from meetings of the Authority for a period longer than 6 consecutive months without the permission of the Authority;

(b) has become bankrupt;

(c) is incapacitated by physical or mental illness; or

(d) is otherwise unable or unfit to discharge the functions of a member,

the Minister may terminate his or her appointment.

(7) If the Minister terminates the appointment of a member the Minister shall –

(a) give the person whose appointment is terminated notice, in writing, of the termination and of the reasons for it; and

(b) present a report to the States informing the States of the termination and specifying upon which of the grounds in sub-paragraph (6) the appointment has been terminated.

(8) Nothing in sub-paragraph (7) shall affect the continuance of any other appointment with the Authority held by a member.

(9) The Chairman of the Authority shall continue to hold appointment as such until –

(a) he or she resigns from that appointment by notice, in writing, delivered to the Minister; or

(b) that appointment is revoked by the Minister by an instrument in writing.

2 Disclosure of interest

(1) Where a member has any direct or indirect personal interest in the outcome of the deliberations of the Authority in relation to any matter –

(a) he or she shall disclose the nature of his or her interest at a meeting of the Authority in person or by means of a written notice brought to the attention of the Authority;

(b) the disclosure shall be recorded in the minutes of the Authority; and

(c) he or she shall withdraw from any deliberations of the Authority in relation to that matter and not vote upon it.

(2) For the purposes of this paragraph a general notice given by a member that he or she is a member or director of a particular organization and is to be regarded as interested in any matter concerning that organization is sufficient disclosure in relation to any such matter.

3 Procedure at meetings

At a meeting of the Authority –

(a) at least 2 members including a representative of the Minister or the representative of the Minister for Treasury and Resources shall form a quorum;

(b) the Chairman or, in his or her absence, the Deputy Chairman, shall preside, but if neither is present the Authority present shall elect one of their number to preside;

(c) each member shall have one vote on each matter for deliberation;

(d) in the event of an equality in the votes the chairman of the meeting shall have a casting vote; and

(e) a member shall be treated as being present in a meeting of the Authority if, during the meeting, either by way of a live television link, or video link or otherwise, the member is able to see and hear all the other the members in the meeting and to be seen and heard by all the other members in the meeting.

4 Transaction of business without meeting

A resolution is a valid resolution of the Authority, even though it was not passed at a meeting of the Authority, if –

(a) notice of the proposed resolution was given to all members; and

(b) it is signed or assented to by a majority of members.

5 Minutes of meetings

The Authority shall keep accurate minutes of its proceedings including minutes of any business transacted in accordance with paragraph 4.

6 Expenses of members

The Authority shall pay to the members –

(a) such remuneration as it may determine; and

(b) reasonable out of pocket or other expenses occasioned in the course of carrying out their duties.

SCHEDULE 2

PART 1

(Article 24(7))

INFORMATION TO BE SUPPLIED BY A BANK FOR RESOLUTION PLANNING

(1) The following information must be supplied by a bank to the Authority for resolution planning –

(a) a detailed description of the bank's organizational structure, including a list of all entities incorporated in Jersey or which are subsidiaries of entities incorporated in Jersey;

(b) identification of the direct holders and the percentage of voting and non-voting rights of each entity referred to in paragraph (a);

(c) the location, jurisdiction of incorporation, licensing and key management associated with each entity referred to in paragraph (a);

(d) a mapping of the bank's critical operations and core business lines, including material asset holdings and liabilities relating to such operations and business lines, by reference to group entities in the bank's group;

(e) a detailed description of the components of the bank's and all its legal entities' liabilities, separated, at a minimum, by types and amounts of short-term and long-term debt, secured, unsecured and subordinated liabilities;

(f) details of those liabilities of the bank that are eligible liabilities;

(g) an identification of the processes needed to determine to whom the bank has pledged collateral, the person that holds the collateral and the jurisdiction in which the collateral is located;

(h) a description of the off balance sheet exposures of the bank and its legal entities, including a mapping to its critical operations and core business lines;

(i) the material hedges of the bank, including a mapping to entities;

(j) identification of the major or most critical counterparties of the bank, as well as an analysis of the impact of the failure of major counterparties in the bank's financial situation;

(k) each system on which the bank conducts a material number or value amount of trades, including a mapping to the bank's entities, critical operations and core business lines;

(l) each payment, clearing or settlement system of which the bank is directly or indirectly a member, including a mapping to the bank's entities, critical operations and core business lines;

(m) a detailed inventory and description of the key management information systems, including those for risk management,

accounting and financial and regulatory reporting used by the bank including a mapping to the bank's entities, critical operations and core business lines;

(n) an identification of the owners of the systems identified in sub-paragraph (m), service level agreements related to the systems, and any software and systems or licenses, including a mapping to their entities, critical operations and core business lines;

(o) an identification and mapping of the entities and the interconnections and interdependencies among the different entities such as –

(i) common or shared personnel, facilities and systems,

(ii) capital, funding or liquidity arrangements,

(iii) existing or contingent credit exposures,

(iv) cross guarantee agreements, cross-collateral arrangements, cross-default provisions and cross-affiliate netting arrangements,

(v) risks transfers and back-to-back trading arrangements; and

(vi) service level agreements,

(p) identification of the regulator and resolution authority applicable to each entity;

(q) the member of the management body responsible for providing the information necessary to prepare the resolution plan of the bank as well as those responsible, if different, for the different entities, critical operations and core business lines;

(r) a description of the arrangements that the bank has in place to ensure that, in the event of resolution, the Authority will be provided with all the necessary information, as determined by the Authority, for applying a resolution tool and exercising a resolution power;

(s) all the agreements entered into by the banks and their legal entities with third parties the termination of which may be triggered by a decision of the Authority to apply a resolution tool and whether the consequences of termination may affect the application of the resolution tool;

(t) a description of possible liquidity sources for supporting resolution; and

(u) information on asset encumbrance, liquid assets, off-balance sheet activities, hedging strategies and booking practices.

PART 2

(Article 24(10))

CONTENTS OF A RESOLUTION PLAN

(1) The Resolution plan shall contain the following –

(a) a summary of the key elements of the plan;

(b) a summary of the material changes to the bank that have occurred after the latest resolution information was filed;

(c) a demonstration of how critical functions and core business lines could be legally and economically separated, to the extent necessary, from other functions so as to ensure continuity upon the failure of the bank;

(d) an estimate of the timeframe for executing each material aspect of the plan;

(e) a detailed description of the assessment of resolvability carried out in accordance with Article 25;

(f) a description of any measures required to address or remove impediments to resolvability identified as a result of the assessment of resolvability;

(g) a description of the processes for determining the value and marketability of the critical functions, core business lines and assets of the bank;

(h) a detailed description of the arrangements for ensuring that the information required from the bank for the purpose of the resolution plan and future resolution plans is up to date and at the disposal of the resolution authorities at all times;

(i) an explanation by the resolution authority as to how the resolution options could be financed without the assumption of any of the following –

(i) any extraordinary public financial support besides the use of the Fund;

(ii) emergency liquidity assistance; or

(iii) liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms;

(j) a detailed description of the different resolution strategies that could be applied according to the different possible scenarios and the applicable timescales;

(k) a description of critical interdependencies;

(l) a description of options for preserving access to payments and clearing services and other infrastructures and, an assessment of the portability of client positions;

(m) an analysis of the impact of the plan on the employees of the bank, including an assessment of any associated costs, and a description of envisaged procedures to consult staff during the resolution

process, taking into account national systems for dialogue with social partners where applicable;

(n) a plan for communicating with the media and the public;

(o) the minimum requirement for own funds and eligible liabilities required by the Commission under Article 26 and a deadline to reach that level, where applicable;

(p) where applicable, the minimum requirement for own funds and contractual bail-in instruments required by the Commission, and a deadline to reach that level, where applicable;

(q) a description of essential operations and systems for maintaining the continuous functioning of the bank's operational processes; and

(r) where applicable, any opinion expressed by the bank in relation to the resolution plan.

(2) In paragraph (1) emergency liquidity assistance" means the provision by the States of money, or any other assistance that may lead to an increase in the States money, to a solvent bank or group of a solvent bank, that is facing temporary liquidity problems.

PART 3

(Article 25(1))

MATTERS FOR CONSIDERATION TO ASSESS RESOLVABILITY OF BANK

(1) Matters to be considered by the Authority in assessing the resolvability of a bank are as follows –

(a) the extent to which the bank is able to map core business lines and critical operations to legal persons;

(b) the extent to which legal and corporate structures are aligned with core business lines and critical operations;

(c) the extent to which there are arrangements in place to provide for essential staff, infrastructure, funding, liquidity and capital to support and maintain the core business lines and the critical operations;

(d) the extent to which the service agreements that the bank maintains are fully enforceable in the event of resolution of the bank;

(e) the extent to which the governance structure of the bank is adequate for managing and ensuring compliance with the bank's internal policies with respect to its service level agreements;

(f) the extent to which the bank has a process for transitioning the services provided under service level agreements to third parties in the event of the separation of critical functions or of core business lines;

(g) the extent to which there are contingency plans and measures in place to ensure continuity in access to payment and settlement systems;

(h) the adequacy of the management information systems in ensuring that the Authority is able to gather accurate and complete information regarding the core business lines and critical operations so as to facilitate rapid decision making;

(i) the capacity of the management information systems to provide the information essential for the effective resolution of the bank at all times even under rapidly changing conditions;

(j) the extent to which the bank has tested its management information systems under stress scenarios as defined by the Authority;

(k) the extent to which the bank can ensure the continuity of its management information systems both for the affected bank and the new bank in the case that the critical operations and core business lines are separated from the rest of the operations and business lines;

(l) the extent to which the bank has established adequate processes to ensure that it provides the Authority with the information necessary to identify depositors and the amounts covered by the Depositors Compensation Scheme;

(m) where the bank's group uses intra-group guarantees, the extent to which those guarantees are provided at market conditions and to which the risk management systems concerning those guarantees are robust;

(n) where the bank's group engages in back-to-back transactions, the extent to which those transactions are performed at market conditions and to which the risk management systems concerning those transactions practices are robust;

(o) the extent to which the use of intra-group guarantees or back-to-back booking transactions increases contagion across the bank's group;

(p) the extent to which the legal structure of the group inhibits the application of a resolution tool as a result of the number of legal persons, the complexity of the group structure or the difficulty in aligning business lines to the group entities;

(q) the amount and type of eligible liabilities of the bank;

(r) where the assessment involves a mixed activity holding bank, the extent to which the resolution of its group entities that are banks could have a negative impact on the part of the bank's group that is not deposit taking business;

(s) the existence and robustness of service level agreements;

(t) whether resolution authorities in the other jurisdictions in which the bank's group operates have the power to apply a resolution tool necessary to support resolution actions by the Authority and the extent to which there is scope for cooperation between such resolution authorities and the Authority;

(u) the feasibility of applying a resolution tool in such a way which meets the resolution objectives, given the tools available and the bank's structure;

(v) the extent to which the structure of the bank's group allows the home jurisdiction's resolution authority to resolve the whole group or one or more of its group entities without causing a significant direct or indirect adverse effect on the financial system, market confidence or the economy in Jersey and with a view to maximising the value of the group as a whole including the branches and subsidiaries operating in Jersey;

(w) the arrangements and means through which resolution could be facilitated in the cases of groups that have subsidiaries established in different jurisdictions;

(x) the credibility of applying a resolution tool in such a way which meets the resolution objectives, given possible impacts on creditors, counterparties, customers and employees and possible actions that third-country authorities may take;

(y) the extent to which the impact of the bank's resolution on the financial system in Jersey and on financial market's confidence can be adequately evaluated;

(z) the extent to which the resolution of the bank could have a significant direct or indirect adverse effect on the financial system, market confidence or the economy in Jersey;

(aa) the extent to which contagion to other banks or to the financial markets could be contained through the application of a resolution tool and exercise of a resolution power; and

(ab) the extent to which the resolution of the bank could have a significant effect on the operation of payment and settlement systems.