Economic and International Affairs Scrutiny Panel
By email
11th June 2025

Dear Chair,

Draft Bank (Recovery and Resolution) (Jersey) Amendment Law 202-

Thank you for your email requesting further information on the Draft Bank (Recovery and Resolution) (Jersey) Amendment Law 202-. I have answered your individual questions below.

1. **The accompanying report to P.42/2025 indicated the framework in the Bank (Recovery and Resolution) (Jersey) Law 2017 offers a more appropriate approach for handling the failure of banks that are systemically important – either locally or globally – than relying solely on insolvency and compensation mechanisms. Can you identify elements of the framework which negate the need for compensation?**

An effective resolution framework seeks to prevent or manage the failure of a bank in a way that maintains financial stability, protect public funds and avoid the need for depositor compensation by ensuring depositors retain access to their funds. As noted, resolution tools and actions are typically utilised for larger or systemically important banks. These tools include bail-in mechanisms – such as converting debt into equity –, utilising loss absorbing capacity provided through maintenance of minimum capital and debt requirements (MREL), sale of all or critical parts of the bank by the Jersey Resolution Authority (JRA), or the creation of a bridge bank. Application of these tools, and the intended avoidance of insolvency, would negate the triggering of the compensation scheme.

2. **It is highlighted in the accompanying report that consultation provided valuable insights from professionals with experience of navigating insolvencies and operating such compensation schemes, can you please identify which recommendations from these professionals have been reflected in the draft Law?**

Our engagement with professionals from the insolvency and restructuring sector enabled us to closely examine the legal provisions within the draft law – particularly how these provisions would be practically applied by the JRA in the event that the compensation scheme is triggered.
Overall, this review confirmed that the provisions are conducive to practical implementation, with positive feedback on the clearly defined timescales for the scheme's delivery and closure. This is especially noteworthy given the challenges faced in other jurisdictions, where similar schemes which have been enacted have remained active for over a decade following a default event.
Adjustments were made following the consultation and engagement to enhance both clarity and functionality. For example, conflicting provisions in the Articles relating to the winding up of the scheme where amended. Additionally, we addressed challenges related to accounting and reporting by simplifying the framework - reporting requirements for the operation of the

Depositor Compensation Fund have now been separated from the broader reporting obligations of the JRA.

Another key consideration was the practicality of enforcing the offence related to depositors failing to notify the JRA of payments received from other sources in connection with their deposit. While this issue did not require changes to the legislation itself, it informed collaborative discussions with the JRA to ensure their processes adequately address this risk.

3. One area of particular interest that has been raised with, and by, the Panel has been the continuation of the limit of compensation as £50,000 per depositor in the event of a bank being wound up, the equivalent limit in the United Kingdom is £85,000 per depositor. The Jersey figure has not increased since its introduction in 2009 Despite inflation over the same period having been 67%. One question we have is why Jersey has fallen behind protections offered in the UK and what reputational damage this might have for Jersey's banking system, as well as local savers. We would be grateful if you could outline any thoughts as to why this figure has not been increased and whether it should be.

The deposit compensation limit in Jersey is currently set at £50,000, in line with the limits in Guernsey and the Isle of Man. While this is lower than the limits in some larger jurisdictions, such as the UK and the EU, it has historically been considered proportionate and appropriate given Jersey's size and the importance of maintaining depositor confidence without introducing undue costs.

Our current priority is supporting the transfer of the compensation scheme to the JRA, along with the legislative changes required to facilitate this. These changes include measures to enable faster compensation payout – reflecting operational advancements within the scheme – as well as a range of administrative enhancements.

Our focus on these initiatives represent a significant step forward in strengthening Jersey's financial safety net and ensuring a robust, modern framework that supports both depositor protection and financial stability.

Subsequent to delivery of this work, consideration will be given to reviewing the compensation limit, to ensure it continues to reflect Jersey's needs and remains aligned with international expectations where appropriate.

4. What ability will there be for a decision to be made to provide compensation lower than the £50,000, even if an eligible depositor held that amount, if funding this proves challenging?

The determination to make a compensation payment will take into account the funds available within the Depositors Compensation Fund, as well as the obligation to disburse those funds in accordance with the priorities set out in the law – particularly under Article 142N Division 5 of this Part of the Law governs the payout, with Article 142P allowing for a reduction in payments if there are insufficient funds to meet the maximum entitlement. In such cases, further payments must be made if, at a later time, sufficient funds become available.

If the JRA is unable to make the required payment within the five-year period, the depositor's rights to the reduction applied – recognised under Article 142N(4) – must be restored in accordance with Article 142Y.

5. The Law will allow you to prescribe criteria for eligible liabilities, please could you give an indication of what these will be?

Criteria relating to eligible liabilities will be set in conjunction with the JRA to bridge the gap between domestic legal provisions and the evolving international standards on Total Loss Absorbing Capacity. This alignment is essential to ensure that the resolution framework remains credible, effective, and consistent with global best practices.
Broadly, the criteria for eligible liabilities will ensure that locally systemic banks maintain a sufficient buffer of instruments that can be credibly and feasibly bailed-in during resolution. These liabilities must be capable of absorbing losses and recapitalising the institution without resorting to depositor bail-ins, thereby preserving financial stability and depositor confidence.
Through 2024 the JRA has consulted on items that would be excluded from eligible liabilities - 20240916-MREL-Consultation-and-Feedback-Paper-v01.00.pdf
Note that eligible liabilities are distinctly different from eligible deposits – eligible deposits are explicitly excluded from bail-in whereas eligible liabilities are specifically available for bail in.

6. Please can you further outline the purpose of Article 54 of the draft Law given the deletion of a number of the Banking Business (Depositors Compensation) (Jersey) Regulations 2009 identified in the new Regulation 8A(4) and 8A(5)?

Article 54 introduces amendments to the existing *Banking Business (Depositors Compensation) (Jersey) Regulations 2009*. It is intended that, through a specific provision within a Commencement Order, paragraphs (1) to (4) will come into effect on the proposed transfer date of 1 January 2026. Paragraph (5), together with Article 48, will be brought into force at a later stage, but no later than 31 March 2026.
This phased approach will allow the Jersey Bank Depositors Compensation Board to continue in a residuary capacity following the transfer, enabling it to oversee its own orderly dissolution. Once this process is complete, the remaining provisions of the legacy compensation scheme will be deleted.

7. Article 2 of the draft law will amend Article 1 of the Bank (Recovery and Resolution) (Jersey) Law 2017 to include indication of a figure of £85,000 in the interpretation of "covered deposit", can you please outline the background as to the inclusion of this figure?

It should be noted that the amendment law does not introduce the £85,000 threshold into the definition of "covered deposit"; this threshold has existed within the Bank (Recovery and Resolution) (Jersey) Law 2017 (the Resolution Law) since its inception. The amending law merely updates the wording to reflect current legislative drafting conventions.
The inclusion of this value within the definition of "covered deposit" is significant for the interpretation and application of the resolution framework, particularly in the context of cross-border cooperation.
For example, in the event of a bail-in involving a Jersey-incorporated bank with a branch in the UK, the UK branch would fall under the UK Financial Services Compensation Scheme. The Jersey definition of "covered deposit" ensures that such deposits are excluded from bail-in, thereby recognising and respecting the protections afforded by overseas deposit

guarantee schemes. This enables the depositor to claim from the UK scheme. It does not enable an increased claim from the Jersey scheme.
This alignment supports the principle of depositor protection and facilitates smoother coordination with foreign resolution authorities in line with international standard.

8. The draft Law proposes to remove the £100 million cap on compensation payouts with the accompanying report identifying that this should enable the JRA to pay 100% compensation in most cases the DCS is activated. Please could you outline what cases meeting 100% compensation would not be possible and how the compensation amount would be met should the JRA be unable to recover funds from the insolvency proceedings of a failed bank?

As previously noted, the resolution framework is designed to mitigate the impact of bank failure, particularly on depositors. For larger, systemically important banks, insolvency and compensation are not considered viable solutions – primarily due to the scale of funding required to meet compensation obligations. Accordingly, resolution strategies for such institutions are expected to avoid insolvency proceedings and, by extension, the triggering of the compensation scheme. In contrast, the scheme is anticipated to be used primarily in the event of the failure of smaller, non-systemic banks.
The scheme operates by paying compensation from the Depositors' Compensation Fund, with funding sources outlined in Article 142M(2). If the Fund lacks sufficient resources and no further contributions are expected, the remaining compensatable rights of eligible depositors will be restored in accordance with Article 142Y.
It is also important to note that the value of the States loan available to support the scheme is currently capped at £100 million, as set out in the Public Finances (Jersey) Law 2019.

9. Please can you confirm the role of Liquidity Funding by the States of Jersey under the draft Law and how this compares to the previous legislation?
The draft law continues the ability for the JRA to seek a loan from the States to give them more immediate liquidity to operate the scheme, in particular to make payments of compensation prior to the primary payment date (7 days). This is necessary because the Depositors' Compensation Fund is not prefunded and there is some anticipated delay before the initial receipts of depositors' compensation levy.

10. Will the Authority have sufficient powers to ascertain the value of the assets of a bank facing insolvency?
The JRA has powers, greater than the existing Jersey Bank Depositors Compensation Board, to request this information either directly from the failing bank, from the Jersey Financial Services Commission or via cooperation with Overseas Authorities. This is especially the case in relation to any Jersey Incorporated Banks.

11. Please can you outline what ability the Authority will have to borrow monies and your role as Minister in this provision under the draft Law?

For the purposes of the scheme, the primary provision enabling the JRA to borrow funds from the States is set out in Article 142O. This article also outlines the role of the Minister, including the requirement to consult with the Minister for Treasury and Resources before

authorising the JRA to apply bank levies toward compensation payments in priority to drawing on the States loan.
Any loan provided to the JRA would be subject to the requirements of the Public Finances (Jersey) Law 2019, which governs the approval and administration of public borrowing. Note there are existing provisions within the public finance law for borrowing by the scheme and these are reflected and carried forward annually through the Government's budget process. Additionally, Article 142M(2) recognises that the Depositors' Compensation Fund may be funded by "a loan," allowing for flexibility in sourcing liquidity. This acknowledges that there may be circumstances in which the JRA considers it reasonable to use alternative funding mechanisms—beyond the States loan—to ensure timely compensation payments.

12. Could you please provide further explanation of other reasons that may occur for justifying postponing or refusing a payment of depositors' compensation in repect of an eligible deposit under the proposed Article 142S(2)(c) and established in proposed Article 142S(5)?

The power to postpone or refuse the payment of depositors' compensation under Article 142S(2)(c) is intentionally non-prescriptive. This design grants the JRA discretion to determine, in accordance with the guiding principles set out in Article 7 of the amending law, the circumstances in which such action may be necessary.
Examples of such circumstances may include:

- The need to obtain Jersey probate before releasing compensation to an estate;
- Known or suspected inaccuracies in the depositor data provided by the failed bank;
- Situations where the depositor has already received compensation from another jurisdiction and has not complied with the legal obligation to remit that amount to the Scheme.

This flexible approach ensures that the JRA can act prudently and proportionately, while maintaining the integrity of the compensation process.

13. Please could you provide more information on the limitation on liability of banks to pay depositors' compensation levy and confirm if the maximum levy a bank would pay in a 12 month period is £2,000,000?

The maximum the largest banks on island will pay is £2,000,000 per annum.
The provisions establishing a cap on the compensation levy payable by an individual bank are set out in Article 142ZG. These provisions maintain consistency with the existing framework under the *Banking Business (Depositors Compensation) (Jersey) Regulations 2009.*
Levy Cap Based on Eligible Deposits:

- If 0.3% of a bank's eligible deposits exceeds £10 million, the maximum levy payable is £10 million.
- If 0.3% of a bank's eligible deposits is less than £10 million, the levy is capped at the lesser of:
- £5 million, or
- 0.3% of eligible deposits.

Annual Payment Cap:

- If 0.3% of eligible deposits exceeds £10 million, the maximum annual payment is £2 million.

- If 0.3% of eligible deposits is less than £10 million, the maximum annual payment is £1 million.

14. Article 48 of the draft Law proposes to delete Article 37 of the Banking Business (Jersey) Law 1991, the power under which the 2009 Regulations are made, why is there a requirement to remove these powers?

As previously noted, and in line with the transfer of the scheme to the Resolution Law, it is our intention to delete the legacy legislation. The commencement of Article 48, which facilitates this, is planned to take effect upon the formal dissolution of the Jersey Bank Depositors Compensation Board. This dissolution is scheduled to occur by 31 March 2026, three months after the scheme's transfer.

I hope you find the above information useful. Please don't hesitate to contact me if you require further assistance.

Deputy Ian Gorst
Minister for External Relations

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