

STATES OF JERSEY



Jersey

DRAFT BANKING BUSINESS (AMENDMENT No. 9) (JERSEY) LAW 202-

**Lodged au Greffe on 14th February 2022
by the Minister for External Relations and Financial Services
Earliest date for debate: 29th March 2022**

STATES GREFFE



Jersey

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European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for External Relations and Financial Services has made the following statement –

In the view of the Minister for External Relations and Financial Services, the provisions of the Draft Banking Business (Amendment No. 9) (Jersey) Law 202- are compatible with the Convention Rights.

Signed: **Senator I.J. Gorst**

Minister for External Relations and Financial Services

Dated: 11th February 2022

REPORT

This draft Amendment to the [Banking Business \(Jersey\) Law 1991](#) is part of a package of proposed legislative and regulatory changes (in particular changes to Jersey Financial Services Commission (JFSC) banking code of practice) concerning auditing and financial reporting requirements for banks in Jersey. These changes were consulted upon by the JFSC in 2020 ([JFSC Consultation Paper No. 13 2020 – “Bank Financial Reporting and Audit”](#)). Industry responses supported the proposals.

The amendment updates and clarifies definitions for banks incorporated in Jersey and overseas, and their auditors. It repeals outdated provisions relating to the publication of accounts, which will be replaced by fit for purpose requirements which will more appropriately be set out in an Accounts Order under the Banking Law. The amendment is also needed to update the 1991 Law so that its provisions apply to legal as well as natural persons. Importantly, the amendment will also enable the bringing into force of another amendment – [the Banking Business \(Amendment No. 7\) \(Jersey\) Law 2011](#) – which provides an enabling power to create financial reporting Orders under the Banking Law. Although Amendment No. 7 was previously approved by the States, for it to be enacted the changes proposed by Amendment No. 9 are first required to be made.

These Amendments to the Banking Law will then permit the wider package of proposed legislative and regulatory changes, the main part of which is the proposed new **Banking Business (Accounts, Auditors and Reports) (Jersey) Order 202-** (the “**Accounts Order**”). For banks the Accounts Order will provide fit for purpose requirements:

- to notify the JFSC of appointment of bank auditors;
- to submit financial statements, prudential returns and declarations of compliance to the JFSC with accompanying annual auditors’ reports; and
- to make audited financial statement available to depositors online, as well as in branches.

These requirements bring up to date, formalise and clarify the existing requirements. Importantly these requirements will provide consistency for banks when complying with similar existing requirements under the [Financial Services \(Jersey\) Law 1998](#) in respect of their licences to conduct Investment Business, Trust Company Business and Fund Services Business.

The final part of the package is to bring into force amended JFSC code of practice for deposit-taking businesses (**Banking Code**) to outline JFSC expectations regarding the practices banks must follow when meeting each requirement. The Banking Code changes were also consulted on by the JFSC in 2020 and following industry feedback it was agreed to delay the changes until September 2022 to allow banks more time to make any changes and/or to agree changes to the Banking Code requirements.

Financial and resource implications

There are no financial or resource implications resulting from this proposition.

Human Rights

The Law Officers’ Department has indicated that the draft Law does not give rise to any human rights issues. The notes on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers’ Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

APPENDIX TO REPORT**Human Rights Notes on the Draft Banking Business (Amendment No. 9)
(Jersey) Law 202-**

These Notes have been prepared in respect of the draft Banking Business (Amendment No. 9) (Jersey) Law 202- (the “**draft Law**”) by the Law Officers’ Department.

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

The draft Law gives rise to no human rights concerns. It provides for amendments to the Banking Business (Jersey) Law 1991 to extend powers to the Jersey Financial Services Commission in relation to auditors.

EXPLANATORY NOTE

The Draft Banking Business (Amendment No. 9) (Jersey) Law 202- amends the Banking Business (Jersey) Law 1991 (“principal Law”) in order to extend the supervisory powers of the Jersey Financial Services Commission to auditors of any bank whether it is a “Jersey incorporated bank”, a “Jersey branch” or an “overseas incorporated bank”.

The Banking Business (Amendment No. 7) (Jersey) Law 2011 (which is not yet in force) substituted the definition “auditor” in Article 1 (interpretation) of the principal Law and substituted Article 33 (notification in respect of auditors) of the principal Law so that the requirement for auditors to give notice to the Commission of certain matters was replaced by a power of the Minister to make Orders relating to the accounting and auditing of persons registered under the principal Law.

Article 1 introduces amendments to be made to the principal Law.

Article 2 amends Article 1 (definitions) of the principal Law by substituting the definition “auditor” so as to include within the definition the auditor of a “Jersey incorporated bank”, a “Jersey branch” and an “overseas incorporated bank”, all of which are also defined. *Article 2* also amends Article 1 to insert a definition for the term “registered person”.

Article 3 deletes Article 32 to remove the requirement for audited accounts to be open to inspection as provision for the same would now be made in Order made under the principal Law.

Article 4 amends the Schedule to clarify that in the case of a transfer of deposit-taking business (which under the Schedule has to be sanctioned by order of the Royal Court) the Court will not determine an application for such an order unless the application is accompanied by a report on the terms of the scheme by an independent auditor, who must be an auditor as defined in Article 102(1) of the Companies (Jersey) Law 1991.

Article 5 makes miscellaneous amendments to the principal Law to clarify that wherever there is a reference to a person, that reference includes both a natural and a legal person.

Article 6 gives the title of this Law and provides for it to come into force immediately upon the coming into force of the Banking Business (Amendment No. 7) (Jersey) Law 2011.



Jersey

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Jersey

DRAFT BANKING BUSINESS (AMENDMENT No. 9) (JERSEY) LAW 202-

A LAW to amend the [Banking Business \(Jersey\) Law 1991](#) to extend powers to the Jersey Financial Services Commission in relation to auditors.

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

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

1 **[Banking Business \(Jersey\) Law 1991](#) amended**

This Law amends the [Banking Business \(Jersey\) Law 1991](#).

2 **Article 1 (interpretation) amended**

In Article 1 –

- (a) for the definition “auditor” there is substituted –
 - “ “auditor” –
 - (a) in relation to a Jersey incorporated bank or a Jersey branch, has the same meaning as “auditor” in Article 102(1) of the [Companies \(Jersey\) Law 1991](#); and
 - (b) in relation to an overseas incorporated bank, means the individual, firm or company appointed as auditor of the overseas incorporated bank;”;
- (b) after the definition “institution” there is inserted –
 - “ “Jersey branch” means the part (if any) of an overseas incorporated bank that carries on business or a part of its business or operations at a place in Jersey and, in the case of an overseas incorporated bank that carries on any business or operations at more than one place in Jersey, means all the places in Jersey at which it carries on that business or those operations;

“Jersey incorporated bank” means a registered person that is a company incorporated in Jersey under Article 3 of the [Companies \(Jersey\) Law 1991](#);”;

- (c) after the definition “money laundering reporting officer” there is inserted –

““overseas incorporated bank” means a registered person that is not a Jersey incorporated bank;”;

- (d) after the definition “registered” there is inserted –

““registered person” means a person registered under Article 9;”.

3 Article 32 (audited accounts to be open to inspection) deleted

Article 32 is deleted.

4 Schedule (transfer of deposit-taking business) amended

In paragraph 3 of the Schedule, after “independent auditor” there is inserted “(where “auditor” has the same meaning as in Article 102(1) of the [Companies \(Jersey\) Law 1991](#))”.

5 Miscellaneous amendments: application of provisions to legal and natural persons

In the provision described in the first column of the following table, for the existing words specified in the 2nd column there is substituted the words specified in the 3rd column in the same row of that provision –

Provision	Existing words	Substituted words
Article 9(9)	while his or her application is awaiting	while awaiting
Article 10(3)(b)	his or her	person A’s
Article 14(1)	his or her	the person
Article 14(3A)	his or her	the person
Article 16(2)	that he or she did not know of the acts or circumstances by virtue of which he or she	that the person did not know of the acts or circumstances by virtue of which the person
Article 16(2)	he or she has become such a controller the person shall be guilty of an offence unless he or she gives the Commission written notice of the fact that he or she	the person has become such a controller the person shall be guilty of an offence unless the person gives the Commission written notice of the fact that the person
Article 17(7)(a)	he or she	the person

Provision	Existing words	Substituted words
Article 17(7)(b)	he or she	the person
Article 20(4)	if he or she proves that he or she received the advertisement for publication in the ordinary course of his or her business, that the matters contained in the advertisement were not (wholly or in part) devised or selected by the person or by any person under his or her direction or control and that he or she did not know	if the person proves that the person received the advertisement for publication in the ordinary course of the person's business, that the matters contained in the advertisement were not (wholly or in part) devised or selected by the person or by any person under the person's direction or control and that the person did not know
Article 20(6)(a)	he or she	the person
Article 24(1)(a)	he or she has notified the Commission in writing of his or her	the person has notified the Commission in writing of the person's
Article 24(1)(b)	his or her	the person
Article 24(3)	his or her	the person
Article 24(10)	if he or she shows that he or she did not know of the acts or circumstances by which, as the case may be, he or she,	if the person shows that the person did not know of the acts or circumstances by which, as the case may be, the person,
Article 24(11)	he or she shall be guilty of an offence unless he or she gives the Commission written notice of the fact that he or she,	the person shall be guilty of an offence unless the person gives the Commission written notice of the fact that the person,
Article 25(4)	that he or she did not	that the person did not
Article 25(4)	he or she has become such a shareholder the person shall be guilty of an offence unless he or she gives the Commission written notice of the fact that he or she	the person has become such a shareholder the person shall be guilty of an offence unless the person gives the Commission written notice of the fact that the person
Article 26(13)	his or her client	the lawyer's client
Article 28(2)	his or her investigation, he or she	the investigation, the person
Article 31(1)	he or she proves that he or she	the person proves that the person
Article 34(1)	his or her	the auditor or approved professional
Article 34(2)	his or her	the auditor's

Provision	Existing words	Substituted words
Article 34(3)	his or her	the approved professional's
Article 35	his or her business in a manner satisfactory to his or her.	the business in a manner satisfactory to the person's
Article 36(2)	his or her business in a manner satisfactory to his or her	the business in a manner satisfactory to the person's
Article 37A(4)	his or her	the person's

6 Citation and commencement

This Law may be cited as the Banking Business (Amendment No. 9) (Jersey) Law 202- and comes into force immediately upon the coming into force of the Banking Business (Amendment No. 7) (Jersey) Law 2011.