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# STATES OF JERSEY



## **DORMANT BANK ACCOUNTS LAW: CONSULTATION PAPER (R.85/2015) – SUMMARY OF RESPONSES**

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**Presented to the States on 5th May 2016  
by the Chief Minister**

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**STATES GREFFE**



**DORMANT BANK ACCOUNTS LAW: CONSULTATION  
PAPER (R.85/2015) – SUMMARY OF RESPONSES**

**SUMMARY**

A draft Law has been prepared that would enable dormant bank accounts to be used for good causes. This document aims to set out the responses to the consultation in summary form and identifies the changes to the draft Law before debate by the States Assembly.

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Date published: 26th April 2016

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Supporting document attached at Appendix:  
**Draft Dormant Bank Accounts (Jersey) Law 201- (P.25/2016)**

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**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.

**Response to consultation**

A consultation took place in which the Chief Minister invited responses on the Draft Dormant Bank Accounts (Jersey) Law 201- (the “**Draft Law**”). The aim of the Draft Law is to transfer balances in “dormant” bank accounts (i.e. accounts where contact has been lost with the customer for 15 years) from banks to a central fund called the Jersey Reclaim Fund. The Jersey Reclaim Fund will be administrated by government and used to support a number of good and charitable causes in the local community.

The Draft Law should not disadvantage the customer, because they can still claim their money back from the Jersey Reclaim Fund (via their bank) at any time. The bank will pay the customer their money and ask for the sum back from the Jersey Reclaim Fund. Importantly, such persons do not have to find out information about the Jersey Reclaim fund or to seek new contact details. Instead, they can contact their bank and their bank will repay them their funds. The bank will in turn be entitled to ask for the monies paid out to the customer from the Jersey Reclaim Fund to ensure that the bank is not out of pocket.

This response to the Consultation Paper identifies the comments made about its content, and the changes made to the Draft Law as a result of those responses. The Department is very grateful to all those who responded. Responses will not be repeated in full, but the comments made have been considered, and many are referred to in the course of discussing the issues in this document.

**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](mailto:Communications.Unit@gov.je).

**RESPONSE TO CONSULTATION ON  
DRAFT DORMANT BANK ACCOUNTS (JERSEY) LAW 201-**

**Introduction**

1. The Assistant Chief Minister invited responses on the text of a Draft Dormant Bank Accounts (Jersey) Law 201- (the “**Draft Law**”). A total of 15 responses were received by Jersey Finance, and 12 further comments from individuals. Many of the respondents only addressed certain issues.
2. This paper aims to summarise the issues raised and the government’s responses.

**Question 1: Should precious stones and precious metal custody accounts be included as accounts captured by the Draft Law?**

3. There were fairly evenly-split responses over whether the scheme should be limited to bank accounts or should include precious stones and precious metals.
4. Some points raised were about the difficulties relating to the inclusion of such assets, including the potential for fluctuating values. Many banks responded that they do not hold such assets, and so the question was not relevant to their business models. Others commented that they would not look to transfer over such assets on a voluntary basis, because of the risk of litigation if a person should lose money due to such a decision. One bank commented that jewellery should be excluded because of the sentimental nature of such items.
5. As the decision whether to transfer such assets would be at the option of the bank (i.e. a bank may choose to transfer the proceeds of sale of precious metals and precious stones to the Jersey Reclaim Fund rather than being compelled to do so by the terms of the statute), it is considered appropriate to leave such classes within the scope of the legislation. This would enable a bank to pay over the proceeds of such assets in appropriate circumstances. However one change, because of the complications in reporting values on such assets which may not have been valued, is to remove the requirement to produce returns even if none are being transferred.

**Question 2: Should any other types of accounts be captured by the Draft Law at this initial stage?**

6. The overwhelming response was that no other classes of assets should be added to the list already contained in the legislation. Consequently, no changes have been made to the legislation in this respect.

**Question 3: Should the period of dormancy match the period of dormancy in the UK?**

7. The overwhelming response by respondents was that the dormancy period should match the UK period of dormancy. Many banks headquartered in the

UK stated that their commercial requirements were to try to create a scheme that enabled their systems to match those that they already had in place in the UK. It was also stated that we should try to bring in a system that matches the Isle of Man and Guernsey, if possible, if they are also to legislate in this area.

**Question 4: Should no-mail accounts be included in the Scheme? Should the definition of dormancy vary from the UK definition by not including accounts if there are transactions on related accounts?**

8. The paper form of the Consultation Paper varied slightly from the electronic consultation questionnaire, and so these 2 questions are answered together in this section.
9. The overwhelming response was that that “no-mail” accounts should be included in the scheme as there were very few, if any, still in existence. The responses also supported the variance from the UK definition by not including accounts if there are transactions on related accounts. The UK Reclaim Fund commented that the key to such transactions are whether they are initiated by the customer or by the bank. These comments resulted in amendments being made to the Draft Law.

**Question 6: Should there be a requirement on a bank to send a notice to the last known address, once an account is identified as dormant, in order to attempt to protect customers, by notifying them that their account is being transferred to the Jersey Reclaim Fund?**

10. The Draft Law contained the proposal to require each bank to attempt to contact the customer one last time at the last known address in order to notify them that the account is going to be transferred to the Jersey Reclaim Fund. This *de minimis* process is set out in Article 6(1)(c). However, several respondents argued that in cases where there was a known risk of fraud, then there should be the ability to depart from this requirement. In response to such concerns, the Draft Law has been amended to give a bank the option of not contacting the customer if the bank believes that writing to the last known address may lead to a risk of fraud.

**Question 7: Should non-sterling accounts be included in the scheme?**

11. The overwhelming majority of responses agreed with the government proposal that accounts that are held in currencies other than pounds sterling should be included in the scheme. Interestingly, it is also something that the UK Dormant Assets Commission will be considering over the course of 2016 for introduction in the UK.

**Question 8: Should the Jersey Reclaim Fund, the bank or the account holder bear the risk of currency fluctuation?**

12. Only just over half of the respondents directly responded to this question. Of those who responded, over half (10) stated that the bank or the account holder should bear the risk of currency fluctuations. The remainder were fairly evenly split between the risk remaining with the Jersey Reclaim Fund and the customer. This response has caused the government to carefully consider the proposal.
13. Further discussions were held with an overseas reclaim fund as to their experiences concerning the likelihood of claims, and the effect of the Jersey Reclaim Fund being responsible for fluctuations in currency. Having considered the responses as a whole and the results of the further research, certain factors were considered persuasive in addition to those stated in the Consultation Paper.
14. If the Jersey Reclaim Fund was at risk for fluctuations in currency, then significantly higher reserves would need to be held to guard against the risks of a large fall in the pound relevant to other currencies or a dramatic strengthening of other currencies. This would lead to a reduction in the funds that could be paid over to good causes and the holding of larger reserves. Responses of those who did not directly respond on this issue were mainly of the view that the Law should aim to maximise the returns for good causes. It is also the case that the Minister has the power under Article 9(2) to pay appropriate sums to a particularly deserving claimant provided that, in layman's language, there are sufficient funds in the Jersey Reclaim Fund to pay such sums, bearing in mind the size of the Jersey Reclaim Fund, other potential claims, and other relevant factors. An example of such an exceptional case might be where a person was held unjustly as a prisoner abroad, and was unable to contact his bank to inform them of the reason that the account was dormant.
15. Having considered all the factors, it was decided that a fundamental aim of the legislation was to maximise the return for good causes, and that injustice could be prevented in appropriate cases; therefore after careful consideration, that the risk of currency fluctuations should fall on the customer rather than the bank or the Fund.

**Question 9: Should payment of balances into the Jersey Reclaim Fund scheme be compulsory or optional?**

16. The majority of respondents thought that the scheme in respect of dormant accounts with money in them should be compulsory. Many banks responded that they believe that payments of dormant accounts should be compulsory because it would reduce the risks of a depositor challenging a bank for taking the decision to pay monies across to the scheme. It was acknowledged by a number of banks that the risk of action being taken was very low. Therefore, the Draft Law will continue to state that payments of dormant accounts will be compulsory.

**Question 10: If optional, do you think that there is a risk that the sum of the balances transferred will be less than if the scheme was compulsory?**

17. Those who responded to this question stated that the chances of the sums paid over to the Reclaim Fund being reduced were increased if the scheme was voluntary rather than compulsory. Therefore no change has been made.

**Question 11: Can respondents think of any scenarios where issues may arise through the bank acting as the agent of the Jersey Reclaim Fund?**

18. The majority of respondents did not consider scenarios where issues may arise because of an agency agreement arising under the proposed statute. However, there were also a number of issues raised, including the conflict of interest between the bank acting for itself and for the Jersey Reclaim Fund. In response, it is believed that this system is designed to be similar to that which is adopted in the UK and which many of the banks support following. It was also raised that there is a risk that banks may have different policies in respect of refunding customers, and that there was a risk that treatment might be different depending on the institution banked with. This risk applies across all banking activity, and is not believed to be a significant obstacle to such a policy being carried through to the final statute.
19. Finally, the interplay between Article 11 setting out the duties of the bank and Article 19, which sets out the areas in which the bank acts as the agent of the Minister, was commented on. The answer to how the Articles inter-relate is that Article 11 sets out the duties of the bank by statute, while Article 19 states that in certain of these areas where the bank has a duty, it acts as the agent of the Jersey Reclaim Fund and the Minister may by Order set out the manner in which the bank should act. This is an unusual agency arrangement, as it is set up by statute rather than by virtue of a negotiated agency agreement between the parties. There were no issues raised that resulted in a change to these clauses.

**Question 12: Are the terms of the agency agreement sufficient and comprehensive for the purpose of protecting the Jersey Reclaim Fund?**

20. The majority of the respondents thought that the terms of the agency agreement as set out in the Draft Law were sufficient for the protection of the Jersey Reclaim Fund. The provisions therefore have remained unaltered. However, following discussions with another reclaim fund, an Order will be drafted in due course to add to the existing terms. The aim will be for these terms to mirror those which exist in the UK.

**Question 13: Is it reasonable that the level of interest to be added on dormant accounts after transfer to the Jersey Reclaim Fund is set at zero and the proceeds used for good causes? If not, what is an appropriate level of interest?**

21. An overwhelming majority of respondents agreed with the proposal that the level of interest rates should be set at zero. Some of those who disagreed believed that the rate should be clear regardless of the level that was set. One



respondent thought that where the interest level was unclear, then this should be determined by the ombudsman or by the courts. Another respondent questioned whether it was fair to change the terms of the account after the account was opened. Comments by those who supported the opposing view stated that interest should be set at zero in order to minimise the risks of disputes, and that this was probably the most practical option.

22. Taking into account the fact that the majority of respondents supported the existing Draft Law, no amendments have been made in respect of this question.

**Question 14: Are the timescales proposed reasonable in order to allow customers to contact their bank and for banks to process the administration of transfers?**

23. The overwhelming majority of respondents supported the timescales set out in the draft legislation, therefore no amendments are proposed in respect of this question.

**Question 15: Should the banks be required to report balances in relation to precious metals and precious stones? If not, then please give reasons.**

24. The Consultation Paper asked whether balances should be reported by banks in relation to precious metals and precious stones. While the majority of written responses favoured banks reporting balances in relation to precious metals and stones, further enquiry revealed that this was on the basis that such assets were included on a compulsory basis rather than a voluntary basis. Some responses also set out practical difficulties with the approach set out in the Draft Law relating to valuing such assets. Accordingly, as a decision has been made to propose that such assets are not included on a compulsory basis, this requirement has been withdrawn.

**Question 16: Is the proposed mechanism for the Jersey Reclaim Fund to reimburse the banks sufficiently practical?**

25. The overwhelming number of respondents supported the mechanism as drafted. However, there were several comments that reclaiming only once a year was too stringent in the case of large claims, or that banks should receive the money back from the Jersey Reclaim Fund prior to reimbursement of the customer. Discussion with the UK reclaim fund revealed that they allow reclaims 4 times a year, with the banks paying monies over to the customer before seeking a reclaim from the fund. Therefore, taking these factors into account, the same process as that in the UK is proposed to be adopted to bring Jersey into line with banks who already have systems in place in line with UK requirements.

**Question 17: Do you agree with the proposed use of the funds generated by the Dormant Accounts Law? If not please state what you would suggest as an alternative. For example, should the funds be divided proportionally or thematically sector by sector?**

26. This was the one question on which all respondents answered. The majority supported the proposals contained in the legislation, but there were also a number of comments that certain sectors should be excluded: 3 thought that sport or professional sport should be excluded; one thought that churches but not good causes supported by churches should be excluded; one thought that the funds should be used to supplement support for culture and the arts; another thought that a larger-scale use of the funds should be realised. Some commented that existing States spending should not decrease as a result of use of any funds. Others stated that they supported the Minister handing over the responsibility for spending the money to an independent party such as the Association of Jersey Charities, or the Arts Trust, in different sectors. It was also stated that it should be clear that the heads were separate, so that an application under, say, public participation in sport, should not also get funding from the general charities head unless it was for a different aim.
27. Therefore, in response to the comments, Article 21 has been amended to make it clear that the head of charitable purposes is separate to the other heads. No other changes have been made, because the majority of the consultation responses supported how the Article was drafted.

**Question 18: Is the proposed timescale for banks to build systems too long, too short or about right? If your answer is that the timescale is too long or too short, please state what length of time is considered appropriate?**

28. Seven banks responded on these issues, saying that the time proposed for transitional provisions is about right, with one saying that the timing is too short. Comments from the banking industry indicate that there are substantial changes needing to be implemented at this point in time, including changes relating to the Common Reporting Standard and FATCA. Therefore, the 5 years proposed was a reasonable transitional period, taking into account many other changes that are also taking place at present. Accordingly, no change has been proposed to the Draft Law in relation to this question.
29. Question 19 contained a series of issues which related only to banks. They were technical questions put in order to see what procedures would need to be put in place by the banks, and whether the proposed tests for dormancy would work.
30. The responses demonstrated that banks currently adopt very different procedures for dealing with dormant accounts; that the current periods of dormancy used vary significantly; that only one bank will be able to produce the data necessary without systems changes; and that many will have to do a manual review of old accounts to determine whether they are older than 15 years, as opposed to their existing dormancy period. Not all banks are able to tell if there are customer-initiated transactions on all linked accounts through a computer-guided search. Not all banks hold information on the last time that

a customer was in contact with them, and therefore whether there was contact more recently than the last customer-initiated transaction.

31. The banks were not able to give the likely costs of the project until there is a clear scope to be investigated. Likewise, the timescale for the project to change systems in order to identify dormant accounts was not known until the scoping exercise has taken place.
32. These answers given by the banks support their answers to Question 18 that changes will be necessary to many systems, and that these changes may take longer than one year for some banks to fully implement.

### **Conclusions and next steps**

33. The Draft Law has been amended in many places as a result of the feedback to the consultation. A number of other changes were identified as a result of the final checking process. The final Draft Law was identified as ready to be lodged and is attached to this document. If the Draft Law was to be adopted by the States, approved by the Privy Council, and registered in the Royal Court by July 2016, it is likely that the first monies identified by the banks as dormant could be paid across at the beginning of 2017. However, there will be a significant transitional period in respect of many dormant accounts, and so the full amount of dormant accounts will not be known for a further 5 years.
34. The next steps include working with the States Treasury to ensure that the relevant forms are prepared for reporting to take place by the banks, and that the relevant processes and procedures are put in place. Further consultation will take place with the banking industry in order to ensure that these are fit for purpose.

**STATES OF JERSEY**



**DRAFT DORMANT BANK ACCOUNTS  
(JERSEY) LAW 201-**

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Lodged au Greffe on 15th March 2016  
by the Chief Minister

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**STATES GREFFE**

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**DRAFT DORMANT BANK ACCOUNTS (JERSEY)  
LAW 201-**

**European Convention on Human Rights**

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Assistant Chief Minister has made the following statement –

In the view of the Assistant Chief Minister, the provisions of the Draft Dormant Bank Accounts (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator P.F.C. Ozouf**  
*Assistant Chief Minister*

Dated: 10th March 2016

## REPORT

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The Draft Dormant Bank Accounts (Jersey) Law 201- (the “Dormant Accounts Law”) aims to enable balances standing to the credit of “dormant” bank accounts (i.e. accounts where contact has been lost with the customer or where no instructions have been received from the customer for a period of at least 15 years) to be transferred from the banks to a central fund called the Jersey Reclaim Fund, from which monies can be paid out to support a number of charitable and other related purposes in the local community.

### History of the dormant accounts legislation

Dormant account schemes already exist in a number of jurisdictions, including the United Kingdom, Ireland and the Cayman Islands. It is understood that the Isle of Man are also intending to introduce a dormant accounts scheme.

In December 2008 a consultation exercise was commenced in respect of a proposed Dormant Accounts Law. The overall response to the consultation was positive, and work continued on the development of this project. Liaison took place with the other Crown Dependencies and also with the Reclaim Fund in the United Kingdom concerning the development of the Law. A further consultation on the proposed final text of the Dormant Accounts Law took place commencing in July 2015 and closing in September 2015.

### Summary of key aspects of the Dormant Accounts Law

The Dormant Accounts Law gives the responsibilities, duties and functions to run the dormant accounts scheme to the Chief Minister under Article 10. The responsibilities and duties focus on 3 areas. Firstly, to ensure that the Jersey Reclaim Fund makes payments to customers to meet reclaims; secondly to manage the Jersey Reclaim Fund appropriately so that it can pay claims to customers; and finally to distribute monies to further charitable purposes and the related purpose of the costs of the Charities Commissioner as set out in Part 3 of the Dormant Accounts Law.

As the scheme is new to Jersey, it is thought appropriate to limit the scope of the Dormant Accounts Law to banking deposits and other limited classes, and then to consider whether to broaden the categories at a later date. Therefore, Article 2 of the Dormant Accounts Law covers both personal and non-personal deposit accounts (i.e. accounts held for entities such as companies, partnerships and trusts) regardless of the residence of the customer.

However, there is a small extension. Article 2 also applies the scheme to precious metal and precious stones (but not jewellery) held in dormant safe custody arrangements, as well as such other accounts as are prescribed by Order. The decision whether to transfer such assets would be at the option of the bank (i.e. a bank may choose to transfer the proceeds of sale of precious metals and precious stones to the Jersey Reclaim Fund rather than being compelled to do so by the terms of the statute).

Article 5 states the test concerning whether an account is dormant. It provides that an account will be dormant if no transactions have been carried out by or on the instructions of the customer in relation to the account by or on the instructions of a holder of the account for 15 years. This test follows the test set out in the UK scheme. The proposal to adopt a 15 year dormancy period is consistent with the UK legislation. The research carried out in the UK indicates that a very small percentage of people reclaim monies from a scheme once 15 years has passed. A shorter period would lead to an increased possibility of claims for repayment, and allowing banks to apply a

different (shorter) period may cause complications for the Jersey Reclaim Fund. Accordingly, the draft legislation follows the UK precedent concerning the length of time for an account to be considered dormant.

Article 5 contains an exception from the UK's test for dormancy. It is drafted to ensure that an account will not be considered dormant if the bank holds other accounts for the same customer and there are transactions on that account. Also, an exception for fixed term accounts is set out in Article 5 so that the dormancy period for such accounts will only begin at the end of the fixed term period. In the case of fixed term periods that have a "roll over" facility, the clock will start for the test of dormancy at the end of the first period and at the time that the initial fixed term ends.

Article 3(1) provides that the balance of a customer's account for the purposes of the Dormant Accounts Law will be the amount owing to the customer at that particular time after appropriate adjustments such as interest due, fees and charges payable as at that date. Article 3(3) exempts balances in accounts which are covered by the security interests taken as a matter of Jersey law over accounts. The reason for this exemption is that if an account has a security interest held over the account, then the account may not be able to be operated under the provisions of the security granted, and therefore such accounts should not be classed as dormant.

Article 7 provides for the mechanism for the transfer of the dormant balances to the Jersey Reclaim Fund. It is proposed that banks will transfer dormant balances to the Jersey Reclaim Fund annually, in December of each year.

Article 1 defines the start of each relevant year as 1st July. After that time, Article 7(1) requires banks to notify the Minister within 3 months (by 30th September) of the number and balances of dormant deposit accounts.

The Dormant Accounts Law includes accounts that are held in currencies other than pounds sterling in the scheme. As one of the aims of the scheme is to maximise the monies that can be used for charitable purposes, it would appear appropriate to include such accounts with safeguards against currency risks. Accordingly, Article 2(1)(a) does not limit the scope of the Law only to sterling accounts.

Fluctuations in value post the transfer to the Jersey Reclaim Fund when the monies in a foreign currency are to be placed on the account holder. It is considered appropriate to protect the Jersey Reclaim Fund against the risk of currency fluctuations, as the relevant accounts have been left dormant for 15 years and the person has not responded to a letter notifying them that the account is going to be moved to the Jersey Reclaim Fund.

The Jersey Reclaim Fund will be set up with a minimal cost base in order to maximise the monies paid to beneficiaries. It is proposed that the scheme is initially run by the Minister and his staff, and that it will have no solely dedicated personnel or independent infrastructure. The reasons for this proposal include that it is appropriate for banks to maintain the relationship with their own customers. Accordingly, the legislation is drafted to enable each bank to act as the agent of the Jersey Reclaim Fund in respect of matters such as customer relationship management, record-keeping, customer claims for repayment, and any dispute or complaint from the customer (including any legal and regulatory compliance aspects).

Article 11 of the Dormant Accounts Law sets out the duties of the bank in respect of the monies transferred to the Fund. Article 11(1) states that the bank must retain records, receive claims for payment, verify claims, calculate the amount that must be paid, determine entitlement, and pay out the amount determined.

Article 9 provides that when a dormant account balance is transferred to the Jersey Reclaim Fund, the liability for repayment of the balance transfers to the Jersey Reclaim Fund. This general principle is subject to the fact that the bank will continue to have the administrative responsibility for dealing with and settling claims in the first instance acting as the agent of the Minister. Article 9(2) provides for the transfer of the liability and clarifies that there is no longer a debt owed by the bank to the customer. This provision allows the bank to derecognise the liability for balance sheet purposes.

For administrative simplicity, Article 13 requires banks to make quarterly claims for reimbursement of the amounts reclaimed by customers from the Jersey Reclaim Fund.

Article 20 of the Dormant Accounts Law sets out the proposed uses of the balances in the Jersey Reclaim Fund. The provisions permit monies to be used to cover the costs of the Commissioner of Charities and other related expenses under the Charities (Jersey) Law 2014. Further, they permit monies from the Jersey Reclaim Fund to be distributed in equal shares for a number of charitable purposes. However, the primary duty of the Jersey Reclaim Fund is to repay the customer if they make a claim.

Article 29 sets out transitional provisions in order to give a reasonable period of time for banks to develop systems if they do not already have systems that can identify dormant accounts under the definition in the Dormant Accounts Law. For example, a bank may have a system that recognises accounts as dormant after a shorter period of time than 15 years. If that system cannot flag up accounts that have been dormant for 15 years without a manual check, then the provisions permit the bank to wait for the remainder of the 15 years to pass before the balances are classed as dormant. For example, a bank may have a dormant period of 7 years in its internal systems, and those systems may not be able to identify the exact period of dormancy over 7 years for the dormant accounts. The transitional provisions enable the bank to wait a further 8 years (15 years minus the 7 years already recorded) until the accounts are classed as dormant.

Where the bank has no computerised system in place that identifies dormant accounts that are 15 years old, then the transitional provisions give the bank 5 years from the coming into force of Article 7 to build a system.

However, where a bank wishes to identify accounts as dormant and pass them to the Jersey Reclaim Fund immediately, once the Law comes into force, then this will be possible at the discretion of the Minister.

#### **Financial and manpower implications**

There are no financial or manpower implications for the States arising from the adoption of this draft Law, as any costs will be met by expenses being charged to the Jersey Reclaim Fund.

#### **Human Rights**

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 Note on the Draft Dormant Bank Accounts (Jersey) Law 201-

## Article 6 ECHR – Right to a fair trial

1. Article 6(1) of the ECHR provides that:
 

*“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”*
2. Jurisprudence has confirmed that where the substantive content and effect of a domestic law right are of a predominantly personal, private or economic nature, the right at issue will usually be a civil right and therefore Article 6 will be engaged. Given that the draft Law regulates the ability of certain citizens to recover monies owed to them by their bank and therefore Article 6 is engaged.
3. Where dormant money is transferred to the Fund, the account holder no longer has any right against the bank to payment of the balance or part thereof. However, the right is now against the Minister and is whatever right the account holder would have had if the transfer had not occurred.
4. The draft Law provides mechanisms for persons to recover monies transferred to the account. This in itself provides protections to account holders, but if such persons were unsuccessful in pursuing the recovery of their money in the Law by dealing with Minister or the bank as his agent, then such a person could exercise their right to sue for the money against the Minister, thus providing an avenue of redress before an Article 6 compliant court. The Minister’s decisions under the draft Law could also be subject to judicial review (there being no express right of appeal).
5. Based on the reasoning above, the draft Law can be said to be compatible with Article 6 ECHR.

## Article 8 ECHR – Right to respect to private and family life, home and correspondence

6. Article 8 ECHR provides that:
  - a. Everyone has the right to respect for his private and family life, his home and his correspondence.
  - b. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

7. Banks or other bodies holding records relating to dormant bank accounts, are required to permit the Minister to have access to any records of the bank where that access is necessary for the performance of the Minister's functions under the draft Law.
8. Article 8 ECHR is therefore potentially engaged, as this constitutes an interference with a right to the respect to private life.
9. However, Article 8 is a qualified right and an interference is permitted if: (i) it is in accordance with law, (ii) it pursues a legitimate aim, and (iii) it is necessary in a democratic society, i.e. proportionate.
10. The interference will clearly be in accordance with law, and it will pursue a legitimate aim of the economic well-being of the country.
11. Regarding proportionality, the liabilities which were attached to the bank now transfer to the Minister, and under Article 15 he may in certain circumstance perform the functions of the bank. It is therefore entirely reasonable for him to have access to records, particularly as it is limited to where such access "is necessary for the performance of the Minister's functions under this Law."
12. The draft Law is, based on the reasoning above, compatible with Article 8 ECHR.

**Article 1, Protocol 1 ECHR ("A1, P1") – Right to peaceful enjoyment of property**

13. Article 1, Protocol 1 of the ECHR provides that:
 

*"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*

*The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."*
14. The draft Law engages A1, P1 as it will interfere with the enjoyment of the proprietary rights of holders of so-called dormant accounts.
15. A1, P1 is a qualified right and allows for the control of use of property in accordance with the general interest, and to deprive persons of property in accordance with the public interest, the conditions provided for by law and the general principles of international law.
16. Any interference with the right to the peaceful enjoyment of possessions must be proportionate by striking a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. Contracting States generally enjoy a wide margin of appreciation in judging the measures appropriate to achieving the aims sought.
17. The interferences under the draft Law will be in accordance with the Law and in pursuit of legitimate aims such as preserving the economic well-being of the Island. The European Court of Human Rights has also specifically recognised, in the context of dormant bank accounts, the legitimate aim of terminating long-term legal relationships which were created so long ago that they had become uncertain.

18. Turning to the question of proportionality, the transfer of monies in accounts which have been dormant for 15 years will be a control of use, and it is clear that there are safeguards which will ensure the means are proportionate to the aims pursued:
- (i) a period of 15 years must elapse without any transactions or contact by the customer;
  - (ii) written notice is given of the balance to holders of dormant accounts within 3 months of the start of the relevant year;
  - (iii) a transfer to the Fund must not be made if the holder of the account has notified the bank that the account is not dormant, or the bank otherwise realises the account is not dormant;
  - (iv) the rights of account holders against the bank are preserved as against the Minister;
  - (v) the account holders may reclaim money transferred to the Fund; and
  - (vi) the rights of account holders are not prejudiced by the bank's bankruptcy, transfer of business, cessation of trading, extinction or reduction.
19. The above safeguards are vital. Of particular importance are the provisions ensuring that reasonable steps are taken to allow account holders to be informed of any situation that might jeopardise their financial interests so that they can take steps to protect their property. This mitigates the burden placed on the account holder to a proportionate level.
20. Regarding precious metals or stones or other prescribed items, or foreign currency accounts, the interference in these circumstances will be a deprivation if the account holder who has made a claim does not receive the tangible item back *in specie* or the foreign currency in that form. However, the framework of the draft Law provides that the account holder will be compensated reasonably in the currency of Jersey, thus ensuring the proportionality of the Law concerning the transfer of such accounts.
21. Account holders are not entitled to post-transfer interest on the account, except to the extent that the Minister otherwise prescribes. The bank of course remains liable for any interest accruing before the transfer which was not transferred to the Fund. An entitlement to interest could be claimed as a possession for the purposes of A1, P1. However, compensation will only need to be considered if the account holder would have otherwise been entitled to interest, and as bank terms and conditions often set 0% interest for dormant accounts, it is likely that it will be rare for a claimant to have otherwise been entitled to interest.
22. Based on the reasoning above, the draft Law is compatible with A1, P1 ECHR.

## Explanatory Note

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This draft Law enables monies lying in dormant bank accounts to be transferred to a fund to be used for charities and the regulation of charities, subject to the account holder's right to reclaim balances from the fund.

### *Part 1 – Interpretation*

*Article 1* contains a number of definitions of words and phrases used in the Law. The most important terms are then defined in *Article 2* – “account”, *Article 3* – “balance”, *Article 4* – “bank” and *Article 5* – “dormant”.

*Article 6* enables any of the definitions to be amended by Regulations made by the States.

### *Part 2 – Notices, transfers and claims*

*Article 7* provides for when and to whom notice must be given of dormant accounts and the requirements with respect to transfers to the Jersey Reclaim Fund (the “Fund”).

*Article 8* provides for the selling of precious metals and stones and the conversion into Jersey currency of foreign currencies held in dormant accounts.

*Article 9* removes any right the holder of a dormant account had against the bank where it was held but instead gives rights against the Chief Minister in respect of the Fund.

*Article 10* sets out the responsibilities and duties of the Chief Minister in relation to the Fund, which are concerned with payments out to meet claims from account holders, management of the Fund and the distribution of money from the Fund.

*Article 11* sets out the bank's duties in relation to the Fund, which are concerned with recording-keeping and the handling of claims from account holders.

*Article 12* requires the bank to give the Chief Minister annual statements of the amount repaid to account holders from the Fund.

*Article 13* enables the bank to claim or recover quarterly from the Fund an amount equal to the sum it has paid out to account holders.

*Article 14* provides for the bank to deduct from account holders expenses incurred in carrying its functions under this Law to the extent provided for in its terms and conditions that are binding on the account holder, but otherwise no amount by way of fees and expenses may be deducted from what is paid to the Fund unless expressly provided for in the Law.

*Article 15* provides that this Part of the Law is not affected by the bank ceasing to trade, etc. The Minister may take on the bank's functions and there is also provision for duties to be passed on to other entities to which the business of the bank has been transferred or to a liquidator in the case of bankruptcy.

*Article 16* preserves an account holder's rights in respect of any balance transferred under the Law if the bank then ceases to trade, etc.

*Article 17* provides for the Chief Minister to have access to records relating to dormant accounts where this is necessary for the Chief Minister to carry out his or her functions under the Law.

*Part 3 – Jersey Reclaim Fund and distribution of money*

*Article 18* provides for the establishment of the Fund.

*Article 19* states that the bank acts as the agent of the Chief Minister in respect of claims and repayments from the Fund, client relationships, record-keeping and the fulfilment of obligations.

*Article 20* provides for the distribution of money from the Fund to pay for the services of the Jersey Charity Commissioner and for charitable purposes in Jersey.

*Part 4 – Miscellaneous*

*Article 21* states that the Chief Minister's functions under the Law do not consist of carrying on deposit-taking or financial service business.

*Article 22* limits the liability of the Chief Minister and his or her servants or agents.

*Article 23* contains the general Order-making powers.

*Article 24* creates an offence of providing false information and for failing to provide information.

*Article 25* is a standard provision about criminal responsibility of partners and officers.

*Article 26* states that the Law doesn't affect the position as regards *bona vacantia*.

*Article 27* provides for the Chief Minister to recover his or her expenses from the Fund.

*Article 28* enables the Chief Minister to delegate certain functions under the Law.

*Article 29* contains a transitional provision whereby no offence is committed for a limited time where a bank's system for identifying dormant accounts does so for a period of less than 15 years or there is no system in place.

*Article 30* makes consequential amendments regarding liquidators

*Article 31* provides the short title of the Law and for it to come into force on such day or days as the States may by Act appoint.

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Jersey

## DRAFT DORMANT BANK ACCOUNTS (JERSEY) LAW 201-

### Arrangement

#### Article

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Jersey

**DRAFT DORMANT BANK ACCOUNTS (JERSEY)  
LAW 201-**

A LAW to provide for the transfer, to a fund, of balances in dormant accounts, and for the distribution of money in that fund for charitable and other purposes, subject to a right to reclaim those balances from the fund; and for connected purposes.

|  |                              |
|--|------------------------------|
| <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> |

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

**PART 1  
INTERPRETATION**

**1 Interpretation**

(1) In this Law –

“account” has the meaning given by Article 2;

“account holder” or “holder” means, in respect of an account, a person (whether or not an individual) –

- (a) in whose name the account is held by a bank;
- (b) who is beneficially entitled to the account or has the power to operate it or control it; or
- (c) who is entitled to demand repayment of an amount on the account;

“balance” has the meaning given by Article 3;

“bank” has the meaning given by Article 4;

“bankruptcy” has the meaning given by paragraph (2);

“dormant” has the meaning given by Article 5;

“function” includes a power and a duty;



“Fund” means the Jersey Reclaim Fund;

“Jersey Reclaim Fund” means the fund established under Part 3;

“liquidator” means the person (whether the Viscount or some other person) for the time being charged with the administration of the property of a bank by virtue of its bankruptcy;

“Minister” means the Chief Minister;

“Order” means an Order made by the Minister;

“prescribed” means prescribed by Order;

“relevant year” means the 12 month period starting on 1st July in any calendar year and ending on 30th June immediately following.

- (2) In this Law, and without limiting the operation of Article 8 of the Interpretation (Jersey) Law 1954<sup>1</sup>, references to bankruptcy include –
- (a) the winding up of an insolvent company under Article 155 of the Companies (Jersey) Law 1991<sup>2</sup>; and
  - (b) a process or state equivalent or similar to such winding up, or to bankruptcy (within the meaning of the Interpretation (Jersey) Law 1954), under the law of a jurisdiction outside Jersey.
- (3) For the purposes of this Law a person is still to be treated as the holder of an account despite the fact that the whole or any part of the balance on the account has been transferred to the Fund in accordance with this Law, and whether or not the account is closed.

## 2 “Account” defined

- (1) For the purposes of this Law, “account” means –
- (a) an account held by a bank in Jersey as part of its activity of accepting deposits;
  - (b) any one or more of the following held by a bank in Jersey in its activity of accepting safe custody –
    - (i) precious metal (which includes bullion and coins but excludes jewellery),
    - (ii) precious stones (but not jewellery),
    - (iii) such other things as may be prescribed;
  - (c) a prescribed account; or
  - (d) any other prescribed thing, facility or arrangement (whether or not in prescribed circumstances).
- (2) For the purposes of this Law, an account referred to in paragraph (1)(a) includes a current account and a deposit account.

## 3 “Balance” defined

- (1) For the purposes of this Law, the balance of an account at any particular time is the amount, or value, owing to the holder of the account in respect of the account at that time, after adjustments have been made for sums

due to the bank in respect of the account (such as any interest due or any fees or charges payable at that time, including those payable under Article 14(1)).

- (2) For clarity, a reference to sums due to the bank is a reference to sums due according to the terms and conditions of the account as in force from time to time and up to the time referred to in paragraph (1).
- (3) However, the balance of an account at any particular time does not include such amount, or value, in that account as is subject to a security interest to which the Security Interests (Jersey) Law 1983<sup>3</sup> or the Security Interests (Jersey) Law 2012<sup>4</sup> applies.

#### 4 “Bank” defined

For the purposes of this Law, “bank” means –

- (a) a person who is registered under the Banking Business (Jersey) Law 1991<sup>5</sup> and carries on deposit taking business within the meaning of that Law;
- (b) a person who, as part of a business, takes safe custody (but not ownership) of anything referred to in Article 2(1)(b); or
- (c) a person prescribed for the purposes of this Article.

#### 5 “Dormant” defined

- (1) Subject to the following provisions of this Article, an account is dormant at any time for the purposes of this Law if –
  - (a) the account has been open throughout the period of 15 years ending at that time; and
  - (b) during that period –
    - (i) no transactions carried out in relation to the account were initiated by a holder of the account, and
    - (ii) there is no evidence held by the bank of the account holder’s having made any contact with the bank in relation to that account by any means of communication.
- (2) An account referred to in Article 2(1)(a) is dormant for the purposes of this Law even if the period during which no transactions have been carried out or no contact has been made under paragraph (1)(b) in relation to the account is less than 15 years if –
  - (a) an application is made to the Minister by the bank holding the account; and
  - (b) the Minister agrees to treat the account as dormant.
- (3) An account is not to be treated as dormant if at any time during the period mentioned in paragraph (1)(a) –
  - (a) a transaction initiated by a holder of the account was carried out or there is evidence held by the bank of contact having been made under paragraph (1)(b) in relation to another account in the name

- of the same person as that first-mentioned account at the same bank; or
- (b) under the terms and conditions of the account –
    - (i) withdrawals from the account were not permitted, or
    - (ii) there was a financial penalty or other disincentive for making a withdrawal from the account and the financial penalty or other disincentive applied in all circumstances.
  - (4) Where either of the restrictions mentioned in paragraph (3)(b)(i) or (ii) applied to an account but the account then continues without such a restriction, the account is treated as having been opened only at the date on which the restriction ceased to apply.
  - (5) For the purposes of paragraph (1) an account that is closed before the time referred to in that paragraph is treated as remaining open at that time if it has been closed otherwise than by, or on the instructions of, a holder of the account.
  - (6) For the purposes of paragraph (3)(b)(ii), “financial penalty or other disincentive” does not include a reasonable fee for keeping the account or for carrying out a transaction on the account, or a requirement to give a reasonable period of notice of a withdrawal from the account.

#### 6 Amendment of definitions

The States may by Regulations amend any provision in this Part.

## PART 2

### NOTICES, TRANSFERS AND CLAIMS

#### 7 Notice and transfer of dormant accounts

- (1) Within 3 months of the start of each relevant year a bank must, in relation to every account it holds that falls dormant during the preceding relevant year –
  - (a) in the case of every account referred to in Article 2(1)(a) –
    - (i) give notice to the Minister setting out the number of, and balances of, each dormant account, and
    - (ii) give notice of the balance of every dormant account to the person in whose name the account is held at the person’s last address known to the bank, unless the bank believes that writing to that address may lead to a risk of fraud; and
  - (b) in the case of every other account, where the bank has not renewed its registration under the Banking Business (Jersey) Law 1991<sup>6</sup> and consequently its registration has expired or will expire, give notice to the Minister describing each account.
- (2) Where a description under paragraph (1)(b) includes a valuation the valuation may be based on an estimate of the current value of the assets or the last-known valuation.

- (3) If requirements have been prescribed in relation to the form or contents of, or information to be included in, a notice under paragraph (1), the notice must comply with those requirements.
- (4) When so requested in writing by the Minister a bank must provide the Minister with further information about dormant accounts held with the bank within 1 month of being notified of that request.
- (5) The bank must not make a transfer of a dormant account under this Article if at any time prior to 30th November in the relevant year –
  - (a) a holder of the account has notified the bank that the account is not dormant;
  - (b) the bank otherwise realises that the account is not dormant; or
  - (c) the Minister refuses to accept the transfer.
- (6) The Minister may refuse to accept the transfer under paragraph (5) if it appears to the Minister reasonable to do so.
- (7) Subject to Article 8 and to any Order made under Article 23(2)(f), by the end of December in the relevant year a bank –
  - (a) must transfer to the Fund such part of the balance of a dormant account as is an account referred to in Article 2(1)(a);
  - (b) must transfer to the Fund such part of the balance of a dormant account as is not an account referred to in Article 2(1)(a) but is prescribed for the purposes of this sub-paragraph; and
  - (c) may transfer to the Fund such part of the balance of a dormant account as is a part to which sub-paragraph (a) or (b) does not apply.
- (8) In the case of accounts that are dormant when this Article comes into force –
  - (a) the notice period in paragraph (1) runs from 3 months of the end of the relevant year in which this Article comes into force;
  - (b) if a bank so wishes and the Minister agrees, the bank may make a transfer of a dormant account at any time up to the beginning of the period mentioned in sub-paragraph (a) and this Law applies to the transfer as if the foregoing provisions of this Article had been complied with.
- (9) A bank must ensure that a transfer is accompanied by such information as the Minister may prescribe.
- (10) If for whatever reason a transfer does not take place by the date mentioned in paragraph (7) it must take place during the next period of 12 months following that date without any further notice being given.
- (11) If a bank fails, without reasonable excuse, to comply with this Article, it is guilty of an offence and liable to a fine of level 4 on the standard scale.
- (12) The Minister may, by Order, amend –
  - (a) the notice requirements in paragraph (1);
  - (b) paragraph (2) to make the provision of valuations in respect of accounts mandatory.

**8 Precious metals, precious stones and foreign currencies**

- (1) If a dormant account consists partly or wholly of things referred to in or prescribed under Article 2(1)(b) those things must be sold at reasonable market value as at the time of the sale and their value treated as, respectively, part or the whole of the balance of the account (after subtracting the reasonable costs of the sale) before any part of the balance of the account is transferred under Article 7.
- (2) If a dormant account consists in part or in whole of money in a currency other than the currency of Jersey, that money must be converted to the currency of Jersey at the market mid-rate on the day of the conversion (or at such other rate as is prescribed) immediately before any part of the balance of the account is transferred under Article 7.
- (3) Any payment out on a claim as referred to in Article 10 must be made in the currency of Jersey.

**9 No further right against bank after transfer of balance to Fund**

- (1) After a transfer of any part of the balance of a dormant account under Article 6, a holder of the account –
  - (a) no longer has any right against the bank to payment of the part of the balance; but
  - (b) has against the Minister in respect of the Fund whatever right to payment of the part of the balance as he or she would have had against the bank if the transfer had not occurred.
- (2) However, the Minister may pay the account holder out of the Fund a sum greater than that which he or she would be entitled to under paragraph (1)(b) if the Minister considers it appropriate to do so, having regard to the amount of money held in the Fund in the light of that additional payment out, other possible claims against the Minister in respect of the Fund and any other matter that the Minister considers relevant.
- (3) A part of a balance, being a part transferred under Article 7, is no longer a debt owed, or value due, by the bank.
- (4) An account holder is not entitled to interest on the part of the balance in respect of any period during which the part is held in the Fund, except to the extent that the Minister otherwise prescribes (though the bank remains liable in respect of any interest that accrued before the transfer but was not in fact transferred).
- (5) In relation to things referred to in or prescribed under Article 2(1)(b) that have been sold under Article 8(1) –
  - (a) nothing in paragraph (1)(b) or (7) entitles the holder of the account in which those things were held to recover those things *in specie*;
  - (b) nothing in paragraph (7) entitles that holder to compensation over and above the value of those things because they are no longer held *in specie*, or because they were so sold; and
  - (c) a reference in paragraph (1)(b) to the part of the balance (in so far as it relates to the value of those things) means the sum realized by

the sale referred to in Article 8(1) after deduction of the reasonable costs of the sale.

- (6) Nothing in paragraph (1)(b) or (7) entitles the holder of an account that consisted (before the part of the balance of the account was transferred under Article 7) in whole or in part of money in a currency other than the currency of Jersey to recover any part of the balance –
  - (a) in that other currency; or
  - (b) at a value calculated in terms of that currency as at any time other than the time of the conversion of that other currency under Article 8(2).
- (7) For the avoidance of doubt, nothing in paragraph (1) or (3) affects –
  - (a) any liability of the bank to the account holder in respect of an amount, or value, other than the part of the balance referred to in whichever paragraph; or
  - (b) the operation of Article 11.
- (8) Subject to paragraph (4) and to the extent that an Order prescribes otherwise, the terms on which a balance was held by a bank apply to any part of it that is held in the Fund.

#### 10 Responsibilities and duties of Minister in relation to Fund

- (1) The Minister's responsibilities in relation to the Fund are limited to –
  - (a) payments out of the Fund to meet claims in accordance with this Part;
  - (b) the management of the Fund in such a way as to enable the meeting of such of those claims as it is prudent to expect;
  - (c) the management of the Fund in accordance with any requirement with regard to its financial resources that is imposed on it by or under any enactment and to defray the expenses of the administration of this Law;
  - (d) the distribution of money under Article 20, subject to subparagraphs (b) and (c); and
  - (e) matters that are incidental or conducive to, or otherwise connected with, any of the above (including in particular the prudent investment of money held in the Fund).
- (2) The Minister must prepare an annual report on the operation of this Law in the preceding year and publish it on a website that the Minister considers appropriate.
- (3) Nothing in paragraph (1) affects a bank's duties referred to in Article 11.

#### 11 Duties of bank in relation to Fund

- (1) Except as otherwise provided by Order, a bank must do the following in relation to any part of a balance, being a part that the bank has transferred to the Fund under this Law –



- (a) retain the records that the bank has created or acquired relating to the relevant dormant account and to any holder of that account;
  - (b) receive any claim for payment of that part;
  - (c) verify the claim;
  - (d) calculate the amount that should be paid in respect of the claim;
  - (e) determine who is entitled to that amount;
  - (f) pay out the amount to the person so entitled;
  - (g) comply with any written directions of the Minister given to the bank for the purposes of this Part.
- (2) Nothing in this Law affects any duty of a bank to comply, in respect of the account and the claim, with any law that imposes obligations on the bank in relation to taxation, anti-money laundering or terrorist financing, or with any other obligation imposed by law.
- (3) The Minister may give written directions to a bank for the purposes of this Part, which bank must comply with such a direction.
- (4) The Minister may by Order make provision for the purposes of this Part by –
- (a) amending paragraph (1); and
  - (b) specifying or modifying the duties, liabilities, and rights, under this Part, of a liquidator or other person who acts in relation to a bank in a case where the bank has become bankrupt, has transferred any part of its deposit-taking business or has ceased to trade.
- (5) A reference in this Article to payment of part of a balance includes payment of any amount of interest that becomes due to the account holder, in relation to the part, as prescribed under Article 9(4).
- (6) If a bank fails, without reasonable excuse, to comply with this Article, the bank is guilty of an offence and liable to a fine of level 4 on the standard scale.

#### 12 Bank to make annual statements of repayments

- (1) A bank must give to the Minister, during the 3 months following the end of each relevant year, written notice of the amounts that it has during that year –
- (a) paid out in accordance with Article 11(1)(f);
  - (b) claimed from the Minister under Article 13(1); and
  - (c) not paid out.
- (2) If a bank fails to comply with this Article, it is guilty of an offence and liable to a fine of level 4 on the standard scale.

#### 13 Bank may recover payment from Fund

- (1) A bank may, by application in writing to the Minister, claim quarterly from the Fund an amount equal to the amount that the bank, in

accordance with Article 11 and this Article, has paid out on claims made to the bank.

- (2) However, such an application by a bank for payment from the Fund is not in accordance with this Article in relation to any amount to the extent that –
  - (a) the amount paid out has been paid out by the bank on the claim by the account holder more than 3 years before the application is made;
  - (b) the amount was paid out in error; or
  - (c) the application is not made in relation to the amount by such time as the Minister may allow in particular circumstances.
- (3) Such an application is not in accordance with this Article unless it meets any prescribed requirements, and those requirements may stipulate that the application –
  - (a) be made in respect of aggregates of amounts instead of individual amounts;
  - (b) be made at or in respect of any specified time or times; and
  - (c) set out the prescribed information.
- (4) The Minister must pay from the Fund any amount that the Minister is satisfied has been the subject of an application made in accordance with this Article.

#### 14 Fees and expenses of bank

- (1) A bank may deduct from an account reasonable fees and expenses incurred in respect of carrying out its functions under this Law to the extent provided for in terms and conditions that are binding on the account holder.
- (2) However, except as provided for in paragraph (1), a bank is not entitled to deduct from any amount transferred to, recovered from or to be paid from, the Fund, any amount in respect of the bank's costs or expenses in the performance of its functions under this Law unless expressly provided for elsewhere under this Law.

#### 15 Actions in cases of default by bank

- (1) Subject to the following provisions of this Article, the operation of this Part is not affected by the fact that a bank has become bankrupt, has transferred any part of its deposit-taking business or has ceased to trade.
- (2) If the Minister believes that any function referred to in Article 11(1)(a) to (f) is not being performed by or in respect of a bank, the Minister may perform the function instead.
- (3) If the Minister performs a function as referred to in paragraph (2), the Minister may deduct from the Fund the Minister's costs and expenses in the performance of the function or may reduce payments out of the Fund by an amount not exceeding those expenses.



- (4) Where a bank –
- (a) is to transfer any part of its deposit-taking business to another entity or move it to another branch of the same bank, the person to whom that business is transferred or moved must comply with paragraph (5);
  - (b) is to cease to trade in Jersey, the bank must make arrangements to ensure compliance with paragraph (5); or
  - (c) has become bankrupt, the liquidator must comply with the requirements of paragraph (5).
- (5) The requirements are –
- (a) to ensure that Article 11(1)(b) to (g) is complied with;
  - (b) to hold the records of the deposit-taking business of the bank and to make them accessible from within Jersey,
- for a period of 10 years beginning with the date of whichever is the relevant event mentioned in paragraph (4).
- (6) Any expenses of a liquidator, whenever incurred, in complying with paragraph (5) have the same priority –
- (a) as the monies chargeable by the Viscount under Article 32(1)(a) of the Bankruptcy (Désastre) (Jersey) Law 1990<sup>8</sup>; and
  - (b) as the costs, charges and expenses payable under Article 165 of the Companies (Jersey) Law 1991<sup>8</sup> in relation to a creditors' winding up.
- (7) In this Article "liquidator" means the person (whether the Viscount, or some other person) for the time being charged with the administration of the property of a bank by virtue of its bankruptcy, including a person to whom the administration has been delegated.

#### 16 Account holder's rights preserved on insolvency etc. of bank

If an account holder has a right to payment under this Part in respect of any part of a balance, being a part transferred by a bank under this Law, and –

- (a) the bank becomes bankrupt, has transferred any part of its deposit-taking business or has ceased to trade; or
- (b) for any reason the liability that the bank would have to the account holder (but for the operation of this Part) is extinguished or reduced,

the bankruptcy, transfer, cessation, extinction or reduction is, for the purposes of this Part, to be disregarded in relation to the account holder's rights.

#### 17 Disclosure of information

- (1) A bank (or any other person who holds any records of a bank that relate to dormant accounts held or formerly held with the bank) must allow the Minister (or another person authorized in writing by the Minister for the purposes of this Article) to have access to any records of the bank where that access is necessary for the performance of the Minister's functions under this Law.

- (2) No obligation as to secrecy or other restriction on disclosure (however imposed) prevents a bank or other person from disclosing those records to the Minister or other person under paragraph (1).
- (3) If a bank fails to comply with paragraph (1), the bank is guilty of an offence and liable to a fine of level 4 on the standard scale.

### PART 3

#### JERSEY RECLAIM FUND AND DISTRIBUTION OF MONEY

#### 18 Fund

There is established the Jersey Reclaim Fund, being a special fund within the meaning of Article 3 of the Public Finances (Jersey) Law 2005<sup>9</sup>.

#### 19 Bank to act as agent of Fund

- (1) A bank acts as the agent of the Minister in respect of the following matters –
  - (a) any claims from and repayments out of the Fund;
  - (b) client relationships;
  - (c) record-keeping;
  - (d) the fulfilment of any legal or regulatory obligations arising out of client relationships.
- (2) The Minister may by Order prescribe the terms on which a bank so acts as agent.
- (3) Despite paragraph (2) the Minister may agree with a bank such additional terms as the Minister considers appropriate.
- (4) The bank with which the Minister makes an agreement under paragraph (3) must meet the Minister's reasonable costs in reaching the agreement.
- (5) Unless and until it is terminated with the consent of the Minister on behalf of the Fund the arrangement by which a bank acts as agent under this Article is binding on any liquidator, any trustee in bankruptcy and any successor of the bank.
- (6) A bank's role as agent under this Article may not be assigned or transferred by contract except as approved by the Minister on behalf of the Fund.

#### 20 Distribution of Fund money by Minister

- (1) The Minister may use such money from the Fund as he or she considers appropriate for the remuneration or other payment for the services of the Commissioner due under the terms of his or her appointment or for the cost of providing staff, accommodation or equipment that are required for the proper and effective discharge of the Commissioner's functions.

- (2) The Minister may use money from the Fund that he or she does not wish to use for the purpose mentioned in paragraph (1) for the following charitable purposes in such proportions as may be prescribed –
- (a) the advancement of the arts in Jersey;
  - (b) the advancement of public participation in sport in Jersey;
  - (c) the advancement of the heritage of Jersey;
  - (d) the advancement of health, education, and environmental protection or improvement, in Jersey;
  - (e) any other charitable purpose carried on by a registered charity in Jersey.
- (3) The Minister may make grants or loans, or make or enter into other arrangements, for the purpose of facilitating the performance of the function referred to in paragraph (2).
- (4) Such a grant or loan may be subject to conditions (which may, in particular, include conditions as to repayment with interest).
- (5) For the purposes of this Part, paying out money for a purpose includes paying out money in order to establish, or contribute to, endowments (including permanent endowments) in connection with the purpose.
- (6) The States may by Regulations amend paragraph (1) or paragraph (2) so as to vary the use to which any money from the Fund may be put.
- (7) In this Article, “Commissioner” and “registered charity” have the same meaning as in Article 1 of the Charities (Jersey) Law 2014<sup>10</sup>.

#### PART 4

##### MISCELLANEOUS

#### 21 Functions under Law not deposit-taking or financial service business

If the Minister or another person performs any function that the Minister may perform under this Law, he or she does not, by so doing, carry on deposit-taking business within the meaning of the Banking Business (Jersey) Law 1991<sup>11</sup> or financial service business within the meaning of the Financial Services (Jersey) Law 1998<sup>12</sup>.

#### 22 Limitation of liability

- (1) Despite Article 19(1) the Minister, his or her servants or agents (excluding the bank where the bank acts as an agent of the Minister) are not liable for the actions of the bank, its servants or agents in respect of any of the bank’s obligations under this Law, other than in respect of its obligation under Article 11(1)(f).
- (2) The Minister, his or her servants or agents are not liable to a bank or any of its account holders as a result of any action taken in relation to the Fund that would otherwise arise outside of any obligation imposed by or under this Law.

- (3) Without limiting paragraphs (1) and (2), the Minister, his or her servants or agents are not 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 unless it is shown that the act or omission was in bad faith.
- (4) For clarity, this Article applies to any person to whom the Minister has delegated any function under Article 28 of this Law or under Article 28 of the States of Jersey Law 2005<sup>13</sup> in relation to any of his or her functions under this Law.

### 23 Orders

- (1) The Minister may make Orders relating to any matter required or permitted by this Law to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Law.
- (2) In particular the Orders may make provision for or with respect to any of the following –
  - (a) amending any expression of time (whether numerical or otherwise) in this Law;
  - (b) notices to be given under this Law;
  - (c) procedures, requirements, and other matters, that relate to such notices, including how notice is to be given, the matters in respect of which notices are required and the form or contents of, or information to be included in, the notices;
  - (d) forms in general for the purposes of this Law;
  - (e) returns and reports, to be furnished by banks to the Minister for the purposes of this Law;
  - (f) the circumstances in which a bank is not to transfer, to the Fund, part or all of a balance on a dormant account;
  - (g) for fees to be charged in prescribed circumstances for the benefit of the Fund for processing a claim for repayment to a former account holder whose dormant account has been transferred to the Fund;
  - (h) the administration of this Law;
  - (i) procedures, requirements, and other matters, in respect of the operation of this Law.
- (3) The States may by Regulations make provision for the following matters –
  - (a) the performance of the functions of a bank under this Law in the case where the bank has become bankrupt, has transferred any part of its deposit-taking business or has ceased to trade;
  - (b) the rights and priorities of holders of dormant accounts, and of other persons with interests in those accounts, in the case where the bank has become bankrupt, has transferred any part of its deposit-taking business or has ceased to trade;

- (c) the appointment or constitution, and functions under this Law, of a person who may perform the functions of the relevant bank under this Law in a case referred to in sub-paragraph (g) or (h);
  - (d) the remuneration or funding of such a person in such a case, including remuneration or funding from the bankrupt estate of the bank or from the bank's assets or former assets or from the Fund;
  - (e) making provision for priority in such a case as between such a person and creditors of the relevant bank;
  - (f) subject to the Public Finances (Jersey) Law 2005<sup>14</sup> and any enactment made under that Law, the structure and operation of the Fund;
- (4) Orders and Regulations may create an offence punishable by a fine of level 4 on the standard scale.
  - (5) Orders and Regulations may contain such transitional, consequential, incidental or supplementary provisions, or such savings, as appear to the Minister to be necessary or expedient for the purposes of the Order.
  - (6) A reference in this Article to procedures does not include the procedure of any court.

#### 24 Providing false information etc.

- (1) A person is guilty of an offence and liable to imprisonment for a term of 2 years and to a fine if –
  - (a) the person provides information to the Minister, or to any other person entitled to information under this Law –
    - (i) in connection with an application or claim,
    - (ii) in purported compliance with a requirement imposed under this Law or any enactment made under this Law, or
    - (iii) otherwise than as mentioned in sub-paragraphs (i) and (ii) but in circumstances in which the person providing the information intends, or could reasonably be expected to know, that the information would be used by the Minister or other person for the purpose of exercising his or her functions under this Law;
  - (b) that information is false or misleading in a material particular; and
  - (c) the person knows that, or is reckless as to whether, the information is false or misleading in a material particular.
- (2) A person is guilty of an offence and liable to a fine of level 4 on the standard scale if the person fails, without reasonable excuse, to comply with a requirement, imposed under this Law or any enactment made under this Law, to provide information in connection with an application or claim to the Minister, or to any other person entitled to the information, under this Law or under any enactment made under this Law.

**25 Criminal responsibility of partners and officers**

- (1) Where an offence under this Law committed by any form of partnership that is a legal person or by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –
  - (a) a person who is a general partner of the partnership or other partner participating in the management 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 the member were a director of the body corporate.

**26 *Bona vacantia***

- (1) Nothing in this Law affects the operation of the rule of law regarding *bona vacantia* or any claim that the Receiver-General may have in respect of *bona vacantia*.
- (2) Accordingly, the Receiver-General may claim, and be paid, from the Fund any amount of a balance paid to the Fund where the amount corresponds to the value of property that is *bona vacantia*.

**27 Recovery of Minister's expenses**

The Minister may recover from the Fund his or her expenses in the performance of any of his or her functions under this Law.

**28 Power of Minister to delegate functions**

- (1) The Minister may, in writing, delegate, wholly or partly, the functions conferred upon or vested in the Minister by or under any provision of this Law (except Article 20) to any person (other than a person to whom the Minister may make such a delegation under Article 28 of the States of Jersey Law 2005<sup>(4)</sup>).
- (2) A Minister must not so delegate –
  - (a) any power to make an enactment;
  - (b) any power to decide an appeal under an enactment;
  - (c) any function the delegation of which is prohibited by an enactment.
- (3) The delegation of functions by a Minister under this Article does not prevent the Minister exercising those functions personally.



**29 Transitional provision**

- (1) This Article applies where a bank has, before the coming into force of this Article –
  - (a) a system in place that identifies accounts held by the bank that are dormant for a shorter period than 15 years; or
  - (b) no system is in place for identifying dormant bank accounts.
- (2) Where this Article applies no offence is committed under Article 7 –
  - (a) where paragraph 1(a) applies, until a period of time has elapsed that is equivalent to the time difference between the length of time after which the system identifies accounts as dormant and 15 years;
  - (b) where paragraph 1(b) applies, until 5 years after the coming into force of Article 7.
- (3) However, paragraph (2) does not apply if the bank were able by reasonable means to discover whether or not any accounts held by it are dormant (within the meaning of Article 5) other than by a manual check of each account it holds (for example by means of a computerized search using its existing systems).

**30 Amendment of enactments**

- (1) At the end of Article 32(1)(a) of the Bankruptcy (Désastre) (Jersey) Law 1990<sup>16</sup> there shall be added the words “(and any expenses of a liquidator as defined by Article 15(7) of the Dormant Bank Accounts (Jersey) Law 201-<sup>17</sup>)”.
- (2) In Article 165 of the Companies (Jersey) Law 1991<sup>18</sup> after the word “liquidator” there shall be inserted the words “(and any expenses of a liquidator under Article 15(6)(a) of the Dormant Bank Accounts (Jersey) Law 201-<sup>19</sup>)”.
- (3) In Schedule 1 to the Charities (Jersey) Law 2014<sup>20</sup> –
  - (a) at the beginning of paragraph 2(4)(a) there shall be inserted the words “subject to Article 20(1) of the Dormant Bank Accounts (Jersey) Law 201-<sup>21</sup>,”;
  - (b) at the beginning of paragraph 4(7) for the word “The” there shall be substituted the words “Subject to Article 20(1) of the Dormant Bank Accounts (Jersey) Law 201-<sup>22</sup>, the”.

**31 Citation and commencement**

- (1) This Law may be cited as the Dormant Bank Accounts (Jersey) Law 201-.
- (2) This Law shall come into force on such day or days as the States may by Act appoint.

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| 1  | <i>chapter 15.360</i> |
| 2  | <i>chapter 13.125</i> |
| 3  | <i>chapter 13.775</i> |
| 4  | <i>chapter 13.776</i> |
| 5  | <i>chapter 13.075</i> |
| 6  | <i>chapter 13.075</i> |
| 7  | <i>chapter 04.160</i> |
| 8  | <i>chapter 13.125</i> |
| 9  | <i>chapter 24.900</i> |
| 10 | <i>chapter 15.070</i> |
| 11 | <i>chapter 13.075</i> |
| 12 | <i>chapter 13.225</i> |
| 13 | <i>chapter 16.800</i> |
| 14 | <i>chapter 24.900</i> |
| 15 | <i>chapter 16.800</i> |
| 16 | <i>chapter 04.160</i> |
| 17 | <i>P.25/2016</i>      |
| 18 | <i>chapter 13.125</i> |
| 19 | <i>P.25/2016</i>      |
| 20 | <i>chapter 15.070</i> |
| 21 | <i>P.25/2016</i>      |
| 22 | <i>P.25/2016</i>      |