

# STATES OF JERSEY



Jersey

## **DRAFT BANK (RECOVERY AND RESOLUTION) (JERSEY) AMENDMENT LAW 202-**

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**Lodged au Greffe on 27th May 2025  
by the Minister for External Relations  
Earliest date for debate: 8th July 2025**

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**STATES GREFFE**



## **DRAFT BANK (RECOVERY AND RESOLUTION) (JERSEY) AMENDMENT LAW 202-**

### **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 has made the following statement –

In the view of the Minister for External Relations, the provisions of the Draft Bank (Recovery and Resolution) (Jersey) Amendment Law 202- are compatible with the Convention Rights.

Signed: **Deputy I.J. Gorst of St. Mary, St. Ouen and St. Peter**  
*Minister for External Relations*

Dated: 21st May 2025

## REPORT

The Draft Bank (Recovery and Resolution) (Jersey) Amendment Law 202- (the “**Draft Law**”) proposes to amend the [Bank \(Recovery and Resolution\) \(Jersey\) Law 2017](#) (the “Resolution Law”) to transfer the functions of the Jersey Bank Depositor Compensation Board (“the DCS Board”), currently established under the [Banking Business \(Depositors Compensation\) \(Jersey\) Regulations 2009](#) (the “2009 Regulations”), to the Jersey Resolution Authority (the “JRA”).

This proposition aims to simplify Jersey’s overall response to bank failures by consolidating the aforementioned functions into a single independent body. The objectives of the Draft Law are to:

- facilitate the transfer of powers and functions from the DCS Board, as established under the 2009 Regulations, to the JRA under the Resolution Law. The legislation for both the compensation scheme and the resolution framework will be consolidated into the Resolution Law;
- implement necessary amendments to enhance the effective administration of the Depositors Compensation Scheme and ensure greater alignment with international best practices; and
- make necessary amendments to the Resolution Law to clarify its scope and support its practical application.

### Background

The 2008 global financial crisis marked the most severe economic downturn since the Great Depression, triggered in part by widespread banking failures and resulting in large-scale bailouts by major governments, including the US and the UK. In response to the crisis and the regulatory shortcomings it exposed, jurisdictions worldwide introduced depositor compensation schemes and developed recovery and resolution frameworks.

In 2009, the Banking Business (Depositors Compensation) (Jersey) Regulations 2009 (“**2009 Regulations**”) were brought into force to establish the Depositor Compensation Scheme (“DCS”). The DCS was designed to protect individual depositors in the event of a bank being wound up, promoting financial stability and serving as a safety net for essential savings. Since its introduction, the DCS framework has evolved to reflect key aspects of international best practice.

Building on this foundation, Jersey enacted the Bank (Recovery and Resolution) (Jersey) Law 2017 (the “Resolution Law”) to provide a more robust framework for planning for, and managing, bank failures. This Law implemented international standards developed post-crisis and offers a more appropriate approach for handling the failure of banks that are systemically important – either locally or globally – than relying solely on insolvency and compensation mechanisms. In line with international standards, the resolution regime seeks to save systemic banks from failure, whereas non-systemic banks, typically smaller banks, would be wound up using normal insolvency proceedings to ensure the application of the principle of moral hazard. The DCS would therefore become applicable after a resolution authority has decided to allow a bank to be wound up.

The Resolution Law led to the establishment of the JRA in 2022, which is responsible for preparing for and overseeing the resolution of banks.

### Transfer of the DCS to the JRA

The primary objective of the Draft Law is to facilitate the transfer of functions from the DCS Board to the JRA.

The 2009 Regulations and the Resolution Law both act as parts of a complementary response to bank failure, as can be seen in the analysis above. Where a bank is considered systemically important by virtue of its collapse, the Resolution Law provides a range of resolution tools to avoid a disorderly failure. However, where a bank is not considered to be systemically important or where the resolution plan allows the Jersey entity to enter insolvency, then the Scheme is likely to be the preferred tool and provides a means of ensuring that depositors have access to their essential savings. Since the establishment of the JRA, it has been envisaged that the operations of the DCS Board should be consolidated with the JRA to provide an effective and more proportionate response to bank failure in Jersey. This aligns with Government's objectives to reduce unnecessary red tape as well as Jersey vision for Sustainable Economic Development, reducing duplication and enabling improved agility and accessibility.

The Draft Law extends the responsibility of the JRA to include the administration of the DCS. This includes specific provisions relating to the DCS operations as well as amending the functions and powers of the authority to ensure it can effectively administer the DCS. Recognising the need to segregate compensation funds raised in the event of a bank default to operate the DCS, separate accounting requirements have been established to improve the simplicity transparency of the DCS should it be enacted.

In recognition of the increased scope of the JRA, the name of the authority is proposed to change to "The Jersey Resolution and Depositors Compensation Authority". For the purposes of this report, we will continue to refer to the authority as the JRA.

### **Amendment to enhance the administration of the DCS**

Further to the transfer of the DCS, the Draft Law proposes to enhance the operation of DCS, reflecting advances in international standards and means of delivery. In 2016, the Draft Bank Depositors Compensation (Jersey) Law 201- ("the 2016 Draft DCS Law") was lodged au Greffe identifying improvements to the 2009 Regulations. Whilst this proposition was withdrawn to allow further analysis to be undertaken of evolving international standards at the time, including the delivery of the Resolution Law, it is recognised that some of the best practices the 2016 Draft DCS Law was providing for should be adopted.

#### ***Removing the £100 million limit***

The Draft Law proposes to remove the £100 million cap on compensation payouts. This change is particularly relevant in scenarios where the total compensation due exceeds £100 million and the JRA would be unable to make full payouts within the initial seven-day period, resulting in rateable reductions to payments.

Under the proposed changes, the JRA will be empowered to recover funds from the insolvency proceedings of a failed bank and use those recoveries to make further compensation payments. The Draft Law also revises the order of priority for distributing recovered funds such that depositors will now be paid ahead of banks that have contributed to compensation levies for compensation exceeding the previous £100 million cap.

Provided that the bank insolvency yields a reasonable recovery rate, these changes should enable the JRA to pay 100% compensation (up to the £50,000 limit per depositor) in most cases the DCS is activated. This reform enhances depositor protection by increasing the potential amount of compensation and prioritising depositors' rights over the reimbursement of compensation levies.

It should be noted that the £100 million limit will remain in place for bank compensation levies and the States Loan.

***Improving timescales for payout of compensation***

Under the 2009 Regulations, the DCS Board must payout compensation within three months of receiving applications for compensations. It should be noted that the compensation within this period would typically be rateably reduced.

Technological advances now allow for more effective means of processing claims for deposit compensation, in particular the development of straight through payment. The DCS Board has developed the capabilities to operate a straight through payment model, utilising accurate bank data in the form of a single customer view file, and the Draft Law proposes changes to enable this. Effectively this will enable the JRA to pay compensation without the delay of requiring applications to be Individually submitted by depositors. Applications will remain where straight through payout is not possible or not appropriate.

Parallel to straight through processing, the Draft Law will enable the automatic subrogation such that depositors' rights to their eligible deposits (i.e. up to £50,000) will automatically vest in the JRA on the activation of the DCS. This removes what is currently achieved through the manual assignment by the application process. Further to this, the JRA may determine in certain circumstances that rights of the depositor above £50,000 should be vested in the JRA, primarily to counteract any prejudice caused by the application of foreign law. In the event that the bank in defaults insolvency process has not concluded within five years, the remaining rights will be re-vested to the depositor.

With the above enabling the JRA to make faster payouts, the Draft Law will require payment of compensation within seven working days. This will ensure Jersey meets international standards as set out in the International Association of Deposit Insurers' Core Principles. Caveats are however provided to the JRA in recognition of circumstances where this is not feasible. This includes clauses recognising instances where the information provided by banks is of insufficient quality, such that the JRA may request better data or utilised applications, or if sufficient funds are not available in the Compensation Fund, such that the compensation paid within the seven days may be pro-rated with later payments of compensation made.

Taken as a whole, these changes seek to benefit depositors by reducing the time period before payment of compensation.

***Scheme trigger mechanism***

The trigger mechanism for the DCS has been amended to allow the JRA greater flexibility in activating the scheme where a bank is insolvent or likely to become unable to pay its creditors, even if no formal winding-up application has been made. While the JRA is unlikely to exercise this discretion without a relevant court winding up order in Jersey or another jurisdiction, the enhanced provisions ensure the scheme can be triggered in response to foreign insolvency proceedings – even where those processes differ from Jersey's.

Additional discretion is introduced to accommodate scenarios where the JRA may prefer to pursue alternative resolution actions rather than enacting the DCS. This may include a foreign resolution or suspensory mechanism, which may offer a better outcome for depositors in certain circumstances.

**Necessary amendment to the Resolution Law**

Amendments to specific provisions of the existing Resolution Law are proposed to better align the law with international standards and ensure its practical implementation by the JRA.

Article 72 currently permits the JRA to bail in a bank's creditors to minimise the costs of failure for the islanders and preserve financial stability. This is achieved by requiring banks to include specific contractual terms with their creditors. The Draft Law refines the scope of this provision

to bring it in line with international standards by limiting its application to Jersey-incorporated banks, excluding branches of foreign banks. The amendments also empower the Minister to prescribe circumstances in which including such contractual terms would be impracticable.

A central standard within resolution regimes is to ensure that banks maintain sufficient loss-absorbing capacity to enable effective resolution in times of financial distress. While Article 26 of the current law establishes a minimum requirement for own funds and eligible liabilities (“MREL”), it lacks a formal mechanism to define “eligible liabilities.” The Draft Law addresses this by allowing the Minister to prescribe criteria for eligible liabilities, enabling the JRA to build on its work initiated through industry consultations in 2023 and 2024.

### **Commencement**

The transfer of functions is intended to take effect at the end of 2025, enabling the JRA to assume increased responsibilities from 2026. The law includes provisions to delete Article 37 of the [Banking Business \(Jersey\) Law 1991](#), which originally established the DCS, and to introduce temporary measures reducing the functions of the DCS Board during the first three months of 2026 to allow for an orderly dissolution. Given the differing timings required for certain provisions, the law is proposed to come into force in accordance with a commencement order issued by the Minister for External Relations.

### **Consultation**

A [consultation on the proposed transfer the scheme](#) and associated enhancements was conducted in Q1 2024. This consultation attracted responses from two banks, one individual and the Jersey Bankers Association. The response to this initial consultation were consistently supportive of the proposals.

Following the drafting of the Law, a [further consultation](#) was conducted to gather feedback on the proposed legislation. Due to the technical nature of the Draft Law, responses were limited to three responses: two from insolvency practitioners and one comment from a member of the public. Additional engagement with the banking industry and insolvency professionals was undertaken following the closure of this consultation.

The consultation and subsequent engagement provided valuable insights from professionals with experience of navigating insolvencies and operating such compensation schemes. Where appropriate, recommendations have been reflected in amendments to the Draft Law to support practical operation of the scheme.

Government has worked closely with the JBDCB and JRA throughout the development of the Draft Law and will continue to do so in preparation for the proposed transfer of the scheme at the end of this year.

### **Financial and staffing implications**

There are no financial or resource implications arising from the adoption of this Draft Law, as any costs will be met by expenses being charged to the banking industry.

### **Children’s Rights Impact Assessment**

A Children’s Rights Impact Assessment has been carried out. The impacts on children’s rights are likely to be indirect and/or negligible and thus only a screener is required. It will be published on the States Assembly website in the usual way.

**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 Notes on the Bank (Recovery and Resolution) (Jersey)  
Amendment Law 202-**

These Notes have been prepared in respect of the draft Bank (Recovery and Resolution) (Jersey) Amendment Law 202- by the Law Officers' Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers' opinion, the draft Law is compatible with the European Convention on Human Rights ("ECHR").

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

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. In civil proceedings, Article 6 will be engaged where there is a dispute as to a civil right or obligation. What constitutes a civil right will depend on the substantive character of the right at issue. The 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 for the purposes of Article 6. The Resolution Law (as amended by the draft Law) engages Article 6 in circumstances in which the proprietary rights of persons are effected.
3. Decisions which have an effect on proprietary rights under the Resolution Law (as amended by the draft Law) are made mostly by the Authority or the Jersey Financial Services Commission. These bodies will not satisfy the Article 6 requirements for an independent and impartial tribunal. However, the European Court of Human Rights recognizes the value of decision-making at an administrative level and has said that an assessment of Article 6 compatibility requires an examination of the whole decision-making process. Therefore, if decisions by, or proceedings before, an administrative body are subject to control by a judicial body with full jurisdiction and which provides the guarantees of Article 6, the process shall be compatible with Article 6.
4. Under:
  - a. Article 168 of the Resolution Law (as amended by the draft Law), a person aggrieved by: (i) a decision of the Authority to take a crisis prevention measure; and (ii) any other decision under the Resolution Law (as amended by the draft Law) of the Authority (other than a decision relating to a public statement), of the Commission or of any other person exercising a power or function under the Resolution Law (as amended by the draft Law); and
  - b. Article 168A of the Resolution Law (as amended by the draft Law), a person dissatisfied with: (i) a decision of the Authority that the person is not entitled to depositors' compensation; (ii) a decision of the Authority to postpone or refuse to pay depositors' compensation; (iii) a decision of the Authority as to the amount of depositors' compensation the person is entitled to; or (iv) a decision of the Authority not to exercise its powers under Article 142R(3)(b).

a person may appeal against the relevant decision to the Royal Court. Therefore, the process is subject to judicial control by a self-evident Article 6 compliant body. The grounds for



appeal are that the decision was unreasonable: (i) having regard to all the circumstances of the case (Article 168(2)); or (ii) on the facts available to the Authority (Article 168A(1)), which is sufficient to ensure that the issues are determined by recognizable legal principles. This wide language is present in other financial services legislation such as the Financial Services (Jersey) Law 1998 and enables the Court to conduct a full review of the decision. There is also a specific appeal provision regarding public statements in Article 163 which is also on the grounds of the decision being unreasonable in all the circumstances.

5. It can therefore be concluded that the Resolution Law (as amended by the draft Law) is compatible with Article 6 ECHR.

## Article 8 ECHR

6. Article 8 of the ECHR provides that:

- “1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*
2. *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. There is provision in the Resolution Law (as amended by the draft Law) (Article 147) for the search of specified premises for the purposes of searching and seizing material likely to be of substantial value to an investigation or for the purposes of preventing an investigation being prejudiced. (It should be noted that Article 147 is not subject to any amendment under the draft Law.)
8. “Premises” is defined widely and could in some circumstances involve a person’s home which would therefore engage Article 8 ECHR which provides for the right to not have unlawful interference with a person’s home, family and private life and correspondence.
9. However, for an inspector to be authorized to search premises, he must obtain a warrant from the Bailiff in Chambers. This provides a necessary safeguard ensuring that any interferences are proportionate, see in particular *Funke v France* (1993) 16 EHRR 297.
10. **It can therefore be concluded that the Resolution Law (as amended by the draft Law) is compatible with Article 8 ECHR.**

## A1P1

11. A1P1 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.”*

## **A1P1 (Scheme-related, cref Article 34 of draft Law (insertion of Part 7A (Bank Depositors Compensation Scheme))**

12. There will be no doubt that any interference in creditor rights and the raising of levies on banks will be “by law”: all relevant measures will be conducted under the detailed provisions of the Resolution Law (as amended by the draft Law), and subject to the

supervision by the Courts in terms of the proper execution of that Law. Further, where property rights are concerned, legislatures have a considerable margin of appreciation in determining the existence of a problem of general public concern and in implementing measures designed to meet it.

13. In terms of proportionality, paragraph 2 of A1P1 refers to measures that the state “*deems necessary to control the use of property in accordance with the general interest*”. This means that the measure has to be proportionate, i.e.: (a) is done for a legitimate aim; (b) the measure is rationally connected to the aim; (c) the aim could not be achieved in a less intrusive manner; and (d) is proportionate in the general sense of not using a “sledgehammer to crack a nut”. In reality, given the breadth of the margin of appreciation accorded to states in respect of interference with property for the general good, this tends to turn on a less structured question of whether the legislation strikes a “fair balance”, see *Sporrong and Lönroth v Sweden* (1983) 5 EHRR 35. It must be noted that the Scheme exists in the context of the regulation of bank failure and its effect on ordinary deposit holders. It exists as a measure to protect deposit holders, and, by doing so, help maintain public confidence in the banking sector so as to reduce the risk of banks collapsing. Given the economic ramifications of banking collapse plainly justifies application of the “precautionary principle” (i.e. the priority is that any risk should be avoided if possible), a Court would give a very broad margin of discretion to the judgement of the legislature as to where the balance should be struck.

#### A. *Effect on creditors*

14. A1P1 is engaged by Part 7A of the Resolution Law (as amended by the draft Law) because the proprietary rights of creditors will be interfered with when certain actions are taken under the Resolution Law (as amended by the draft Law).
15. Generally speaking, there are two broad scenarios envisaged by Part 7A of the Resolution Law (as amended by the draft Law) under which rights will be vested the Authority –
  - a. The first is the ‘Jersey scenario’. That scenario is where a Jersey bank is wound up and the liquidator recognises the applicable statutory provisions in the Resolution Law (as amended by the draft Law) as to the automatic vesting of depositor’s compensatable rights in the Authority (in this case it will be the vesting of the compensatable element of a deposit, i.e. up to £50,000).
  - b. The second can be labelled the ‘foreign bank scenario’. In that scenario, an overseas bank with a Jersey branch fails. The liquidator: (i) recognises the applicable statutory provisions in the Resolution Law (as amended by the draft Law) as to the automatic vesting of depositors’ rights but: (ii) does not recognise Jersey bankruptcy rules as provided in the Resolution Law (as amended by the draft Law).

#### *Scheme as a system of insolvency priority*

16. The automatic vesting of compensatable rights in the Authority engages A1P1, which guarantees the right to property. These provisions are found in Articles 142ZJ, 142ZK and 142ZL of the Resolution Law (as amended by the draft Law). The legislation creates a system of priority. It fully compensates account holders up to £50,000. This may in part be funded by the Scheme being compensated out of the rights of deposit holders insofar as they have accounts greater than £50,000.
17. In other words, the means to prioritise accounts up to £50,000 may involve giving what is often now called a “haircut” to those with accounts above £50,000. As will be seen, this is no different to any system of priority within an insolvency. This is why the rights of deposit

holders up to £50,000 are called compensatable rights, and those above £50,000 (not being compensatable) are called excess rights.

*Vesting of rights as engaging A1P1*

18. The vesting of depositors' rights engages a 'possession' for the purposes of A1P1, i.e. the contractual claim to a deposit. In terms of the interference with the A1P1 right, the automatic vesting of rights in the Authority might be cast as a control of use<sup>1</sup>, although it is perhaps more akin to a deprivation of a possession in that the Scheme will deprive depositors of the legal ownership of rights in a deposit and, in the foreign bank scenario, will consolidate and reallocate rights. In either case, however, for the interference with the A1P1 right to be justified, it must be shown to be: (1) by law; and (2) proportionate. The concepts were described above.
19. Generally speaking, the automatic vesting of the compensatable element of a deposit is considered compatible with the ECHR in that the automatic vesting is part of a system under which their rights to that compensatable element are enhanced by the rights under the Scheme. In short, their ability to get their money back is greater as against queuing during a run on a bank or claiming in a liquidation.
20. The potential vesting of the excess element of a deposit in a "Jersey scenario" is also compatible with the ECHR. Although in this case the depositor might effectively suffer a haircut, this will be in keeping with the priority given to deposit holders under the Law. In the case of excess rights, it should be noted that these rights will only be vested in the Authority under certain circumstances as set out in Article 142ZK of the Resolution Law (as amended by the draft Law).
21. It is the position of those with excess rights in a "foreign bank scenario" which ostensibly creates a difficulty, as such an individual may be worse off than they would have been had they received a dividend direct from a foreign liquidator. This is because their excess rights may have been given a "haircut" in favour of compensatable rights. The position is this –
  - a. The States of Jersey will advance liquidity funding to the Authority to enable it to pay compensation to depositors.
  - b. Using that funding, the Authority will pay each eligible depositor up to £50,000 as compensation, depending on the size of the relevant deposit.
  - c. In principle, all the rights of those depositors (relating to both the compensatable element and excess rights, if applicable) in their deposit in the failed bank will have been assigned to the Authority and pooled.
  - d. The liquidator pays out a proportion of recovered funds to the Authority representing depositors' recoveries from the liquidation.
  - e. The Authority uses those recovered funds to repay the loan from the States of Jersey.
  - f. If applicable, the Authority then reassigns pooled excess rights back to depositors, making any necessary adjustments to reassigned rights depending on the amount outstanding to each depositor.
22. For the purposes of this human rights assessment, the following aspects of the Scheme are considered critical –
  - a. All the rights of each depositor in a bank deposit will be vested automatically in the Authority and pooled.

<sup>1</sup> In that depositors are temporarily deprived of the use of their rights in a deposit, recognising that the: Human Rights Practice R.10: July 2005, para 15.023; *Handyside v United Kingdom* (1976) 1 EHRR 737 (para 62).

- b. Depositors will not be given the choice of whether to participate in the Scheme, i.e. there will be no ‘opt out’.
- c. Recoveries, flowing from rights vested in the Authority, will be used by the Authority to repay funding received from the States of Jersey.
- d. Rights are reassigned by the Authority, in some cases with adjustment meaning ‘larger’ depositors may not receive exactly the same rights in return.
- e. The same ‘monetary value’ of excess rights taken will ultimately be assigned by the Authority back to the depositor.

*Application of AIP1 to facts*

23. Despite the complexities of the legislation, the vesting provisions (whether in domestic or foreign liquidation scenarios) are designed to achieve the same legitimate aim. The aim is to achieve a priority for depositors so that accounts under £50,000 receive greater protection. Enforcing that priority is more complex in the case of foreign insolvencies, but the “legitimate aim” of that part of the legislation is the same as with purely Jersey scenarios. The proportionality of the measure is thus dependent on:
  - a. Whether the measure is rationality connected with the aim. The aim is to create a compensation scheme that applies equally whether the Jersey Bank operates as a Jersey registered company or as a branch of a non-Jersey Bank. This would not be achieved unless the priority rules applied equally to both scenarios.
  - b. Whether a less rights intrusive alternative can be found. No such system could exist unless it failed to deliver the objective. In enforcing priorities in insolvency scenarios, it is an essential part to gather together the money that is to be paid out. A system of priority requires an orderly paying out of that money.
  - c. There is no suggestion that any part of the system is a “sledgehammer to crack a nut”. This will be the case where a measure unavoidably creates unacceptably large amounts of collateral damage, e.g. a non-discriminatory measure against forced marriage that restricts rights far beyond cases where there is an appreciable risk of the harm being addressed, see *R (Quila) v Secretary of State for the Home Department* [2012] 1 AC 621. The measures are closely linked to the aim throughout – there is no group of account holders that are “collateral damage”. Their rights insofar as they are damaged is because of a system of priority within what is essentially an insolvency scenario.
24. Ultimately, the policy of this Law in this regard is the same as the EU’s Banking Recovery and Resolution Regulations (2014/59). These Regulations endorse the concept of prioritising rights of depositors up to a particular level at the expense of those holding greater deposits. See reference to Recital 111 at paragraph 34 below and further analysis at paragraphs 38 to 40 below.
25. It is thus quite possible in insolvency or equivalent provisions to give a priority to depositors up to an amount. This compensation scheme works no differently – and it makes no difference that there are complications in provisions required to deal with extra-territorial complications. The provisions of Articles 142ZJ to 142ZL of the Resolution Law (as amended by the draft Law) simply create personal obligations on depositors as regards the handling of money that could be received from liquidators as opposed to being able to control the flow of money from the liquidator more directly. But this does not change the analysis of the interference with possessions.

**B. Effect on banks**

26. See paragraph 41 below.
27. As per paragraph 92 below, it is worth briefly noting that the Resolution Law (as amended by the draft Law) affects property rights of other banks, namely in terms of the administrative levy and further contributions (see Division 7 of the Resolution Law (as amended by the draft Law)). The rules for setting such levies and contributions are clearly set out and so are in accordance with law. They are plainly justified within the meaning of A1P1 set out above, being in essence a tax on banking institutions to contribute to a system designed to promote stability within the banking sector.

**C. Conclusion**

28. Based on the reasoning above, it can be concluded that the interferences with property will be proportionate.
29. **Therefore, the Scheme-related provisions of the Resolution Law (as amended by the draft Law) are compatible with A1P1 ECHR.**

**A1P1 (Resolution provisions (as amended))****A. Effect on creditors**

30. A1P1 is engaged by the Resolution Law (as amended by the draft Law) because the proprietary rights of shareholders and creditors will be interfered with when certain actions are taken under the Resolution Law (as amended by the draft Law) such as the utilization of the tools in Part 6 of the Resolution Law (as amended by the draft Law).
31. A1P1 is a qualified right and there may be limitations placed on the right if justified under paragraph 2 of A1P1 as the state “*deems necessary to control the use of property in accordance with the general interest*”. This means that the measure has to be proportionate, i.e.: (a) is done for a legitimate aim; (b) the measure is rationally connected to the aim; (c) the aim could not be achieved in a less intrusive manner; and (d) is proportionate in the general sense of not using a “sledgehammer to crack a nut”. In reality, given the breadth of the margin of appreciation accorded to states in respect of interference with property for the general good, this tends to turn on a less structured question of whether the legislation strikes a “fair balance”, see *Sporrong and Lonnroth v Sweden* (1983) 5 EHRR 35<sup>2</sup>.
32. Given the economic ramifications of banking collapse plainly justifies application of the “precautionary principle” (i.e. the priority is that any risk should be avoided if possible), it is difficult to see how a Court would interfere with the judgement of the legislature on where the balance should be struck. This would be the case even were Jersey not essentially following the judgement of the European Union as to where the balance should be struck. The bank recovery scheme follows, to a large extent, the approach which has been taken by European Union under the Bank Recovery and Resolution Directive 2014/59 (“[Directive 2014/59](#)”). Therefore, the Resolution Law (as amended by the draft Law) is in line with and indeed promotes the international standard. In following this standard, the original drafting of the Resolution Law was also informed by the approach taken by the United Kingdom under the Banking Act 2009.
33. For completeness, it is worth setting out the EU provisions.
34. In Directive 2014/59, we find at Recital 111:  

*“While covered deposits are protected from losses in resolution, other eligible deposits are potentially available for loss absorbency purposes. In order to provide a certain level of*

<sup>2</sup> [SPORRONG AND LONNROTH v. SWEDEN - 7151/75 \[1982\] ECHR 5 \(23 September 1982\)](#)

*protection for natural persons and micro, small and medium-sized enterprises holding eligible deposits above the level of covered deposits, such deposits should have a higher priority ranking over the claims of ordinary unsecured, non-preferred creditors under the national law governing normal insolvency proceedings. The claim of the deposit guarantee scheme should have an even higher ranking under such national law than the aforementioned categories of eligible deposits. Harmonisation of national insolvency law in that area is necessary in order to minimise exposure of the resolution funds of Member States under the no creditor worse off principle as specified in this Directive.”*

This is important; “covered deposits” are prioritised. Other deposits may be sacrificed, i.e. they are “available for loss absorbency purposes.”

35. What are “covered deposits”? Article 2 of Directive 2014/59 says:

*“(94) ‘covered deposits’ means covered deposits as defined in point (5) of Article 2(1) of [Directive 2014/49/EU](#); ...”*

Following the trail to Article 2(1) of Directive 2014/49, we find:

*“(5) ‘covered deposits’ means the part of eligible deposits that does not exceed the coverage level laid down in Article 6; ...”*

At Article 6, we find:

*“1. Member States shall ensure that the coverage level for the aggregate deposits of each depositor is EUR 100 000 in the event of deposits being unavailable.”*

So, priority goes to deposits up to €100,000.

36. We see the consequence of this at Article 108 of Regulation 2014/59:

*“(a) the following have the same priority ranking which is higher than the ranking provided for the claims of ordinary unsecured, non-preferred creditors:*

- (i) that part of eligible deposits from natural persons and micro, small and medium-sized enterprises which exceeds the coverage level provided for in Article 6 of Directive 2014/49/EU; ...”*

Deposits above the €100,000 level have a lower priority.

37. Under the approach of the European Court of Human Rights in *Bosphorus Hava Yollari Turizm ve Ticaret Anonim Sirketi v Ireland* (2006) 42 EHRR 1, there is a “presumption” that “the protection of fundamental rights by EC law could be considered ‘equivalent’ to that of the Convention system”.
38. It is thus quite possible in insolvency to give a priority to depositors up to a threshold amount, with the deposits insofar as they are above that threshold having a lower level of priority. As recital 111 to Directive 2014/59 puts it, perhaps a little obliquely, deposits above that level are used for “absorbency purposes” – meaning that they may take a loss for the purpose of protecting balances up to the threshold.
39. The Resolution Law (as amended by the draft Law) can also be said to strike a fair balance as it is structured with sufficient safeguards. For example, the availability of appealing decisions, the specific criteria which must be satisfied for any of the tools to be used, the Resolution Safeguards and the requirement to have regard to the Resolution objectives have the combined effect of a fair scheme. Of particular importance is the safeguard that shareholders and creditors should be no worse off than they would be in a conventional bankruptcy procedure unless it is in the public interest, and the draft Law provides for compensation where a difference of treatment valuation determines that greater losses are incurred under a resolution than would be under normal insolvency proceedings (see Articles 77 and 78 of the Resolution Law (as amended by the draft Law)).

40. The justification clause interferences are also clearly prescribed in the Resolution Law (as amended by the draft Law) and therefore that limb of the test is also satisfied.

**B. *Effect on banks***

41. The Resolution Law (as amended by the draft Law) provides insolvency procedures in respect of banks. This does not create any human rights issues. Such procedures invariably affect the property of the insolvent bank concerned, although, as the relevant bank is *ex hypothesi* insolvent, insolvency procedures are generally better seen in the terms set out above, i.e. interference with creditor rights.
42. It is worth briefly noting that the Resolution Law (as amended by the draft Law) affects property rights of other banks, namely in terms of the administrative levy and further contributions (see Articles 16 and 22). The rules for setting such levies and contributions are clearly set out and so are in accordance with law. They are plainly justified within the meaning of A1P1 (as set out above), being, in essence, a tax on banking institutions to contribute to a system designed to promote stability within the banking sector.

**C. *Conclusion***

43. Based on the reasoning above, it can be concluded that the interferences with property will be proportionate.

**Therefore, the resolution provisions of the Resolution Law (as amended by the draft Law) continue to be compatible with A1P1 ECHR.**

## EXPLANATORY NOTE

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The Bank (Recovery and Resolution) (Jersey) Amendment Law 202- amends the Bank (Recovery and Resolution) (Jersey) Law 2017 (“the Law”), to provide for the continuation of the Bank Depositors Compensation Scheme and to provide for the transfer of functions to the Jersey Resolution and Depositors Compensation Authority for the administration of that Scheme.

*Part 1 (Articles 1 to 46)* amends the Law as follows.

*Article 2* amends Article 1 of the Law to provide for definitions relating to the Bank Depositors Compensation Scheme (“the Scheme”). A “bank” is defined as a Jersey bank for the purposes of the Scheme. A “bank in default”, “bank liquidator”, “bankrupt”, “default date” and “deposit” are defined for the purposes of the Scheme. The definitions “Jersey Bank Depositors Compensation Board” and “2009 Regulations” are deleted.

*Article 3* amends Article 3 of the Law to apply the provisions relating to the Scheme to Jersey banks only.

*Article 4* amends the heading to Part 2 of the Law, reflecting the change of name of the Jersey Resolution Authority to the Jersey Resolution and Depositors Compensation Authority.

*Article 5* substitutes Article 4 of the Law to provide for the change of name of the Authority.

*Article 6* substitutes Article 7 of the Law to provide for the additional functions of the Authority in relation to the Scheme.

*Article 7* amends Article 8 of the Law to require the Authority to have regard to the objectives of protecting the interests of eligible depositors and contributing to financial stability in Jersey when exercising its functions in relation to the Scheme.

*Article 8* amends Article 9 of the Law to add a reference to the powers of the Authority in relation to the Scheme.

*Article 9* inserts new Article 14A in the Law to require the Authority to arrange publication of information about the Scheme and to enable the Authority to publish standards for banks to follow when advising depositors about the Scheme.

*Article 10* amends Article 16 of the Law to provide that “recurring administrative costs” in that Article does not include a payment out of a depositors’ compensation fund.

*Article 11* substitutes Articles 18 and 19 of the Law to provide for borrowing and investment by the Authority, enabling the Authority to invest money standing to the credit of a depositors’ compensation fund.

*Article 12* amends Article 21 of the Law to refer to the Resolution Fund (which is now defined in Article 1 of the Law) and to apply the definition “auditor” to new Article 21A. *Article 13* inserts new Article 21A in the Law to provide for separate accounts, audit and reports in relation to each depositors’ compensation fund.

*Article 14* amends Article 22 of the Law to make clear that it applies to the Resolution Fund only.

*Article 15* amends Article 26 of the Law to enable the Minister to prescribe criteria relating to eligible liabilities.

*Article 16* amends Article 28 of the Law to remove a reference to the Board.

*Article 17* amends Article 29 of the Law to remove the requirement to comply with the Schedule to the Banking Business (Jersey) Law 1991 (the “1991 Law”) before the transfer of a deposit-taking business.

*Article 18* amends Article 30 of the Law in relation to vested rights and covered deposits, to replace references to the Board with references to the Authority.



*Article 19* amends Article 37 of the Law to make clear that it applies to the Resolution Fund only.

*Article 20* amends Article 44 of the Law to make clear that it applies to the Resolution Fund only, and to replace a reference to the 2009 Regulations with a reference to new Part 7A of the Law, which continues the Scheme established under the 2009 Regulations.

*Articles 21 and 22* amend Articles 65 and 66 of the Law to make clear that they apply to the Resolution Fund only and to replace a reference to the Board with a reference to the Authority.

*Article 23* amends Article 72 of the Law so that it applies only to banks incorporated in Jersey. The effect of the amendment is to enable the Minister to prescribe the circumstances in which it would be impracticable for a bank to include the contractual term required by Article 72, and to enable the Authority to waive that requirement.

*Articles 24 to 34* amend Articles 77 to 80, 92, 93, 99, 101, 104, 133 and 141 of the Law to replace references to the Board with references to the Authority, to make clear that Article 78 of the Law applies to the Resolution Fund only, and to consistently apply the defined term “foreign law”.

*Article 35* inserts new Part 7A in the Law.

Division 1 of Part 7A provides for the continuation of the Scheme, its administration by the Authority, and the transfer of assets from the Board to the Authority.

Division 2 provides for the interpretation of Part 7A, setting out the key definitions of “bankrupt” and “eligible deposit”. It also enables the Minister to group banks in readiness for the possibility of a bank being declared to be in default.

Division 3 –

- provides for the Authority to declare a bank that is bankrupt or insolvent to be in default and to notify the Minister of a declaration;
- provides for the vesting of an eligible depositor’s rights in the Authority on the date a bank is declared to be in default (the “default date”), or a later date specified by the Authority;
- requires the Authority to obtain information from banks about their relevant holdings on the default date;
- provides for offences for banks and bank liquidators that do not provide the required information.

Division 4 requires the Authority to establish a separate depositors’ compensation fund for each bank in default, and provides for the order of priority and timing of payments out of a depositors’ compensation fund.

Division 5 –

- requires the Authority to pay the maximum amount of depositors’ compensation to eligible depositors before the primary payment date;
- provides for the calculation of the maximum amount;
- enables the Authority to pay depositors’ compensation by way of straight-through pay-out, to postpone or refuse to pay depositors’ compensation on specified grounds, and to take into account compensation paid by an overseas depositors’ compensation scheme.

Division 6 defines the winding-up date for a bank in default and requires the Authority to complete the depositors’ compensation exercise as soon as practicable after the winding-up date, in accordance with the order of priority.

Division 7 requires payment of depositors’ compensation levy by banks that are not in default, and provides for calculation of the levy.

Division 8 provides for the rights of an eligible depositor, as at the default date, to vest in the Authority. It also provides for the Authority to assign rights vested in it under Division 8.

Division 9 provides for conditions relating to foreign law, and for the objectives of a bank liquidator of a foreign bank in exercising duties under this Law.

Division 10 provides power for the Authority to obtain information from banks.

*Articles 36 and 37* amend Articles 155 and 157 of the Law in relation to disclosure of information by the Authority.

*Article 38* amends Article 165 of the Law to correct a reference.

*Articles 39 and 40* amend Articles 166 and 167 of the Law in relation to offences.

*Article 41* amends Article 168 of the Law to make clear that Article 168 applies to appeals relating to recovery and resolution only.

*Article 42* inserts new Article 168A in the Law to provide for appeals relating to default.

*Article 43* amends Article 172 of the Law to enable the States to amend new Part 7A by Regulations.

*Article 44* amends the citation so that it also refers to the Scheme.

*Article 45* amends Schedule 1 to the Law in relation to appointment of members of the Authority.

*Article 46* amends Part 2 of Schedule 2 to the Law to make clear that it relates to the Resolution Fund only.

*Part 2 (Articles 47 to 54)* makes consequential amendments to other enactments.

*Article 47* amends the Income Tax (Jersey) Law 1961 to refer to the Scheme as continued under this Law, and to refer to the Authority instead of the Board.

*Article 48* deletes Article 37 of the 1991 Law, the power under which the 2009 Regulations are made.

*Article 49* amends the Banking Business (General Provisions) (Jersey) Order 2002 to refer to the continuation of the Scheme under this Law.

*Article 50* amends the Bankruptcy (Netting, Contractual Subordination and Non-Petition Provisions) (Jersey) Law 2005 to refer to the continuation of the Scheme under this Law.

*Article 51* amends the Data Protection (Jersey) Law 2018 to refer to a function of the Authority under Article 7 of this Law, and the transfer of personal data by the Authority.

*Article 52* amends the Public Finances (Jersey) Law 2019 to provide for funding of the Authority as successor to the Board.

*Article 53* amends the Revenue Administration (Information Sharing) (Jersey) Order 2024 to refer to the Authority.

*Article 54* amends the Banking Business (Depositors Compensation) (Jersey) Regulations 2009 to provide for continuation of the Board to enable it to exercise its functions in relation to the final accounting period.

*Article 55* provides for citation and commencement.



Jersey

## DRAFT BANK (RECOVERY AND RESOLUTION) (JERSEY) AMENDMENT LAW 202-

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Jersey

## DRAFT BANK (RECOVERY AND RESOLUTION) (JERSEY) AMENDMENT LAW 202-

A **LAW** to amend the [Bank \(Recovery and Resolution\) \(Jersey\) Law 2017](#), to provide for the continuation of the Bank Depositors Compensation Scheme and to provide for the transfer of functions to the Authority for the administration of that Scheme.

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of His 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 His Most Excellent Majesty in Council, have adopted the following Law –

### PART 1

#### [BANK \(RECOVERY AND RESOLUTION\) \(JERSEY\) LAW 2017](#) AMENDED

#### 1 [Bank \(Recovery and Resolution\) \(Jersey\) Law 2017](#) amended

This Part amends the [Bank \(Recovery and Resolution\) \(Jersey\) Law 2017](#).

#### 2 **Article 1 (interpretation) amended**

In Article 1 –

- (a) the definition “2009 Regulations” is deleted;
- (b) after the definition “annual administration levy” there is inserted –  

“assignment”, in respect of a right held by a person, includes assignment of the right by contract to another person, vesting of the right in another person by operation of law, and assignment of the right in any other manner to another person;
- (c) for the definition “Authority” there is substituted –  

“Authority” means the Jersey Resolution and Depositors Compensation Authority mentioned in Article 4;
- (d) for the definition “bank” there is substituted –

- “bank” means –
- (a) for the purpose of the Bank Depositors Compensation Scheme, a Jersey bank;
  - (b) for any other purpose, a person to whom this Law applies under Article 3(1);
- (e) for the definition “bank depositors compensation scheme” there is substituted –
- “Bank Depositors Compensation Scheme” or “Scheme” means the scheme for payment of depositors’ compensation established by Part 3 of the [Banking Business \(Depositors Compensation\) \(Jersey\) Regulations 2009](#) and continued under Part 7A of this Law;
- (f) after the definition “Bank Depositors Compensation Scheme” there is inserted –
- “bank in default” means a bank that has been declared to be in default under Article 142I;
- (g) for the definition “bank liquidator” there is substituted –
- “bank liquidator” means –
- (a) for a bank that is being wound up under Part 7, a person appointed under Article 98 as a bank liquidator;
  - (b) for a branch of a foreign bank that is bankrupt, the person for the time being charged with the administration of the property of the foreign bank by virtue of it being bankrupt;
- (h) after the definition “bank winding up order” there is inserted –
- “bankrupt”, in respect of a bank, has the meaning given in the [Interpretation \(Jersey\) Law 1954](#), but in Part 7A has the meaning given in Article 142C(2);
- (i) for the definition “covered deposit” there is substituted –
- “covered deposit” means, for an eligible deposit or a deposit that would be an eligible deposit of a bank incorporated in Jersey if the deposit was held in Jersey, that part of the deposit that does not exceed the greater of the following –
- (a) the maximum amount of depositors’ compensation payable in respect of the eligible deposit under Article 142T;
  - (b) the maximum amount of compensation payable under an overseas depositors’ compensation scheme in respect of the deposit, up to a maximum of £85,000;
- (j) after the definition “debt instruments” there is inserted –
- “default-related administrative costs” has the meaning given in Article 142M(5);
- “default date”, for a bank in default, means the date specified in a published notice under Article 142I as the date on which the bank became a bank in default;
- (k) for the definition “deposit” there is substituted –
- “deposit” –
- (a) in Part 7A, has the meaning given in Article 142E(1); and

- (b) in the rest of this Law, has the meaning given in Article 2 of the 1991 Law;
- (l) after the definition “deposit” there is inserted –
  - “depositor” means a person who makes a deposit;
  - “depositors’ compensation” means depositors’ compensation payable under Article 142P(1), (4) or (6);
- (m) for the definition “Depositors Compensation Fund” there is substituted –
  - “depositors’ compensation fund” means a compensation fund established under Article 142M for a bank in default;
  - “depositors’ compensation levy” means –
    - (a) a levy a bank is required to pay under Article 142ZB(2); and
    - (b) any additional levy the bank is required to pay under Article 142ZC(3) or (5) in relation to that levy;
- (n) for the definition “eligible deposit” there is substituted –
  - “eligible deposit” has the meaning given in Article 142E(2);
- (o) for the definition “eligible depositor” there is substituted –
  - “eligible depositor” has the meaning given in Article 142E(4);
- (p) after the definition “foreign bank” there is inserted –
  - “foreign law” means the law of a jurisdiction other than Jersey;
- (q) in the definition “foreign resolution action”, for “the law of a jurisdiction, other than Jersey,” there is substituted “a foreign law”;
- (r) after the definition “foreign resolution instrument” there is inserted –
  - “function” includes a power and a duty;
- (s) the definition “Fund” is deleted;
- (t) after the definition “home resolution authority” there is inserted –
  - “insolvent”, in respect of a bank, means unable, or likely to be unable, to pay its debts as they fall due;
- (u) the definition “Jersey Bank Depositors Compensation Board” is deleted;
- (v) after the definition “netting arrangement” there is inserted –
  - “overseas depositors’ compensation scheme” means a scheme (irrespective of its name) that operates in a jurisdiction other than Jersey and is, in the opinion of the Authority, the same as or similar to the Bank Depositors Compensation Scheme;
- (w) after the definition “provisional valuation” there is inserted –
  - “published notice” means a notice published in a manner that, in the opinion of the Authority, is likely to bring the notice to the attention of those affected by it;
- (x) in the definition “relevant insolvency proceedings”, for paragraph (a), there is substituted –
  - (a) proceedings for a bank winding up order under Part 7 or, for a branch of a foreign bank, proceedings under a foreign law that the Authority considers are the same as or similar to proceedings to wind up a bank under Part 7;
- (y) after the definition “resolution conditions” there is inserted –

“Resolution Fund” means the Jersey Bank Resolution Fund established under Article 22;

(z) after the definition “resolvability assessment” there is inserted –

“responsible person”, for a bank in default, means –

(a) for a bank that is bankrupt, the bank liquidator;

(b) for a bank that is insolvent but not bankrupt, the bank itself;

(za) after the definition “winding up” there is inserted –

“working day” means a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day that is a bank holiday or a public holiday under the [Public Holidays and Bank Holidays \(Jersey\) Law 1951](#);

### 3 Article 3 (application) amended

(1) In Article 3(1), “Subject to paragraph (2)” is deleted.

(2) For Article 3(2) there is substituted –

(2) However –

(a) Part 7A and other provisions of this Law relating to the Bank Depositors Compensation Scheme apply only to a person specified in paragraph (1)(a); and

(b) if a stabilisation power is exercised in respect of a bank, it does not cease to be a bank for the purposes of this Law if it is no longer registered to carry on the deposit-taking business as a result of a resolution action.

### 4 Heading to Part 2 (Jersey Resolution Authority) amended

In the heading to Part 2, after “Resolution” there is inserted “and Depositors Compensation”.

### 5 Article 4 (establishment of the Authority) substituted

For Article 4 there is substituted –

#### 4 Jersey Resolution and Depositors Compensation Authority

(1) The Jersey Resolution and Depositors Compensation Authority is a body corporate with perpetual succession and a common seal that may –

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

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

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

(2) The application of the common seal of the Authority must be authenticated by the signature of a person authorised by the Authority to sign on its behalf.

(3) Every document bearing the imprint of the common seal of the Authority is taken to be properly sealed unless the contrary is proved.



- (4) The Authority is independent of the Minister and of the States and neither the Minister nor the States are liable for any act or omission, or debt or other obligation, of the Authority.

## 6 Article 7 (functions of the Authority) substituted

For Article 7 there is substituted –

### 7 Functions of the Authority

- (1) The Authority has the following general functions in relation to bank resolution and recovery –
  - (a) to make preparations to facilitate the resolution of banks;
  - (b) to administer the resolution of banks;
  - (c) to carry out any other functions in relation to bank resolution or recovery or incidental or ancillary matters required or authorised by this Law or the Regulations.
- (2) The Authority has the following general functions in relation to the Bank Depositors Compensation Scheme –
  - (a) to administer the Scheme in a prudent and economical manner, including in particular –
    - (i) establishing and maintaining arrangements in readiness for the possibility of a bank being declared to be in default under Article 142I;
    - (ii) obtaining and sharing information in accordance with Part 7A (Bank Depositors Compensation Scheme) and Part 9 (restriction on disclosure of information);
    - (iii) paying depositors' compensation under Part 7A in a timely manner; and
    - (iv) ensuring that banks comply with their obligations to the Authority under Part 7A and any other provisions of this Law relating to the Scheme, including by exercising the Authority's enforcement powers under Part 7 and assisting other persons in their enforcement of Part 7;
  - (b) to carry out any other functions in relation to the Scheme or incidental or ancillary matters required or authorised by this Law or the Regulations.
- (3) The Authority has the general function to carry out any other functions conferred on it by this Law or another enactment.
- (4) The States may by Regulations amend this Law to make different or further provision as to the general functions of the Authority in relation to the Bank Depositors Compensation Scheme.

## 7 Article 8 (guiding principles) amended

- (1) The text of the existing Article 8 becomes paragraph (1).
- (2) After Article 8(1) there is inserted –

- (2) In the exercise of its functions, the Authority must ensure that –
  - (a) the Authority is administered in a prudent and economical manner; and
  - (b) the resources of the Authority are used efficiently and effectively.
- (3) In the exercise of its functions relating to the Bank Depositors Compensation Scheme, the Authority must have regard to the objectives of –
  - (a) protecting the interests of eligible depositors; and
  - (b) contributing to financial stability in Jersey.

## **8 Article 9 (general powers of the Authority) amended**

In Article 9(1), after sub-paragraph (c) there is inserted –

- (d) the exercise of its powers relating to the Bank Depositors Compensation Scheme under Part 7A.

## **9 Article 14A inserted**

After Article 14 (publication of information and advice) there is inserted –

### **14A Publication of information and advice about the Scheme**

- (1) The Authority must arrange for information on the operation of the Bank Depositors Compensation Scheme to be published.
- (2) The Authority must publish a list of Jersey banks for the purpose of the Bank Depositors Compensation Scheme.
- (3) The Authority may publish a standard for statements about the Bank Depositors Compensation Scheme to be followed by banks in advertisements, account statements or other documents or publicity produced for depositors or potential depositors.
- (4) The Authority may, in relation to a standard published under paragraph (3) –
  - (a) make different provision for different cases or purposes; and
  - (b) provide for exceptions to the standard in specified circumstances, subject to specified conditions, or at the discretion of the Authority.
- (5) The Authority may, by published notice, amend or revoke a standard published under paragraph (3).
- (6) Anything published by the Authority under this Article must be published in a manner that, in the opinion of the Authority, is likely to bring the publication to the attention of the persons affected by it.
- (7) The Authority must notify the Commission and the Minister of the publication of a standard under paragraph (3).
- (8) The States may by Regulations amend this Law to make other provision as to statements to be made in connection with the Bank Depositors Compensation Scheme.

## **10 Article 16 (annual administration levy) amended**

- (1) For Article 16(2) there is substituted –

- (2) This Article applies to any year whether or not, in that year, the Authority –
  - (a) takes resolution action against a bank; or
  - (b) declares a bank to be in default under Article 142I.
- (2) After Article 16(13) there is inserted –
  - (14) In this Article, “recurring administrative costs” does not include a payment out of a depositors’ compensation fund.

## **11 Articles 18 and 19 substituted**

For Articles 18 and 19 there is substituted –

### **18 Borrowing by the Authority**

- (1) For the purpose of enabling the Authority to carry out its functions, the Authority may borrow money up to a prescribed maximum amount.
- (2) The Authority may –
  - (a) insure against its liabilities in connection with any of its functions;
  - (b) insure against liabilities of its members in connection with any of its functions, or indemnify its members in respect of those liabilities.
- (3) The Minister, on behalf of the States, may on terms determined by the Minister –
  - (a) guarantee the liabilities of the Authority up to the prescribed maximum amount; or
  - (b) lend money to the Authority up to the prescribed maximum amount.

### **19 Investment of money**

- (1) The Authority may invest any of its funds that are not immediately required by the Authority.
- (2) The Authority may invest money standing to the credit of a depositors’ compensation fund.

## **12 Article 21 (accounts, audit and reports) amended**

- (1) In Article 21(3), for “Fund” there is substituted “Resolution Fund”.
- (2) In Article 21(10), after “this Article” there is inserted “and Article 21A,”.

## **13 Article 21A inserted**

After Article 21 (accounts, audit and reports) there is inserted –

### **21A Accounts, audit and reports for depositors’ compensation funds**

- (1) The Authority must –
  - (a) keep proper accounts for each depositors’ compensation fund and proper records in relation to those accounts that permit the status of

- those accounts to be ascertained with reasonable accuracy at any time; and
  - (b) in accordance with paragraph (3), prepare those accounts for each accounting period and prepare a report on the Authority's activities in relation to the bank in default during the accounting period.
- (2) The accounts for each depositors' compensation fund must be kept separate from the accounts for –
- (a) any other depositors' compensation fund; and
  - (b) any other money received, held or expended by the Authority.
- (3) The accounts for each depositors' compensation fund must be prepared in accordance with generally accepted accounting principles and show a true and fair view of –
- (a) the profit or loss of the depositors' compensation fund for the accounting period; and
  - (b) the status of the depositors' compensation fund at the end of the accounting period.
- (4) The Authority must, within 3 months after the end of each accounting period, have the accounts for each depositors' compensation fund audited by an auditor.
- (5) The Authority must, within 3 months after the accounts for a depositors' compensation fund have been audited, provide the Minister with –
- (a) the audited accounts;
  - (b) the report of the auditor; and
  - (c) the report prepared by the Authority under paragraph (1)(b).
- (6) The report provided to the Minister under paragraph (5)(c) must contain –
- (a) details of the Authority's activities in relation to the bank in default during the accounting period; and
  - (b) any other information as directed by the Minister.
- (7) The Minister must lay before the States a copy of the audited accounts and the reports provided to the Minister under paragraph (5) not later than 7 months after the end of each accounting period.
- (8) In this Article, "accounting period" means –
- (a) for the first accounting period, a period of up to 18 months beginning with the default date for the bank in default;
  - (b) for the final accounting period, a period of up to 12 months beginning with the end of the previous accounting period and ending with the completion of the depositors' compensation exercise under Part 7A; and
  - (c) for any other accounting period, a period of 12 months beginning with the end of the previous accounting period.

#### **14 Article 22 (establishment and management of Fund) amended**

In Article 22, in the following places, for "Fund" there is substituted "Resolution Fund" –

- (a) the heading;

- (b) paragraph (2);
- (c) paragraph (3)(a);
- (d) paragraph (4);
- (e) paragraph (5);
- (f) paragraph (5)(c);
- (g) paragraph (6);
- (h) paragraph (7), in both places it occurs;
- (i) paragraph (8);
- (j) paragraph (9).

**15 Article 26 (minimum requirement for own funds and eligible liabilities) amended**

After Article 26(1) there is inserted –

- (1A) The Minister may prescribe criteria relating to eligible liabilities to be used by the Authority when setting the minimum requirement for own funds and eligible liabilities for each Jersey bank.

**16 Article 28 (requirement for notice) amended**

Article 28(4)(c) is deleted.

**17 Article 29 (resolution powers) amended**

In Article 29(4), after sub-paragraph (b) there is inserted –

- (c) before the transfer of a deposit-taking business, the requirement to comply with the Schedule to the 1991 Law.

**18 Article 30 (priority of claims) amended**

In Article 30(5) –

- (a) for sub-paragraph (c), there is substituted –
  - (c) the following which are ranked equally –
    - (i) where a right of an eligible depositor in respect of an eligible deposit held by a bank in default is vested in the Authority, the total amount owing to the Authority by virtue of the vested right (but not exceeding £50,000 per depositor);
    - (ii) where a right of a depositor in respect of a deposit held in a branch outside Jersey of a bank incorporated in Jersey is vested in an overseas depositors' compensation scheme (and the deposit would be an eligible deposit if it was held in Jersey), the total amount owing to the overseas depositors' compensation scheme by virtue of the vested right (but not exceeding £50,000 per depositor);
- (b) for sub-paragraph (e), there is substituted –
  - (e) that part of a covered deposit that –

- (i) is not vested in the Authority or in an overseas depositors' compensation scheme; or
- (ii) is re-vested back to the depositor by the Authority or by an overseas depositors' compensation scheme;

## **19 Article 37 (manner of recovery by the Authority of expenses) amended**

In Article 37, for “Fund” there is substituted “Resolution Fund”.

## **20 Article 44 (pre-resolution valuation) amended**

In Article 44 –

- (a) in paragraph (5)(c)(i), for “Fund” there is substituted “Resolution Fund”;
- (b) for paragraph (6)(g) there is substituted –
  - (g) an estimate of the amount of depositors' compensation that would be payable under Part 7A if the bank were to be wound up or made insolvent under relevant insolvency proceedings.

## **21 Article 65 (application of bail-in tool) amended**

In Article 65 –

- (a) in paragraph (7), for “the law of another jurisdiction” there is substituted “a foreign law”;
- (b) for paragraph (7)(g)(iv), there is substituted –
  - (iv) the Authority.
- (c) in paragraphs (10), (11) and (11)(b), for “Fund” there is substituted “Resolution Fund”.

## **22 Article 66 (assessment of amount of bail-in) amended**

In Article 66(2)(a), for “Fund” there is substituted “Resolution Fund”.

## **23 Article 72 (contractual recognition of bail-in) amended**

- (1) For the heading to Article 72, there is substituted “Contractual recognition of bail-in for banks incorporated in Jersey”.
- (2) In Article 72(1), for “bank shall” there is substituted “bank incorporated in Jersey must”.
- (3) For Article 72(1)(b) and (c), there is substituted –
  - (b) not that part of a deposit mentioned in Article 30(5)(f);
  - (c) governed by a foreign law;
- (4) In Article 72(1)(d)(i), “by the Minister by Order” is deleted.
- (5) For Article 72(2) there is substituted –
  - (2) The Authority may specify the contractual term for the recognition of bail-in that a bank is required, under paragraph (1), to include in its contractual documents.

- (2A) The Minister may prescribe the circumstances under which it would be legally or otherwise impracticable for a bank to include in its contractual documents the contractual term required by paragraph (1).
- (2B) A bank is not required to include in its contractual documents the contractual term required by paragraph (1) if the prescribed circumstances apply.
- (6) In Article 72(3), for “Paragraph (1)(a) shall” there is substituted “Paragraph (1) does”.
- (7) For Article 72(6) there is substituted –
  - (6) On the application of a bank setting out the circumstances that make it impracticable for the bank to comply with paragraph (1), the Authority may waive the requirements of that paragraph.

**24 Article 77 (difference of treatment valuation) amended**

In Article 77(3)(a) and (b), for “Jersey Bank Depositors Compensation Board” there is substituted “Authority, in relation to the administration of the Bank Depositors Compensation Scheme,”.

**25 Article 78 (safeguard for shareholders and creditors) amended**

In Article 78, for “Fund” there is substituted “Resolution Fund”.

**26 Article 79 (procedural requirements after creation of a resolution instrument or share transfer order) amended**

Article 79(1)(a)(iv) is deleted.

**27 Article 80 (safeguard for partial transfers) amended**

In Article 80(3)(b), for “the law of another jurisdiction” there is substituted “a foreign law”.

**28 Article 92 (notice of application) amended**

Article 92(e) is deleted.

**29 Article 93 (right to be heard in proceedings for a bank winding up order) amended**

Article 93(f) is deleted.

**30 Article 99 (objectives of a bank liquidator in exercising his or her duties) amended**

- (1) In the heading to Article 99, for “exercising his or her” there is substituted “exercise of”.
- (2) In Article 99(1), for “his or her duties under this Law, the objectives of a bank liquidator shall be” there is substituted “their duties under this Law, the objectives of a bank liquidator appointed under Article 98 are”.

- (3) In Article 99(1)(a), for “Jersey Bank Depositors Compensation Board” there is substituted “Authority”.

### **31 Article 101 (bank liquidation committee) amended**

In Article 101 –

- (a) paragraph (2)(c) is deleted;
- (b) for paragraph (17) there is substituted –
  - (17) If a bank liquidation committee passes a resolution under paragraph (15)(a) –
    - (a) the bank liquidator must summon a meeting of creditors; and
    - (b) the meeting of creditors must elect an individual as a new member of the bank liquidation committee to represent the interests of creditors.

### **32 Article 104 (powers of bank liquidator) amended**

In Article 104(h), in both places it occurs, for “Jersey Bank Depositors Compensation Board” there is substituted “Authority”.

### **33 Article 133 (disclosure of information by bank liquidator) amended**

In Article 133(1), for “Jersey Bank Depositors Compensation Board” there is substituted “Authority”.

### **34 Article 141 (final dissolution) amended**

Article 141(2)(f) is deleted.

### **35 Part 7A (Bank Depositors Compensation Scheme) inserted**

After Article 142 (assistance for foreign authorities in insolvency matters) there is inserted –

## **PART 7A**

### **BANK DEPOSITORS COMPENSATION SCHEME**

#### **DIVISION 1 – CONTINUATION OF SCHEME**

#### **142A Continuation of Bank Depositors Compensation Scheme**

- (1) This Part continues the scheme for payment of depositors’ compensation established by Part 3 of the [Banking Business \(Depositors Compensation\) \(Jersey\) Regulations 2009](#).
- (2) The Scheme as continued under this Part is administered by the Authority.



### **142B Transfer of assets from the Jersey Bank Depositors Compensation Board to the Authority**

- (1) The assets, rights and liabilities of the Board are transferred to the Authority on the transfer date.
- (2) The Authority is not liable in damages for anything done, or omitted to be done, in bad faith by the Board or other person in the discharge or purported discharge of a function under the [Banking Business \(Depositors Compensation\) \(Jersey\) Regulations 2009](#).
- (3) In this Article –  
 “Board” means the Jersey Bank Depositors Compensation Board established by the [Banking Business \(Depositors Compensation\) \(Jersey\) Regulations 2009](#);  
 “transfer date” means the date on which Regulation 14 of the [Banking Business \(Depositors Compensation\) \(Jersey\) Regulations 2009](#) ceases to be in force.

## **DIVISION 2 – INTERPRETATION OF PART 7A**

### **142C Interpretation of Part 7A**

- (1) In this Part –  
 “Community Savings Ltd” has the meaning given in Article 142D;  
 “compensatable right” has the meaning given in Article 142ZI;  
 “completion of the depositors’ compensation exercise” means the completion declared under Article 142ZA(1);  
 “excess right” has the meaning given in Article 142ZI;  
 “later date”, in relation to the vesting of compensatable rights or excess rights, means a date that falls after the default date for a bank in default and is specified as the vesting date for those rights in –  
  - (a) a published notice under Article 142I; or
  - (b) a further notice published under Article 142J(1)(e) or (f);
 “maximum amount of depositors’ compensation”, in relation to an eligible deposit, has the meaning given in Article 142T;  
 “relevant holding”, in respect of a bank at a particular time, means the total amount held by the bank by way of eligible deposits at that time;  
 “relevant right” has the meaning given in Article 142ZI;  
 “States loan” has the meaning given in Article 142O;  
 “straight-through pay-out” means a payment of depositors’ compensation under Article 142Q made by the Authority without requiring an application under Article 142R;  
 “vesting date” –  
  - (a) for compensatable rights, has the meaning given in Article 142ZJ; and
  - (b) for excess rights, has the meaning given in Article 142ZK.
- (2) In this Part, a bank is “bankrupt” if –

- (a) a bank winding up order has been made under Part 7 in respect of the bank; or
  - (b) for a branch of a foreign bank, the foreign bank has a status under a foreign law that the Authority considers is the same as or similar to the status of a bank under sub-paragraph (a).
- (3) In this Part, a reference to a situation as at the default date is a reference to the situation at the beginning of that day.

#### **142D Meaning of Community Savings Ltd**

- (1) In this Part, “Community Savings Ltd” means the company that is an exempt person for the purposes of Article 8(2)(d) of the 1991 Law by virtue of paragraph 2 of Schedule 1 to the [Banking Business \(General Provisions\) \(Jersey\) Order 2002](#).
- (2) The Minister may by Order amend the definition “Community Savings Ltd” in paragraph (1).

#### **142E Meaning of deposit, eligible deposit and eligible depositor**

- (1) In this Part, “deposit” has the meaning given in Article 2 of the 1991 Law, but is to be read as if sub-paragraphs (b), (c) and (e) of paragraph (3) of that Article do not apply.
- (2) A deposit is an “eligible deposit” if it is held by a bank in an account in Jersey in respect of a depositor who is –
  - (a) a natural person and the deposit is for the person’s own benefit other than as a partner in a partnership;
  - (b) a natural person and the deposit is for the benefit of the person’s child or for the benefit of a child for whom the person has parental responsibility;
  - (c) the administrator or executor of a deceased person’s estate and the deposit represents the whole or part of the proceeds of that estate;
  - (d) Community Savings Ltd, if the deposit is made on behalf of a natural person who holds an account with Community Savings Ltd; or
  - (e) a registered charity within the meaning of the [Charities \(Jersey\) Law 2014](#), including Community Savings Ltd depositing in its own corporate capacity.
- (3) An eligible deposit with a bank in default does not include interest on the eligible deposit in respect of a period after the default date for the bank in default, despite the date of maturity of the eligible deposit.
- (4) A depositor mentioned in paragraph (2) is an “eligible depositor”.
- (5) If a person is an eligible depositor in more than 1 capacity under paragraph (2), the person is a separate eligible depositor in each capacity for the purpose of Article 142T.
- (6) In paragraph (2) –
  - (a) a deposit that is “held by a bank in an account in Jersey” does not include a deposit held by a bank that is registered to carry on banking business in Jersey for business recovery reasons; and

- (b) a person ceases to be a “child” on attaining the age of 18.
- (7) The Minister may by Regulations amend –
  - (a) the meaning of “deposit” in paragraph (1);
  - (b) the meaning of “eligible deposit” in paragraph (2).

#### **142F Calculation of money standing to the credit of eligible deposit**

- (1) If a bank is declared to be in default under Article 142I, the amount of money standing to the credit of an eligible deposit held by the bank in default is to be calculated as at the default date for the bank.
- (2) The amount of money standing to the credit of an eligible deposit held by the bank in default that is not in the currency of Jersey is to be calculated using either of the following rates as at the default date for the bank –
  - (a) the opening middle market exchange rate as determined by the Authority; or
  - (b) another exchange rate determined by the Authority and specified in a published notice.
- (3) Compensation paid by the Authority must be paid in the currency of Jersey.

#### **142G Eligible deposit in joint account**

- (1) In this Article, “joint account” means an account –
  - (a) that is in the names of 2 or more persons, or over which 2 or more persons have rights; and
  - (b) that may be operated against the signature of 1 or more of those persons.
- (2) A deposit held in a joint account with a bank is an eligible deposit to the same extent as an eligible depositor has an interest in the account.
- (3) If an eligible deposit is held in a joint account with a bank, the amount in the account is to be divided –
  - (a) according to the holders’ shares in the account; but
  - (b) if there is no indication of the share of each holder, equally between them.

#### **142H Grouping of banks for purposes of Scheme**

- (1) The Minister may group banks in readiness for the possibility of a bank being declared to be in default under Article 142I.
- (2) If the Minister groups banks under paragraph (1), the Authority must publish a list showing the groups of banks.
- (3) The list must be published in a manner that is, in the opinion of the Authority, likely to bring the list to the attention of those affected by it.
- (4) The banks included in each group of banks are taken to be 1 bank for the purposes of calculating the depositors’ compensation levy and the depositors’ compensation to be paid in respect of those banks under this Law.
- (5) If a bank in a group is declared to be in default under Article 142I, the depositors’ compensation levy must still be imposed on the group but the

eligible deposits of the group must be calculated without reference to the eligible deposits of the bank in default.

### DIVISION 3 – DECLARATION OF DEFAULT

#### **142I Notice declaring bank to be in default**

- (1) As soon as practicable after the Authority determines that, in its opinion, a bank is bankrupt or insolvent, the Authority must –
  - (a) by published notice –
    - (i) declare the bank to be in default; and
    - (ii) specify the date on which the bank became a bank in default (“default date”);
  - (b) notify the Minister of the name of the bank and the default date.
- (2) The Minister must, as soon as practicable after being notified, inform the States of –
  - (a) the name of the bank in default; and
  - (b) the default date.
- (3) Paragraph (1) does not apply if, and for so long as, the Authority considers that –
  - (a) a resolution action or foreign resolution action other than bankruptcy proceedings has started and has not finished, or is likely to start within a reasonable time, in respect of the bank; and
  - (b) it is appropriate, in the light of that action, not to declare the bank to be in default for the time being or at all.
- (4) If, after the Authority has declared a bank to be in default, the Authority considers that sub-paragraphs (a) and (b) of paragraph (3) both apply, the Authority may postpone the performance of any of its functions under this Law, including the payment of depositors’ compensation, until it is satisfied that those sub-paragraphs no longer apply.
- (5) The Minister may, by Order, amend this Law to make alternative provision as to declaring a bank to be in default.
- (6) In this Article, “bankruptcy proceedings” means –
  - (a) proceedings for a bank winding up order under Part 7; or
  - (b) for a branch of a foreign bank, proceedings under a foreign law that the Authority considers are the same as or similar to proceedings to wind up a bank under Part 7.

#### **142J Notice under Article 142I may contain statement about vesting date**

- (1) The Authority may include any of the following statements in a published notice under Article 142I –
  - (a) a statement that an eligible depositor’s compensatable rights vest in the Authority under Article 142ZJ as at the default date for the bank in default;

- (b) a statement that an eligible depositor's compensatable rights vest in the Authority under Article 142ZJ on a later date specified in the notice;
  - (c) subject to Article 142ZK(1), a statement that an eligible depositor's excess rights vest in the Authority under Article 142ZK as at the default date for the bank in default;
  - (d) subject to Article 142ZK(1), a statement that an eligible depositor's excess rights vest in the Authority under Article 142ZK on a later date specified in the notice;
  - (e) a statement that the Authority will publish a further notice specifying a later date (not being earlier than the date the further notice is published) on which an eligible depositor's compensatable rights vest in the Authority under Article 142ZJ;
  - (f) subject to Article 142ZK(1), a statement that the Authority will publish a further notice specifying a later date (not being earlier than the date the further notice is published) on which an eligible depositor's excess rights vest in the Authority under Article 142ZK.
- (2) A statement under paragraph (1) may specify that the statement relates to compensatable rights or excess rights in respect of all eligible deposits or a description of eligible deposits held by the bank in default as at the default date for the bank.
  - (3) If the published notice under Article 142I states that a further notice will be published, an eligible depositor's compensatable rights or excess rights do not vest in the Authority under Article 142ZJ or 142ZK until the date specified in the further notice.

#### **142K Notice requiring banks to provide statement of relevant holding**

- (1) The Authority must, as soon as practicable after declaring a bank to be in default under Article 142I, serve a notice on each bank (other than the bank in default) requiring the bank to provide to the Authority, within the time specified in the notice –
  - (a) a statement of the bank's relevant holding as at the date specified in the notice; and
  - (b) any evidence required by the Authority in support of the statement.
- (2) The Authority must, as soon as practicable after declaring a bank to be in default under Article 142I, serve on the responsible person for the bank in default a notice requiring the responsible person to provide to the Authority –
  - (a) a statement of the bank in default's relevant holding, as at the default date for the bank in default; and
  - (b) any other information held by the bank in default that the Authority requires for calculating each payment of depositors' compensation to be made in respect of the default.
- (3) The Authority may serve on the responsible person a further notice requiring the responsible person to provide to the Authority any further information or documents relating to the bank that the Authority requires to carry out its functions under this Law.
- (4) The responsible person must provide the statement, information and documents required by a notice under paragraph (2) or (3) –

- (a) within the time and in the format specified in the notice; and
  - (b) verified in the manner required by the notice.
- (5) The Authority may, on the application of the bank or the responsible person, extend the time specified in a notice under this Article as the time for compliance with the notice.
- (6) A bank that without reasonable cause fails to comply with a notice under paragraph (1) commits an offence and is liable to a fine.
- (7) A responsible person who without reasonable cause fails to comply with a notice under paragraph (2) or (3) commits an offence and is liable to imprisonment for a term of 6 months and to a fine.
- (8) This Article applies to Community Savings Ltd as it applies to a bank.
- (9) For the purpose of paragraph (8), “relevant holding” means the total of the amounts that each natural person had in an account with Community Savings Ltd as at the default date for the bank in default.

#### **142L Further steps following declaration of default**

- (1) The Authority must, as soon as is reasonably practicable after declaring a bank to be in default under Article 142I, make or activate any further arrangements it considers expedient to administer the Bank Depositors Compensation Scheme in respect of the bank in default.
- (2) Those arrangements must, in respect of depositors’ compensation not paid by way of straight-through pay-out, be designed in particular to ensure that –
  - (a) applications for that depositors’ compensation are submitted to the Authority as soon as practicable;
  - (b) applicants for that depositors’ compensation are given clear instructions on how they may apply for depositors’ compensation; and
  - (c) each claim for that depositors’ compensation is properly verified.

### **DIVISION 4 – DEPOSITORS’ COMPENSATION FUNDS**

#### **142M Establishment of depositors’ compensation funds**

- (1) The Authority must –
  - (a) establish and maintain a separate depositors’ compensation fund for each bank in default; and
  - (b) pay into the depositors’ compensation fund all money received by the Authority in respect of the default.
- (2) Paragraph (1)(b) applies whether or not money is received –
  - (a) as a loan (including a States loan);
  - (b) as a depositors’ compensation levy;
  - (c) by way of adjustment under Article 142ZF(5)(b);
  - (d) as an amount described in Article 142ZJ(5);
  - (e) as an amount described in Article 142ZK(6); or
  - (f) otherwise.

- (3) The Authority must not make a payment out of a depositors' compensation fund established for a bank in default, other than –
  - (a) a payment of default-related administrative costs in respect of that default;
  - (b) payment of depositors' compensation in respect of that default;
  - (c) payment under Article 142N(1)(d), (e) or (f) in respect of that default; and
  - (d) payment to another depositors' compensation fund by way of adjustment under Article 142ZF(5)(b).
- (4) Unless otherwise expressly provided by this Law, the source of money paid into a depositors' compensation fund does not limit any power or duty of the Authority to make a payment out of that fund.
- (5) In this Law, "default-related administrative costs" means amounts payable by the Authority (other than an amount payable under paragraph (3)(b), (c) or (d)) that, in the opinion of the Authority, are attributable to the operation of the Bank Depositors Compensation Scheme in respect of a bank in default.
- (6) Payment of default-related administrative costs includes –
  - (a) repayment of borrowings to the depositors' compensation fund (subject to Article 142O), and payment of associated interest and costs;
  - (b) payment of costs of and related to insurance against the Authority's liabilities in respect of the depositors' compensation fund or the bank in default;
  - (c) payment of expenses of the members of the Authority that would not have been incurred but for the default; and
  - (d) payment of a higher amount attributable to a default, where a lower amount would have been paid but for the default.

#### **142N Order of priority and timing of payments out of depositors' compensation funds**

- (1) Subject to Article 142O and this Article, the order of priority for payments out of a depositors' compensation fund for a bank in default is –
  - (a) payment to another depositors' compensation fund by way of adjustment under Article 142ZF(5)(b);
  - (b) payment of default-related administrative costs;
  - (c) payment of depositors' compensation to eligible depositors;
  - (d) payment to each eligible depositor whose excess rights vested in the Authority under Article 142ZK, of the amount in respect of which the eligible depositor's excess rights were vested;
  - (e) repayment of any States loan;
  - (f) repayment, to each bank that paid a depositors' compensation levy in respect of the bank in default, of the amount paid by each bank.
- (2) Subject to paragraphs (3) and (4), the Authority –
  - (a) may make a payment of default-related administrative costs before making a payment to another depositors' compensation fund by way of adjustment under Article 142ZF(5)(b);



- (b) may make a payment of depositors' compensation before making –
    - (i) a payment to another depositors' compensation fund by way of adjustment under Article 142ZF(5)(b); or
    - (ii) a payment of default-related administrative costs; and
  - (c) in deciding to make a payment of depositors' compensation to an eligible depositor before assessing or paying an amount of depositors' compensation to another eligible depositor, may take account of –
    - (i) the need, charitable status or other characteristics of an eligible depositor; or
    - (ii) any other factor affecting the assessment or payment of depositors' compensation to an eligible depositor.
- (3) When making a payment out of the depositors' compensation fund, the Authority must seek to ensure that, on completion of the depositors' compensation exercise, the order of priority will be satisfied.
- (4) When making a payment of depositors' compensation, the Authority must in addition seek to ensure that, on completion of the depositors' compensation exercise, if there will be insufficient money in the depositors' compensation fund to pay the maximum amount of depositors' compensation to every eligible depositor, the total amount paid in depositors' compensation in respect of each eligible depositor will be reduced –
  - (a) by a proportional amount (disregarding any deduction under Article 142U or 142V) calculated in a manner that the Authority considers to be appropriate; or
  - (b) in any other manner that the Authority considers to be equitable in the circumstances.
- (5) In respect of each of sub-paragraphs (d) to (f) of paragraph (1), the Authority –
  - (a) must not make a payment under that sub-paragraph unless money remains in the depositors' compensation fund after the Authority has paid in full all of the amounts described in the sub-paragraphs of paragraph (1) that precede that sub-paragraph; and
  - (b) must apply any money remaining in the depositors' compensation fund to payment under that sub-paragraph, subject to paragraphs (6) to (8).
- (6) The total amount paid under paragraph (1)(d) must not exceed, despite Article 142M(4), the amount by which the total amount paid into the depositors' compensation fund under Articles 142ZJ(5) and 142ZK(6) exceeded the total amount of depositors' compensation paid by the Authority.
- (7) If the remaining money, or the amount of that money that is available under paragraph (6), is insufficient for the Authority to make payment in full under paragraph (1)(d), the Authority must reduce payment to each eligible depositor under paragraph (1)(d) –
  - (a) by a proportional amount, calculated in a manner that the Authority considers to be appropriate; or
  - (b) if the Authority considers that it is appropriate in a particular default, whether for operational or other reasons, to depart from the general rule in sub-paragraph (a), in any other manner that the Authority considers to be appropriate.



- (8) If the remaining money is insufficient for the Authority to make payment in full under paragraph (1)(f), the Authority must reduce payment to each bank –
  - (a) in proportion to the amount of levy paid by each bank; or
  - (b) in any other manner that the Authority considers to be appropriate in the circumstances.
- (9) The Authority must complete payment of all default-related administrative costs in respect of a bank in default no later than 5 years after the default date for the bank, or before the end of any extended period under Article 142ZH.

#### **142O States loan to Authority in respect of bank in default**

- (1) This Article applies to a loan made by the States to the Authority for the purpose of funding a depositors' compensation fund (a "States loan").
- (2) Subject to paragraph (6), payment of default-related administrative costs does not include repayment of a States loan (as distinct from the payment of any interest or costs associated with that loan).
- (3) Despite Articles 142M(4) and 142N, the Authority –
  - (a) must apply a States loan to the payment of depositors' compensation and default-related administrative costs; and
  - (b) must apply any money received by way of depositors' compensation levy firstly to the repayment of a States loan (and payment of any interest or costs associated with that loan), and secondly to any other payments under Article 142N.
- (4) Paragraph (3)(b) does not apply to the extent that the Minister has made different provision in a notice under paragraph (5).
- (5) The Minister, after consultation with the Minister for Treasury and Resources, may, by notice to the Authority, permit the Authority to apply all, or a specified amount of, money received by way of depositors' compensation levy to the payment of depositors' compensation, in preference to the repayment of a States loan (and payment of any interest or costs associated with that loan).
- (6) The Minister may, in a notice under paragraph (5), provide that payment of default-related administrative costs includes the repayment of all, or a specified amount, of a States loan that is made after the payment of depositors' compensation in accordance with the notice.
- (7) In paragraphs (5) and (6), "specified amount" means an amount –
  - (a) specified in the notice; or
  - (b) calculated or otherwise determined in a manner specified in the notice.

### **DIVISION 5 – PAYMENT OF DEPOSITORS' COMPENSATION**

#### **142P Authority must pay depositors' compensation by primary payment date**

- (1) The Authority must, on or before the primary payment date for a bank in default, pay to an eligible depositor, in respect of an eligible deposit, the maximum amount of depositors' compensation payable to the eligible depositor in respect of the bank in default.

- (2) For the purpose of this Article, the “primary payment date” for a bank in default is 7 working days after the day on which the Authority is satisfied that the responsible person for that bank has complied with the notice under Article 142K(2).
- (3) The Authority may pay depositors’ compensation, in respect of an eligible depositor who is not resident in Jersey, to another person for onward payment to the eligible depositor, if the Authority considers that to do so would more efficiently achieve payment to the eligible depositor.
- (4) If the Authority is not satisfied that both conditions in paragraph (5) are met, the Authority may pay, for the purpose of paragraph (1), a part of the maximum amount of depositors’ compensation payable to the eligible depositor in respect of the bank in default, being an amount that appears prudent to the Authority having regard to Article 142N.
- (5) The conditions are –
  - (a) that there is sufficient money in the depositors’ compensation fund for the Authority to make all payments of maximum amounts of depositors’ compensation; and
  - (b) that there is, or will be by the completion of the depositors’ compensation exercise, sufficient money in the depositors’ compensation fund for the Authority to pay all the default-related administrative costs in full.
- (6) If the Authority makes a part payment under paragraph (4), the Authority must make further payments towards the remaining part of the maximum amount of depositors’ compensation if, at any subsequent time, it is satisfied that there is sufficient money in the depositors’ compensation fund to enable it to do so without contravening Article 142N.
- (7) Paragraphs (1), (4) and (6) are subject to the powers of the Authority under Articles 142I(4), 142S(1), 142ZJ(4), 142ZK(5), 142ZL(5)(b) and 142ZO(6) to postpone or refuse payment of depositors’ compensation.
- (8) The Authority must not pay depositors’ compensation in respect of a bank in default more than 5 years after the default date for the bank, or after the end of any extended period under Article 142ZH.
- (9) The Authority may, by published notice, postpone the primary payment date for a bank in default if the Authority and the Minister are satisfied that –
  - (a) to do so would assist the Authority in the application of Article 142N(4); or
  - (b) it is otherwise appropriate to do so for the better administration of the Bank Depositors Compensation Scheme or for a related purpose.

#### **142Q Straight-through pay-out**

- (1) The Authority must pay depositors’ compensation without requiring an application under Article 142R, unless it publishes a notice under paragraph (4) in respect of that depositors’ compensation.
- (2) Paragraph (4) applies if, in the opinion of the Authority, it is unreasonable in the circumstances to assess depositors’ compensation, or depositors’ compensation in respect of a description of eligible deposits, without any

additional information or evidence that might be provided by an application under Article 142R.

- (3) In making a determination under paragraph (2) the Authority must have particular regard to –
  - (a) the information that the Authority holds on the bank and the eligible deposits (whether derived from the records of the bank or elsewhere);
  - (b) any practical constraint on the ability of the Authority to make payments by way of straight-through pay-out in the particular circumstances of the default; and
  - (c) the Authority's function of timely payment of depositors' compensation under Article 7(2).
- (4) If this paragraph applies, the Authority may, by published notice, require an application to be made to the Authority under Article 142R –
  - (a) for all depositors' compensation payable in respect of the bank in default; or
  - (b) for depositors' compensation payable in respect of a description, specified in the notice, of eligible deposits held by that bank.
- (5) For the purpose of paragraph (4)(b), a description of eligible deposits may be framed in terms of –
  - (a) the amounts or any other characteristics of the eligible deposits;
  - (b) any characteristics of eligible depositors or other persons with a relationship to the eligible deposits; or
  - (c) any other factor relating to the eligible deposits.

#### **142R Application for depositors' compensation not payable by way of straight-through pay-out**

- (1) This Article applies to depositors' compensation in respect of which the Authority has published a notice under Article 142Q(4) requiring an application to be made to the Authority.
- (2) An application for that compensation must, to the satisfaction of the Authority –
  - (a) specify the name and address of the applicant;
  - (b) provide sufficient evidence to show that the applicant is an eligible depositor;
  - (c) provide sufficient evidence to identify the applicant's eligible deposit and the amount of the eligible deposit;
  - (d) contain details of any payments mentioned in Article 142V(2) that the applicant has received;
  - (e) specify the manner in which any depositors' compensation payable by the Authority to the applicant is to be paid; and
  - (f) contain or provide any other information or matter necessary to allow the Authority to verify the applicant's claim for depositors' compensation and to pay depositors' compensation to the applicant.

- (3) Despite Article 142P(1), (4) and (6) and Article 142X, the Authority must not pay depositors' compensation unless the Authority has received an application for depositors' compensation that complies with paragraph (2) –
  - (a) within 6 months after the default date for the bank in default; or
  - (b) within a longer period that the Authority considers reasonable, subject to Article 142P(8), if the Authority is satisfied that the applicant was prevented by events outside the applicant's control from applying within the 6-month period.

#### **142S Postponement of and refusal to pay depositors' compensation**

- (1) If it appears to the Authority that 1 or more of the grounds in paragraph (2) applies, the Authority may –
  - (a) postpone a payment of depositors' compensation in respect of an eligible deposit; or
  - (b) refuse to make the payment.
- (2) The grounds are –
  - (a) that there is any reason for which the bank in default would, but for the default, have had a right or duty to postpone or refuse payment of the eligible deposit;
  - (b) that the account in which the eligible deposit is held is dormant for any reason; or
  - (c) that there is any other reason justifying the exercise of the power conferred by paragraph (1) in the circumstances.
- (3) The reasons that may be taken into account under paragraph (2)(a) include –
  - (a) a reason related to seizure, detention, restraint, freezing, forfeiture, confiscation or other prohibition of dealing under 1 or more of the following –
    - (i) anti-money laundering and counter-terrorism legislation, within the meaning of Article 3 of the [Proceeds of Crime \(Supervisory Bodies\) \(Jersey\) Law 2008](#);
    - (ii) the [Forfeiture of Assets \(Civil Proceedings\) \(Jersey\) Law 2018](#);
    - (iii) the [Criminal Justice \(International Co-operation\) \(Jersey\) Law 2001](#), or any Regulations or Order made under that Law;
    - (iv) any similar legislation under the law of a country or territory outside Jersey; and
  - (b) any other reason related to an injunction, ownership dispute, pending or ongoing litigation or court order, or death or disability of the eligible depositor.
- (4) The reasons that may be taken into account under paragraph (2)(b) include –
  - (a) that any records of the bank in default class the account as dormant;
  - (b) that 2 months or more have passed without a response to a communication sent by the Authority to an address recorded as that of the eligible depositor in the records of the bank in default;

- (c) that the account otherwise appears to be dormant within the meaning of any enactment of Jersey or a foreign law that appears to the Authority to be relevant; and
  - (d) any other reason for which an account might reasonably be described as dormant.
- (5) In assessing a reason for the purpose of paragraph (2)(c), the Authority may, without limitation, have regard to –
  - (a) the Authority's general function to administer the Bank Depositors Compensation Scheme; and
  - (b) the desirability of administering the Bank Depositors Compensation Scheme for any default so that the maximum amount of depositors' compensation is paid to each eligible depositor, or, if that is not possible, so that the depositors' compensation is paid as fully as appears to the Authority to be practicable and fair in the circumstances.
- (6) A postponement of payment of depositors' compensation under this Article takes effect as a refusal of payment under this Article, if the postponement would otherwise extend beyond the time allowed for payment by Article 142P(8).
- (7) Paragraph (8) applies if –
  - (a) a right in respect of an eligible deposit vests in the Authority under Article 142ZJ or 142ZK; and
  - (b) the Authority refuses to pay depositors' compensation under this Article in relation to that deposit.
- (8) If this paragraph applies –
  - (a) the Authority must repay to the responsible person any amount the Authority has received from that person by virtue of Article 142ZJ or 142ZK in respect of the right; and
  - (b) the right vests in the eligible depositor who held the right before it vested in the Authority.

#### **142T Maximum amount of depositors' compensation**

- (1) The maximum amount of depositors' compensation that the Authority may pay to an eligible depositor (in each capacity in Article 142E(2)) in respect of a bank in default is the lesser of –
  - (a) £50,000; or
  - (b) an amount equal to the total amount of eligible deposits held by the bank in respect of the eligible depositor (in that capacity) as at the default date for the bank.
- (2) In calculating the amount for the purpose of paragraph (1)(b), no account is to be taken of any right (whether under an enactment, a provision of a contract, a rule of customary law, a law of another jurisdiction or otherwise) of set-off or counter-claim that the bank may have against the eligible depositor or the eligible deposit, or of any similar right that might otherwise reduce the amount.
- (3) Despite paragraph (1), the maximum amount of depositors' compensation that the Authority may pay to Community Savings Ltd in its capacity in

Article 142E(2)(d) in respect of a bank in default is an amount equal to the total of the amounts that each natural person had in an account with Community Savings Ltd as at the default date for the bank in default, subject to a maximum of £50,000 for each natural person.

- (4) References in this Law to the maximum amount of depositors' compensation are to the amount calculated under this Article, as read with Articles 142U and 142V.
- (5) The Minister may by Order amend paragraph (3) to make alternative provision for the application of this Article to Community Savings Ltd.

#### **142U Entitlement under overseas depositors' compensation scheme**

- (1) This Article applies if an eligible depositor in respect of a bank in default is entitled to receive compensation under an overseas depositors' compensation scheme in respect of the eligible deposit.
- (2) The eligible depositor is not entitled to receive depositors' compensation under this Law except to the extent that the Authority agrees with the person or body administering the overseas depositors' compensation scheme.
- (3) In the absence of agreement under paragraph (2), the Authority may pay depositors' compensation to the eligible depositor if the total amount of compensation paid to the eligible depositor does not exceed the maximum amount of depositors' compensation.
- (4) In paragraph (3), "total amount of compensation" means the total of –
  - (a) the amount of depositors' compensation paid by the Authority to the eligible depositor; and
  - (b) any compensation the eligible depositor receives under the overseas depositors' compensation scheme in respect of the eligible deposit.

#### **142V Reduction in amount of depositors' compensation**

- (1) The Authority must use its best endeavours to ensure that the amount in paragraph (2) is deducted from the amount of depositors' compensation payable to the eligible depositor in respect of the eligible deposit.
- (2) The amount is an amount equal to any payments that an eligible depositor receives in respect of a compensatable right vested in the Authority under Division 8, other than by way of depositors' compensation.
- (3) For the purpose of this Article, payments that an eligible depositor receives in respect of an eligible deposit, other than by way of depositors' compensation, include an amount that the eligible depositor has received from –
  - (a) an overseas depositors' compensation scheme;
  - (b) an insurance policy taken out by or on behalf of the eligible depositor; or
  - (c) the responsible person for the bank in default.
- (4) A payment that an eligible depositor receives in respect of a compensatable right vested in the Authority under Division 8, other than by way of depositors' compensation, is to be disregarded for the purpose of paragraph (1) if the eligible depositor pays to the Authority an amount equal to that payment under Article 142ZJ(2)(b).

- (5) An eligible depositor who is paid depositors' compensation by the Authority and subsequently receives a payment falling within paragraph (6) must, within 30 working days after receiving the payment falling within paragraph (6), pay to the Authority whichever is the lesser of –
  - (a) the amount of the payment falling within paragraph (6); and
  - (b) the amount of depositors' compensation paid to the eligible depositor.
- (6) A payment falls within this paragraph if –
  - (a) it is a payment that the eligible depositor receives in respect of a compensatable right vested in the Authority under Division 8, other than by way of depositors' compensation;
  - (b) it is received by the eligible depositor after the Authority has paid depositors' compensation to the eligible depositor, but before the completion of the depositors' compensation exercise; and
  - (c) the payment and the depositors' compensation are both in respect of the same eligible deposit.
- (7) A person who, without reasonable cause, contravenes paragraph (5) commits an offence and is liable to imprisonment for a term of 2 years and to a fine.

## DIVISION 6 – WINDING UP AND COMPLETION OF DEPOSITORS' COMPENSATION EXERCISE

### **142W Meaning of winding-up date**

In this Division, "winding-up date" means the first date (being no later than 5 years after the default date for the bank in default, or before the end of any extended period under Article 142ZH) on which the Authority is satisfied that –

- (a) it has completed payment of all default-related administrative costs, apart from any costs relating to the audited accounts and report prepared under Article 142ZA(2);
- (b) it has repaid a States loan in full or that it will be able to do so after receiving further payments of depositors' compensation levy in respect of the bank in default, or that no further repayments of a States loan are to be made;
- (c) it is unlikely to receive further payments of depositors' compensation levy, other than payments taken into account under sub-paragraph (b); and
- (d) it is unlikely to receive any further payments under rights vested in it under Article 142ZJ or 142ZK.

### **142X Winding-up of depositors' compensation exercise**

As soon as practicable after the winding-up date, the Authority must assess and make any outstanding payments in accordance with the order of priority and timings under Article 142N.



**142Y Assignment of rights after winding-up date**

- (1) This Article applies if, on the winding-up date –
  - (a) the Authority still holds a right to an amount vested in it under Article 142ZJ (compensatable rights) or 142ZK (excess rights); and
  - (b) that right has not been realised.
- (2) The Authority must, as soon as practicable after the winding-up date, assign the rights in the following order and in respect of the following amounts –
  - (a) first, if amounts of depositors' compensation paid to eligible depositors were reduced under Article 142N(4), to those eligible depositors in respect of the amounts of those reductions;
  - (b) second, if payments of amounts in respect of excess rights vested in the Authority were due to eligible depositors under Article 142N(1)(d) but were not made in full, to those eligible depositors in respect of the amounts remaining unpaid;
  - (c) third, if any States loan was not repaid in full by the winding-up date, to the States in respect of the amount remaining unpaid;
  - (d) fourth, if the banks that paid a depositors' compensation levy in respect of a bank in default were not repaid in full under Article 142N(1)(f), to those banks in respect of the amounts remaining unpaid.
- (3) Before assigning rights to amounts under a sub-paragraph of paragraph (2), the Authority must satisfy itself that it can comply in full with each sub-paragraph preceding that sub-paragraph.
- (4) If the Authority cannot comply in full with a sub-paragraph of paragraph (2), the Authority must assign the rights to the amounts proportionally or in any other manner that the Authority considers to be appropriate in the circumstances.
- (5) The power of the Authority to assign rights under this Article is not limited by the source of those rights before they vested in the Authority.
- (6) Accordingly –
  - (a) an eligible depositor who held the right before it vested in the Authority is not entitled to assignment of all or part of that right;
  - (b) to comply with a particular sub-paragraph of paragraph (2), a right vested in the Authority may be assigned to –
    - (i) an eligible depositor, whether or not the right was held by another eligible depositor before it vested in the Authority;
    - (ii) the States; or
    - (iii) a bank;
  - (c) a right of an eligible depositor vested in the Authority may be assigned as part of the rights held by the Authority, without identifying the eligible depositor who held the right before it vested in the Authority;
  - (d) rights vested in the Authority may be assigned by reference to a description of eligible depositor and a formula as to the amount, without identifying each eligible depositor or specifying each amount.
- (7) It is irrelevant whether the Authority assigns rights under this Article before, on or after the primary payment date determined under Article 142P, but the Authority must have complied with paragraph (2) no later than 5 years after



the default date for the bank in default, or before the end of any extended period under Article 142ZH.

- (8) If the Authority assigns a right under Article 142ZL(1) before the winding-up date, it must seek to ensure that it will have complied with paragraph (2) on completion of the depositors' compensation exercise.

#### **142Z Assignment of excess rights**

- (1) The Authority must, when carrying out its functions under Articles 142Y and 142ZL(1) in relation to excess rights vested in the Authority under Article 142ZK, ensure that paragraph (2) is satisfied –
- (a) on or before completion of the depositors' compensation exercise; and
  - (b) as soon as will not prejudice the operation of the Bank Depositors Compensation Scheme.
- (2) For every eligible depositor whose excess right is vested in the Authority under Article 142ZK –
- (a) the payment amount must equal the taken rights amount; or
  - (b) if the payment amount is less than the taken rights amount, the returned rights amount must equal the difference between the payment amount and the taken rights amount.
- (3) In this Article –
- (a) the “payment amount” is the amount paid to the eligible depositor in respect of excess rights under this Law or under an agreement under this Law;
  - (b) the “taken rights amount” is the total of the amounts in respect of which excess rights of the eligible depositor are vested in the Authority under Article 142ZK; and
  - (c) the “returned rights amount” is the total of the amounts in respect of which excess rights have been assigned to the eligible depositor by the Authority under Article 142Y or 142ZL(1) (whether the rights vested in the Authority were rights of the eligible depositor or rights of another person).

#### **142ZA Completion of depositors' compensation exercise**

- (1) The Authority must, as soon as practicable after it has complied with Articles 142X and 142Y, publish a notice declaring the completion of the depositors' compensation exercise for a bank in default.
- (2) The Authority must, in relation to the final accounting period –
- (a) prepare the accounts for the depositors' compensation fund under Article 21A; and
  - (b) comply with Article 21A(4) to (6).
- (3) The Minister must comply with Article 21A(7) in relation to the final accounting period.

**DIVISION 7 – DEPOSITORS’ COMPENSATION LEVY****142ZB Liability to pay depositors’ compensation levy in respect of bank in default**

- (1) This Article applies if a bank is declared under Article 142I to be in default (“bank in default”).
- (2) Each bank that held eligible deposits as at the default date for the bank in default is liable to pay a depositors’ compensation levy in respect of the bank in default (see Article 142ZC for the amount and timing of the payment).
- (3) Paragraph (2) does not apply to another bank in default.

**142ZC Notice of depositors’ compensation levy**

- (1) The Authority –
  - (a) must calculate the amount of depositors’ compensation levy to be paid by each bank liable to pay the levy; and
  - (b) must, as soon as practicable and no later than 6 months after the default date for the bank in default, serve on each bank liable to pay the levy a written notice requiring it to pay the levy.
- (2) A notice under paragraph (1)(b) must specify –
  - (a) the amount of depositors’ compensation levy the bank is required to pay;
  - (b) how the levy has been calculated; and
  - (c) the date or dates on which the levy or an instalment of the levy becomes payable.
- (3) The Authority may at any time, by written notice served on each bank liable to pay the depositors’ compensation levy, require the bank to pay an additional levy if satisfied that it has become necessary to do so.
- (4) Paragraph (5) applies if –
  - (a) a bank fails to provide a statement of the bank’s relevant holding (as required by a notice under Article 142K(1)(a)) within the time specified in the notice; or
  - (b) the Authority is satisfied that the statement of a bank’s relevant holding provided under that Article is materially inaccurate.
- (5) The Authority may, by written notice served on the bank, require the bank to pay an additional levy representing any underpayment that the Authority considers is attributable to that failure or inaccuracy.
- (6) The calculation of the additional levy must take account of the effect of subparagraphs (a) and (b) of the definition of “A” in the formula in Article 142ZE (amount of depositors’ compensation levy to be paid by each bank).
- (7) A notice under paragraph (3) or (5) must specify –
  - (a) the amount of additional levy the bank is required to pay;
  - (b) how the additional levy has been calculated; and
  - (c) the date or dates on which the additional levy or an instalment of the levy becomes payable.

- (8) A bank served with a notice under this Article must pay the levy or instalment on the date specified in the notice as the date on which that levy or instalment becomes payable.
- (9) A levy or instalment that has become payable is a debt due to the Authority.
- (10) The Authority may bring proceedings for the recovery of the debt at any time after the date on which the levy or instalment becomes payable.

#### **142ZD Total amount of depositors' compensation levy**

- (1) The total amount of depositors' compensation levy to be paid by the banks liable to pay the levy in respect of a bank in default must be an amount that the Authority estimates will meet –
  - (a) the payment of depositors' compensation in respect of the bank in default;
  - (b) all default-related administrative costs; and
  - (c) the repayment of any States loan.
- (2) This Article applies subject to the limitations set out in Articles 142ZF(5)(b) and 142ZG.

#### **142ZE Amount of depositors' compensation levy to be paid by each bank**

- (1) The Authority must require each bank liable to pay a depositors' compensation levy in respect of a bank in default to pay an amount of levy calculated in accordance with paragraph (2).
- (2) The amount of levy is  $A \div B$  of the amount required for the purposes mentioned in Article 142ZD, where –

A is the amount stated by the bank in compliance with the notice under Article 142K(1)(a) or, if the bank failed to comply with that notice, the amount most recently stated by the bank –

  - (a) under Article 142ZQ(2)(a) or (3); or
  - (b) in compliance with a notice falling within Article 142ZR(1); and

B is the total of the amounts stated in accordance with A by all the banks liable to pay a depositors' compensation levy.
- (3) This Article applies subject to the limitations set out in Articles 142ZF(5)(b) and 142ZG.

#### **142ZF Limitation on amount Authority may raise by way of depositors' compensation levy**

- (1) The maximum amount that the Authority may raise by way of depositors' compensation levy in respect of 1 or more banks in default over any period of 5 years (whether the period begins with a default date or another date) is £100 million.
- (2) Paragraphs (3) to (5) apply if –
  - (a) a bank ("Bank A") is declared to be in default;
  - (b) another bank or banks ("Bank B") are declared to be in default; and

- (c) the default date for Bank B is the same as, or within the period of 5 years after, the default date for Bank A.
- (3) If the default date for Bank B is on or after the date of the making of the first payment of depositors' compensation for Bank A, the Authority must, for the purpose of paragraph (1) –
  - (a) raise a depositors' compensation levy in respect of Bank A in preference to a depositors' compensation levy in respect of Bank B; or
  - (b) apply the limitation under paragraph (1) to the raising of depositors' compensation levies in respect of Bank A and Bank B in another manner that the Authority considers equitable in the circumstances.
- (4) If the default date for Bank B is before the date of the making of the first payment of depositors' compensation in respect of Bank A, the Authority must, for the purpose of paragraph (1) –
  - (a) raise depositors' compensation levies in respect of Bank A and Bank B in proportion to the Authority's estimate of the total depositors' compensation payable in respect of each bank; or
  - (b) apply the limitation under paragraph (1) to the raising of depositors' compensation levies in respect of Bank A and Bank B in another manner that the Authority considers equitable in the circumstances.
- (5) If, as a result of the operation of paragraph (3)(b), (4)(a) or (4)(b), the Authority considers that a depositors' compensation levy demanded in respect of Bank A should be applied in respect of Bank B, the Authority may –
  - (a) treat the depositors' compensation levy as payable in respect of Bank B; and
  - (b) if the Authority has paid the proceeds of the depositors' compensation levy into the depositors' compensation fund for Bank A, make a payment, of any amount it considers expedient by way of adjustment, from that depositors' compensation fund to the depositors' compensation fund for Bank B.

#### **142ZG Limitation on liability of banks to pay depositors' compensation levy**

- (1) Subject to the limit set out in paragraph (2), the maximum amount the Authority may require a bank ("Bank A") to pay by way of depositors' compensation levy in respect of a bank in default ("Bank B") is an amount equal to 0.3% of the eligible deposits held by Bank A as at the default date for Bank B.
- (2) In any 5-year period, the maximum amount for which a bank may be liable by way of depositors' compensation levy in respect of 1 or more banks in default is –
  - (a) if the amount calculated under paragraph (1) is £10 million or more, £10 million; and
  - (b) if the amount calculated under paragraph (1) is less than £10 million, £5 million.
- (3) The maximum amount for which a bank may be liable by way of depositors' compensation levy in a 12-month period (regardless of how many banks are in default in that period) is –
  - (a) for a bank to which paragraph (2)(a) applies, £2 million; and

- (b) for any other bank, £1 million.
- (4) The Authority may not require a bank to pay a depositors' compensation levy in respect of a bank in default more than 5 years after the default date for the bank in default.
- (5) But nothing in paragraph (4) prohibits the enforcement, after the 5-year period, of a requirement to pay a depositors' compensation levy falling due before the end of that period.

#### **142ZH Extension of periods of 5 years**

- (1) The Authority, with the consent of the Minister, may by published notice extend any period of 5 years mentioned in Articles 142N, 142P, 142W or 142Y in relation to a bank in default to a date specified in the notice.
- (2) The extension of any 5-year period under paragraph (1) does not have the effect of increasing the total amount of depositors' compensation levy estimated by the Authority under Article 142ZD as payable by banks in respect of a bank in default.

### **DIVISION 8 – VESTING OF RIGHTS IN THE AUTHORITY**

#### **142ZI Interpretation**

- (1) In this Division –
  - “compensatable right” means a relevant right other than an excess right;
  - “excess right” means a relevant right in respect of the amount of eligible deposit that exceeds the maximum amount of depositors' compensation;
  - “relevant right” means a right (whether under the law of Jersey or a foreign law) of an eligible depositor in respect of an eligible deposit held by a bank in default as at the default date for the bank, or that right as subsequently vested in another person under this Part.
- (2) Paragraph (3) applies if the maximum amount of depositors' compensation is reduced under Article 142V (without regard to any power or duty of the Authority to pay less than the maximum amount of depositors' compensation).
- (3) A relevant right in respect of the amount of an eligible deposit that equals the amount of the reduction described in paragraph (2) is neither a compensatable right nor an excess right.

#### **142ZJVesting of compensatable rights in the Authority**

- (1) An eligible depositor's compensatable rights in respect of an eligible deposit with a bank in default vest in the Authority on the vesting date for those rights.
- (2) On and after the vesting date for those rights, the eligible depositor must –
  - (a) provide any assistance the Authority may require to enable the Authority to exercise a compensatable right vested in it; and
  - (b) promptly notify the Authority of any amount the eligible depositor receives on or after the default date in respect of a compensatable right, and pay that amount to the Authority as soon as is practicable.

- (3) Paragraph (4) applies if –
  - (a) a later date is specified as the vesting date for the eligible depositor's compensatable rights, and that date has not yet been reached; or
  - (b) the eligible deposits are held by a branch of a foreign bank, and the Authority considers that there is a risk that the effect of paragraphs (1) and (2), in respect of an eligible deposit, may not be recognised under a foreign law.
- (4) The Authority may postpone payment of depositors' compensation in respect of the eligible deposit until the eligible depositor enters into –
  - (a) a written agreement with the Authority that paragraphs (1) and (2) are to apply in respect of the eligible deposit from the date specified in the written agreement; or
  - (b) a contract, under the law of Jersey or a foreign law, that contains provisions having effect equivalent, to the satisfaction of the Authority, to the effect of applying paragraphs (1) and (2) in respect of the eligible deposit from the date specified in the contract.
- (5) The Authority must pay into the depositors' compensation fund for the bank in default –
  - (a) any amount paid to the Authority under a compensatable right vested in it under this Article; and
  - (b) any amount paid to it under paragraph (2)(b).
- (6) In this Article, "vesting date", in relation to compensatable rights, means –
  - (a) the default date;
  - (b) a later date; or
  - (c) a date specified in a written agreement or contract entered into under paragraph (4) as the vesting date for those rights.

#### **142ZK Vesting of excess rights in the Authority**

- (1) The Authority, if it considers that it is expedient to do so for a reason listed in paragraph (3), may decide that excess rights in respect of all eligible deposits, or a description of eligible deposits, held by a bank in default vest in the Authority on the vesting date.
- (2) On and after the vesting date for those rights, the eligible depositor must –
  - (a) provide any assistance the Authority may require to enable the Authority to exercise an excess right vested in it; and
  - (b) promptly notify the Authority of any amount the eligible depositor receives on or after the default date in respect of an excess right, and pay that amount to the Authority as soon as is practicable.
- (3) The reasons are –
  - (a) to counteract any prejudice (within the meaning of Article 142ZO(4)) likely to be caused to the Scheme by the operation of a foreign law;
  - (b) to achieve, in any other respect, an effect closer to the effect of the order of priority under Article 30, 142N or 142Y;
  - (c) to achieve more timely payment of depositors' compensation to some or all eligible depositors; or

- (d) to enable the Authority to better perform its functions under this Part.
- (4) Paragraph (5) applies if –
  - (a) a later date is specified as the vesting date for excess rights in respect of all eligible deposits or a description of eligible deposits, and that date has not yet been reached; or
  - (b) an eligible deposit is held by a branch of a foreign bank, and the Authority considers that there is a risk that the effect of paragraphs (1) and (2) in respect of excess rights may not be recognised under a foreign law.
- (5) If the Authority considers that it is expedient to do so for any reason listed in paragraph (3), the Authority may –
  - (a) postpone payment of depositors' compensation in respect of an eligible deposit until the eligible depositor enters into –
    - (i) a written agreement with the Authority to the effect that paragraphs (1) and (2) apply in respect of the eligible deposit from the date specified in the written agreement; or
    - (ii) a contract, under the law of Jersey or a foreign law, that contains provisions having effect equivalent, to the satisfaction of the Authority, to the effect of applying paragraphs (1) and (2) to the eligible deposit from the date specified in the contract; and
  - (b) treat the depositor as not being an eligible depositor if the depositor fails to enter into the written agreement or contract within a time specified by the Authority by notice in writing to the eligible depositor.
- (6) The Authority must pay into the depositors' compensation fund for the bank in default –
  - (a) any amount paid to it under an excess right vested in it under this Article; and
  - (b) any amount paid to it under paragraph (2)(b).
- (7) In this Article, "vesting date", in relation to excess rights, means –
  - (a) the default date;
  - (b) a later date; or
  - (c) a date specified in a written agreement or contract entered into under paragraph (5) as the vesting date for those rights.

#### **142ZL Assignment of rights vested in the Authority: general**

- (1) If a right to an amount vests in the Authority under Article 142ZJ or 142ZK, the Authority may, by serving a notice under paragraph (2), assign the right to that amount (subject to Article 142Y), in whole or in part –
  - (a) to the eligible depositor who held the right before it vested in the Authority; or
  - (b) to another person, if the Authority is satisfied that the assignment, or arrangements made by the Authority in connection with the assignment, will assist the Authority to –
    - (i) comply with its duties under Articles 142N, 142Y and 142ZA;



- (ii) counteract any prejudice (within the meaning of Article 142ZO(4)) likely to be caused to the Scheme by the operation of a foreign law; or
    - (iii) achieve, in any other respect, an effect closer to the effect of the order of priority under Article 30.
- (2) In respect of the assignment of a right under paragraph (1) –
  - (a) it is irrelevant whether the Authority serves the notice before, on or after paying depositors' compensation;
  - (b) the notice must specify –
    - (i) the right assigned; and
    - (ii) the date (being a date after the notice is served and before the completion of the depositors' compensation exercise) on which the right vests in the person to whom it is assigned ("the assignee");
  - (c) the Authority may serve the notice –
    - (i) in respect of a particular eligible deposit, by giving the notice to –
      - (A) the eligible depositor who held the right before it vested in the Authority;
      - (B) the assignee; and
      - (C) the responsible person for the bank in default; or
    - (ii) in respect of all eligible deposits, or of a description of eligible deposits, or of a particular eligible deposit, by –
      - (A) publishing the notice; and
      - (B) giving it to the responsible person for the bank in default;
  - (d) the notice may –
    - (i) provide for –
      - (A) subordination of all or part of the right assigned to all or part of any rights retained by the Authority; or
      - (B) subordination of all or part of any rights retained by the Authority to all or part of the right assigned; and
    - (ii) provide that the subordination has effect as if effected –
      - (A) by contract;
      - (B) by variation of the order of priority under an enactment; or
      - (C) in any other manner; and
  - (e) the right assigned –
    - (i) vests in the assignee on the date specified in the notice; and
    - (ii) is subject to any subordination provided for in the notice.
- (3) A notice under paragraph (2), if published under paragraph (2)(c)(ii), may specify either or both of –
  - (a) a description of a class of persons who are the assignees, instead of specifying the assignees; and
  - (b) a formula or other means for calculating or otherwise ascertaining the right assigned to each assignee, instead of specifying the right assigned to each assignee.



- (4) For as long as a right remains vested in the Authority under Article 142ZJ or 142ZK, that right is to be treated (despite any contrary provision of an enactment, contract, rule of customary law or a foreign law) as if it were not subject to a right of another person, if under Article 142T(2) no account is to be taken of that right in calculating the maximum amount of depositors' compensation.
- (5) If an eligible depositor fails to comply with an obligation imposed by Article 142ZJ or 142ZK, or an obligation arising from a written agreement entered into under Article 142ZJ(4) or 142ZK(5), the Authority –
  - (a) may enforce the obligation –
    - (i) in respect of payment of money, as a civil debt; and
    - (ii) in any other respect, by application to the Court for an injunction requiring compliance with the obligation; and
  - (b) may postpone payment of an amount to the eligible depositor (whether the payment is an amount of depositors' compensation or another amount) until the eligible depositor complies with the obligation.
- (6) The assistance that the Authority may require under Articles 142ZJ(2) and 142ZK(2) includes taking steps that the Authority considers would assist in achieving –
  - (a) an assignment of a relevant right that has effect under a foreign law and is assigned in accordance with formalities required by the foreign law, including formalities for an assignment that does not have effect by operation of a statute;
  - (b) an assignment of a relevant right the effect of which is recognised under a foreign law even if the effect of Article 142ZJ or 142ZK is not recognised under the foreign law;
  - (c) recognition under a foreign law of the effect of any of the following –
    - (i) Article 142ZJ;
    - (ii) Article 142ZK;
    - (iii) this Article;
    - (iv) the order of priority under Article 30; or
  - (d) any other effect under a foreign law that is equivalent to the effect of a provision mentioned in sub-paragraph (c).
- (7) The steps that the Authority may require the eligible depositor to take include entering into a contract (under the law of Jersey or a foreign law) that contains provisions the Authority considers would assist in achieving any result described in paragraph (6).
- (8) Nothing in a contract entered into, or other instrument produced, for the purpose of paragraph (6) is to be read as –
  - (a) an admission by the Authority that a right has not vested in the Authority under this Law; or
  - (b) preventing or limiting the vesting of a right in the Authority under this Law.

**142ZM Authority as creditor of bank in default**

- (1) This Article applies if an eligible depositor's rights in respect of an eligible deposit with a bank in default have vested in the Authority.
- (2) The Authority may –
  - (a) participate in the nomination of a person to sit on a creditors' committee or committee of inspection for the bank in default;
  - (b) require that a notice addressed to creditors of the bank is sent to the Authority; and
  - (c) nominate a person to attend and vote at a creditors' meeting.
- (3) For the purpose of paragraph (2), the Authority is taken to be a creditor of the bank in default –
  - (a) with the equivalent priority of an eligible depositor with the bank; and
  - (b) to the total value of the eligible depositors' rights that have vested in the Authority.
- (4) This Article does not affect –
  - (a) any other right of the Authority that arises under the Scheme as a result of an eligible depositor's rights vesting in the Authority; or
  - (b) the manner in which the Authority is to be treated as a result of an eligible depositor's rights vesting in the Authority.

**DIVISION 9 – FOREIGN BANKS AND FOREIGN LAW****142ZN Objectives of bank liquidator for foreign bank in exercising duties**

- (1) This Article applies if a branch of a foreign bank that is bankrupt has been declared to be in default under Article 142I.
- (2) The objectives of the bank liquidator are to –
  - (a) work with the Authority to ensure that all depositors' compensation is paid out as soon as is reasonably practicable; and
  - (b) assist the Authority in relation to the Bank Depositors Compensation Scheme.

**142ZO Conditions related to foreign law**

- (1) The Authority may impose a condition on a payment of depositors' compensation if it appears to the Authority, in respect of a relevant right of an eligible depositor, that the condition is likely to be proportionate and effective in assisting in –
  - (a) achieving recognition under a foreign law of the effect on the eligible depositor's right of the operation under Jersey law of a priority provision;
  - (b) achieving under a foreign law an effect equivalent to the effect on the eligible depositor's right of the operation under Jersey law of a priority provision; or

- (c) counteracting, in another way, any prejudice that would otherwise be likely to be caused to the Scheme by the operation of a foreign law in relation to the eligible depositor's right.
- (2) The conditions that may be imposed under paragraph (1) include –
  - (a) a condition that the eligible depositor must take a step, in relation to the foreign law, appearing to the Authority to be expedient under the foreign law to achieve recognition under the foreign law that a right of the eligible depositor –
    - (i) has vested in the Authority; or
    - (ii) has been given a priority, in bankruptcy or otherwise, that would not otherwise be given under the foreign law;
  - (b) a condition that an eligible depositor must take any other step specified by the Authority before depositors' compensation is paid; and
  - (c) a condition that relates to a right of the eligible depositor, whether or not that right has already vested in the Authority under Article 142ZJ or 142ZK, or in another way.
- (3) In this Article, "priority provision" means –
  - (a) Article 30;
  - (b) Articles 142ZJ to 142ZM;
  - (c) Article 142N;
  - (d) Article 142Y; and
  - (e) any other provision or enactment specified by the Minister by Order for the purpose of this Article.
- (4) For the purpose of this Article, the operation of a foreign law is likely to cause prejudice to the Bank Depositors Compensation Scheme if there is a risk that the effect of the foreign law is –
  - (a) to increase or decrease the amount that an eligible depositor will receive by way of depositors' compensation taken together with –
    - (i) any equivalent of depositors' compensation under the foreign law; and
    - (ii) any other payments in respect of the eligible deposit to which the depositors' compensation relates;
  - (b) to prevent, delay or reduce the recovery by the Authority of amounts due to it by virtue of rights vested in it under Article 142ZJ or 142ZK (whether because of the application of rules of set-off under a foreign law, or because of delay in or refusal of recognition of vesting under Article 142ZJ or 142ZK or delay in or refusal of recognition of the order of priority under Article 30, or for any other reason);
  - (c) to delay the provision of any information required by the Authority; or
  - (d) otherwise to reduce the chance that a person will comply with this Law in respect of the default, or to reduce the chance that a function will be performed effectively by or on behalf of the Authority.
- (5) For the purpose of paragraph (4), the effect of a foreign law may arise in any manner, including –
  - (a) because the bank in default –

- (i) is a branch of a foreign bank;
  - (ii) is a subsidiary company (within the meaning of the 1991 Law) of a holding company (within the meaning of that Law) that is established in another jurisdiction under the foreign law; or
  - (iii) has assets held in another jurisdiction under the foreign law that, in the opinion of the Authority, are relevant to the amount that may be recovered under rights vested in the Authority, or are otherwise relevant to the operation of the Bank Depositors Compensation Scheme;
- (b) because a contract relating to an eligible deposit with the bank in default states that that contract is governed by that foreign law, or the proper law of the contract is for any other reason that foreign law; and
  - (c) because there is a difference or a perceived difference between the law of Jersey and the foreign law that may cause prejudice to the operation of the Bank Depositors Compensation Scheme in another way.
- (6) Without limiting any other means by which the Authority may enforce compliance with a condition imposed under this Article, the Authority may –
- (a) postpone payment of depositors' compensation until the condition is met; and
  - (b) refuse to pay depositors' compensation if the condition is not met, or if the Authority is satisfied that the condition will not be met, within 5 years after the default date for the bank in default.

## DIVISION 10 – POWERS TO OBTAIN INFORMATION

### **142ZP General duty of Authority in relation to information**

The Authority must exercise its functions under this Part with a view in particular to –

- (a) obtaining directly from banks information that –
  - (i) is timely, accurate and comprehensive; and
  - (ii) is necessary for the Authority to carry out its functions under this Law; and
- (b) sharing, with persons in Jersey or elsewhere, information that –
  - (i) is timely, accurate and comprehensive; and
  - (ii) enables those persons to carry out functions that they have in relation to a bank in default, the Bank Depositors Compensation Scheme or an overseas compensation scheme.

### **142ZQ Annual holdings returns from banks**

- (1) Each bank that holds an eligible deposit at the end of a calendar year must send to the Authority an annual holdings return, to be received by the Authority within 28 days after the end of that calendar year.
- (2) An annual holdings return must contain the following statements –

- (a) a statement of the bank's relevant holding as at the end of the calendar year;
  - (b) a statement of the total amount held by the bank as at the end of the calendar year by way of deposits, including both eligible deposits and other deposits;
  - (c) a statement of the total amount held by the bank as at the end of the calendar year by way of amounts of eligible deposits that do not exceed £50,000;
  - (d) a statement of the number of eligible depositors, as at the end of the calendar year, for whom the bank holds eligible deposits;
  - (e) a statement of the total assets of the bank as at the end of the calendar year.
- (3) If a bank's relevant holding, as at any time during the calendar year following the year to which the bank's last return relates, is at least 10% less than the amount stated in that return, the bank may send to the Authority a further return containing a statement of the lesser relevant holding.
- (4) A return sent under paragraph (1) or (3) –
- (a) must be in a form specified by the Authority in a published notice as the appropriate form for that return or description of return;
  - (b) must be accompanied by any additional information specified in the published notice; and
  - (c) may be sent to the Authority through a third party, if the published notice so provides.
- (5) The Minister may, by Order, amend this Law to make alternative provision as to the contents, form or sending of a return.
- (6) This Article applies to every calendar year whether or not, in that year, a bank is in default.
- (7) A bank that without reasonable cause fails to comply with paragraph (1) commits an offence and is liable to a fine.
- (8) This Article applies to Community Savings Ltd as it applies to a bank.
- (9) For the purpose of paragraph (8) –
- “eligible deposit” means an amount that a natural person has in an account with Community Savings Ltd as at the end of the calendar year;
- “relevant holding” means the total of the amounts that each natural person had in an account with Community Savings Ltd as at the end of the calendar year.

#### **142ZR Information notice may be served at any time**

- (1) The Authority may at any time serve a notice on a bank (“information notice”) requiring the bank to provide to the Authority, within a time specified in the notice, either or both of the following –
- (a) a statement of the bank's relevant holding, as at the time specified in the notice;
  - (b) any other information specified in the notice in relation to –
    - (i) eligible deposits held by the bank; and

- (ii) the raising of a levy or any other matter connected with the functions of the Authority under this Part or connected with the operation of the Scheme.
- (2) The Authority may include in an information notice a requirement that the information is to be provided in a specified format.
- (3) The specified format may –
  - (a) be different for different descriptions of banks and different descriptions of information; and
  - (b) be published in a general notice by the Authority in a manner that, in the opinion of the Authority, is likely to bring the notice to the attention of banks.
- (4) The specified format may include a description of electronic record, as defined in Article 1(1) of the [Electronic Communications \(Jersey\) Law 2000](#), and a description of electronic communication, as defined in that Article.
- (5) For the purpose of paragraphs (2) to (4), a specified format is a format decided by the Authority after consultation with the Minister.
- (6) If an information notice includes a requirement to provide information under paragraph (1)(a), the Authority may, after consulting the Minister, specify in the notice that the information is to be provided without delay.
- (7) A person commits an offence, and is liable to a fine, if the person –
  - (a) fails without reasonable excuse to comply with a requirement imposed on the person under this Article; or
  - (b) obstructs the Authority in exercising its powers under this Article.
- (8) This Article applies to Community Savings Ltd as it applies to a bank.
- (9) In applying this Article to Community Savings Ltd –
 

“eligible deposit” means an amount that a natural person has in an account with Community Savings Ltd as at the time specified in the notice;

“relevant holding” means the total of the amounts that each natural person had in an account with Community Savings Ltd as at the time specified in the notice.

#### **142ZS Encryption of information obtained under Article 142ZR**

- (1) Paragraph (2) applies to information (including any document or answer) obtained by the Authority under Article 142ZR that –
  - (a) has not already been obtained under Article 142K, or is not obtained for the purpose of paying depositors’ compensation or verifying a claim for depositors’ compensation; and
  - (b) consists of or includes personal data, within the meaning of the [Data Protection \(Jersey\) Law 2018](#), relating to a person as a depositor of a bank other than a bank in default.
- (2) The Authority must –
  - (a) as soon as is practicable after obtaining the information, encrypt it if it is not already encrypted; and

- (b) ensure that it is encrypted while it is held by or on behalf of the Authority except when it is in use for a purpose that requires it to be temporarily decrypted.
- (3) For the purposes of the [Data Protection \(Jersey\) Law 2018](#) and the [Data Protection Authority \(Jersey\) Law 2018](#), a contravention of paragraph (2) is to be treated as also being a contravention of Articles 8(1) and 21(1) of the [Data Protection \(Jersey\) Law 2018](#).
- (4) Paragraphs (2) and (3) are in addition to, and are not to be read as derogating from, any duty imposed on the Authority by or under the [Data Protection \(Jersey\) Law 2018](#) (and in particular by Article 8(1)(f), or Article 21(1) as read with Article 21(2)(a), of that Law) or by any other law.

### **36 Article 155 (disclosure for facilitating discharge of functions of the Authority and specified persons) amended**

In Article 155, after paragraph (1) there is inserted –

- (1A) Article 154 does not preclude the disclosure of information by the Authority to –
  - (a) the responsible person for a bank in default, if the information concerns the bank; or
  - (b) any person for the purpose of obtaining advice on the performance by the Authority of its functions.

### **37 Article 157 (other permitted disclosures) amended**

In Article 157(4), for “a compensation scheme in relation to one or more deposit-taking businesses (whether in Jersey or in a country or territory outside Jersey)” there is substituted “an overseas depositors’ compensation scheme”.

### **38 Article 165 (service of notices) amended**

In Article 165(2), for “these Regulations” there is substituted “this Law”.

### **39 Article 166 (false or misleading information) amended**

In Article 166, after paragraph (2) there is inserted –

- (3) A person commits an offence if, after applying to the Authority for depositors’ compensation, the person knowingly fails to inform the Authority of a subsequent event that reduces the amount of depositors’ compensation that may be claimed.
- (4) A person who commits an offence under paragraph (3) is liable to imprisonment for a term of 2 years and to a fine.

### **40 Article 167 (criminal liability of partners, directors and other officers) amended**

(1) After Article 167(1) there is inserted –

- (1A) Where an offence mentioned in paragraph (1) is an offence that may be committed by neglect, and the commission of the offence is proved to be



attributable to neglect on the part of a person mentioned in paragraph (1)(a) or (b), that person also commits the offence and is liable in the same manner as the partnership or body corporate to the penalty provided for that offence.

- (2) In Article 167(2), for “paragraph (1) applies” there is substituted “paragraphs (1) and (1A) apply”.

#### **41 Article 168 (appeal) amended**

- (1) For the heading to Article 168, there is substituted “Appeals relating to recovery and resolution”.
- (2) Before Article 168(1) there is inserted –
- (A1) This Article applies to decisions relating to recovery and resolution.

#### **42 Article 168A (appeals relating to default) inserted**

After Article 168, there is inserted –

##### **168A Appeals relating to default**

- (1) A person who is dissatisfied with a decision of the Authority mentioned in paragraph (2) may appeal to the Court against the decision on the ground that, on the facts available to the Authority, the decision was unreasonable.
- (2) The decisions of the Authority are –
- (a) a decision that the person is not entitled to depositors’ compensation;
  - (b) a decision under Article 142I(4), 142S(1), 142ZJ(4), 142ZK(5), 142ZL(5)(b) or 142ZO(6) to postpone or refuse payment of depositors’ compensation;
  - (c) a decision as to the amount of depositors’ compensation the person is entitled to; or
  - (d) a decision not to exercise its power under Article 142R(3)(b) to accept the person’s late application for depositors’ compensation.
- (3) A bank that is dissatisfied with a decision of the Authority requiring the bank to pay a depositors’ compensation levy may appeal to the Court against the decision on the grounds that –
- (a) the bank is not liable to pay the levy;
  - (b) the Authority has miscalculated the amount of levy, or the amount of an instalment of the levy, that the bank is required to pay; or
  - (c) the Authority has miscalculated the date on which the levy, or an instalment of the levy, becomes payable.
- (4) Unless the Court otherwise directs, an appeal by a bank under paragraph (3) does not suspend the operation of a notice sent to the bank under Article 142ZC.
- (5) On an appeal under this Article, the Court may make any order it considers appropriate.
- (6) A reference in this Article to a miscalculation includes a decision to treat costs as recurring administrative costs for the purpose of Article 16(1)(a) or as



default-related administrative costs, if that decision is unreasonable having regard to all the circumstances.

- (7) A person who is dissatisfied with a decision that is made on behalf of the Authority may not appeal to the Court under this Article until –
  - (a) the person has requested, in writing, the Authority to review the decision; and
  - (b) the Authority has reviewed the decision, or 6 weeks have elapsed since the request was made, whichever is the sooner.
- (8) Nothing in this Article is to be read as limiting the Authority's power to reconsider its own decisions.
- (9) A person may not make an appeal under this Article later than 1 year after the date on which the person became aware of the decision appealed against (whether or not paragraph (7) applies).

#### **43 Article 172 (Regulations) amended**

- (1) In Article 172(b), for “Part 5 or 6” there is substituted “Part 5, 6 or 7A”.
- (2) In Article 172(d), after “supplementary” there is inserted “, savings”.

#### **44 Article 178 (citation and commencement) amended**

In Article 178, for “and Resolution” there is substituted “, Resolution and Depositors' Compensation”.

#### **45 Schedule 1 (appointment of members and procedures at meetings of the Authority) amended**

In paragraph 1 (terms of appointment of members), for sub-paragraphs (2) and (3) there is substituted –

- (2) A member –
  - (a) must be appointed by instrument in writing for a period of not more than 5 years; and
  - (b) is eligible for re-appointment at the end of that period.
- (3) The States may extend the period of appointment or re-appoint the member only if the total period of appointment is not more than 9 years.

#### **46 Schedule 2, Part 2 (contents of a resolution plan) amended**

In Schedule 2, Part 2, paragraph (1)(i)(i), for “Fund” there is substituted “Resolution Fund”.

## PART 2

### OTHER ENACTMENTS AMENDED

#### 47 [Income Tax \(Jersey\) Law 1961](#) amended

- (1) This Article amends the [Income Tax \(Jersey\) Law 1961](#).
- (2) In Article 3(1) (general provisions as to interpretation) –
  - (a) after the definitions “connected” and “unconnected” there is inserted –

“depositors’ compensation levy” means a levy paid by a bank to the Jersey Resolution and Depositors Compensation Authority in respect of a bank declared to be in default under Part 7A of the Bank (Recovery, Resolution and Depositors’ Compensation) (Jersey) Law 2017;
  - (b) after the definition “international activities” there is inserted –

“Jersey Resolution and Depositors Compensation Authority” means the Authority mentioned in Article 4 of the Bank (Recovery, Resolution and Depositors’ Compensation) (Jersey) Law 2017;
- (3) For Article 62C there is substituted –

#### **62C Application of Schedule D to the repayment of depositors’ compensation levy**

Tax must be charged under Schedule D in respect of the repayment or partial repayment to a bank of depositors’ compensation levy as if the repayment or partial repayment were a trading receipt of the bank in the year in which the repayment or partial repayment is made.

- (4) For Article 70B there is substituted –

#### **70B Deduction on account of depositors’ compensation levy**

Despite Article 70, in computing the profits or gains to be charged in respect of a trade or profession under Schedule D, a bank may deduct as expenses in any year an amount equal to any depositors’ compensation levy paid by the bank to the Jersey Resolution and Depositors Compensation Authority in that year.

- (5) For Article 115(p) and (q) (miscellaneous exemptions) there is substituted –
  - (p) income derived by the Jersey Resolution and Depositors Compensation Authority in the exercise of its functions relating to the Bank Depositors Compensation Scheme established by Part 3 of the [Banking Business \(Depositors Compensation\) \(Jersey\) Regulations 2009](#) and continued under Part 7A of the Bank (Recovery, Resolution and Depositors Compensation) (Jersey) Law 2017;
  - (q) depositors’ compensation paid to an eligible depositor under Part 7A of the Bank (Recovery, Resolution and Depositors’ Compensation) (Jersey) Law 2017;

#### 48 Article 37 of the [Banking Business \(Jersey\) Law 1991](#) deleted

Article 37 (compensation schemes) of the [Banking Business \(Jersey\) Law 1991](#) is deleted.

**49 [Banking Business \(General Provisions\) \(Jersey\) Order 2002](#) amended**

In the [Banking Business \(General Provisions\) \(Jersey\) Order 2002](#), Schedule 2, paragraph 4(1)(a), after “Law” there is inserted “and continued under Part 7A of the Bank (Recovery, Resolution and Depositors Compensation) (Jersey) Law 2017”.

**50 [Bankruptcy \(Netting, Contractual Subordination and Non-Petition Provisions\) \(Jersey\) Law 2005](#) amended**

In the [Bankruptcy \(Netting, Contractual Subordination and Non-Petition Provisions\) \(Jersey\) Law 2005](#), after Article 6 (Law to prevail in respect of bodies corporate established outside Jersey) there is inserted –

**6A Bank Depositors Compensation Scheme**

- (1) The application of this Law in respect of bank deposits to which the Bank Depositors Compensation Scheme relates is subject to any provision of or under the Bank (Recovery, Resolution and Depositors’ Compensation) (Jersey) Law 2017.
- (2) In this Article, “Bank Depositors Compensation Scheme” means the scheme for payment of depositors’ compensation established by Part 3 of the [Banking Business \(Depositors Compensation\) \(Jersey\) Regulations 2009](#) and continued under Part 7A of the Bank (Recovery, Resolution and Depositors’ Compensation) (Jersey) Law 2017.

**51 [Data Protection \(Jersey\) Law 2018](#) amended**

- (1) This Article amends the [Data Protection \(Jersey\) Law 2018](#).
- (2) For Article 48(5)(b) there is substituted –
  - (b) any function conferred on the Jersey Resolution and Depositors Compensation Authority under Article 7 of the Bank (Recovery, Resolution and Depositors’ Compensation) (Jersey) Law 2017;
- (3) In Schedule 3 (exceptions to adequacy requirements), after paragraph 5 there is inserted –

**5A Transfer by or on behalf of the Jersey Resolution and Depositors Compensation Authority**

- (1) The transfer is necessary for reasons of substantial public interest, which will be the case if –
  - (a) the transfer is a disclosure that is permitted or required under an enactment in force in Jersey;
  - (b) the transfer is made by or on behalf of the Jersey Resolution and Depositors Compensation Authority (“the Authority”); and
  - (c) the Authority has taken reasonable steps to ensure that the transferee will not transfer the personal data to another person except –
    - (i) with the consent of the Authority; or

- (ii) to comply with an order of a court (whether or not a Jersey court) that directs the transferee to transfer the personal data to the other person.
- (2) In this paragraph, “Jersey Resolution and Depositors Compensation Authority” means the Authority mentioned in Article 4 of the Bank (Recovery, Resolution and Depositors’ Compensation) (Jersey) Law 2017.

## 52 **Public Finances (Jersey) Law 2019 amended**

For Article 59(4) (expenditures carried forward) of the [Public Finances \(Jersey\) Law 2019](#) there is substituted –

- (4) The authority to transfer up to £100 million from the Strategic Reserve Fund to the Jersey Resolution and Depositors Compensation Authority (the successor to the Jersey Bank Depositors Compensation Board) for the administration of the Bank Depositors Compensation Scheme or to meet any temporary cash flow funding requirements of that Scheme, as set out in P.84/2009 (lodged on 2 June 2009 and adopted by the States on 6 November 2009), is continued.
- (4A) In this Article –
  - “Jersey Bank Depositors Compensation Board” means the Board established by the [Banking Business \(Depositors Compensation\) \(Jersey\) Regulations 2009](#) for the purpose of administering the Bank Depositors Compensation Scheme;
  - “Jersey Resolution and Depositors Compensation Authority” means the Authority mentioned in Article 4 of the Bank (Recovery, Resolution and Depositors’ Compensation) (Jersey) Law 2017;
  - “Bank Depositors Compensation Scheme” means the scheme for payment of depositors’ compensation established by Part 3 of the [Banking Business \(Depositors Compensation\) \(Jersey\) Regulations 2009](#) and continued under Part 7A of the Bank (Recovery, Resolution and Depositors’ Compensation) (Jersey) Law 2017.

## 53 **Revenue Administration (Information Sharing) (Jersey) Order 2024 amended**

In Schedule 1 to the [Revenue Administration \(Information Sharing\) \(Jersey\) Order 2024](#), for the entry relating to the Jersey Resolution Authority there is substituted –

Jersey Resolution and Depositors Compensation Authority	Enabling or assisting the Jersey Resolution and Depositors Compensation Authority to exercise functions under the Bank (Recovery, Resolution and Depositors’ Compensation) (Jersey) Law 2017
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## 54 **Banking Business (Depositors Compensation) (Jersey) Regulations 2009 amended**

- (1) The [Banking Business \(Depositors Compensation\) \(Jersey\) Regulations 2009](#) are amended as follows.

- (2) For Regulation 8A there is substituted –

### **8AA Continuation of the Board**

The Board continues in existence until the date on which Regulation 14 ceases to be in force, for the purpose of enabling the Board to fulfil its functions under Regulations 8A and 14.

### **8A Continuing functions of the Board**

- (1) For the period that the Board continues in existence, the function of the Board is to exercise its functions under Regulation 14 in relation to the final reporting period.
- (2) In the exercise of those functions, the Board must ensure that –
  - (a) the Board is administered in a prudent and economical manner; and
  - (b) the resources of the Board are used efficiently and effectively.
- (3) The Board may do anything reasonably necessary or expedient for or incidental to those functions, and may in particular, in the exercise of those functions, appoint an employee, agent or contractor to assist it in exercising those functions.
- (3) In Regulation 14 (accounts and report) –
  - (a) in paragraph (1), for “a financial year” there is substituted “the final reporting period”;
  - (b) in paragraphs (2)(a) and (b), (3) and (5)(a), for “financial year” there is substituted “final reporting period”;
  - (c) after paragraph (10) there is inserted –
  - (11) In this Regulation, “final reporting period” means the period beginning on 1 January 2025 and ending on a date specified by Order of the Minister for External Relations under Article 51 of the [Banking Business \(Jersey\) Law 1991](#).
- (4) Regulations 2 to 7 and 15 to 36 are deleted.
- (5) Regulations 1 and 8 to 14 are deleted.

## **PART 3**

### **FINAL PROVISIONS**

#### **55 Citation and commencement**

This Law may be cited as the Bank (Recovery and Resolution) (Jersey) Amendment Law 202- and comes into force on a day specified by Order of the Minister for External Relations.