

STATES OF JERSEY



Jersey

DRAFT BANK (RECOVERY AND RESOLUTION – COMMENCEMENT OF LAW) (JERSEY) ACT 202-

**Lodged au Greffe on 6th December 2021
by the Minister for External Relations and Financial Services
Earliest date for debate: 18th January 2022**

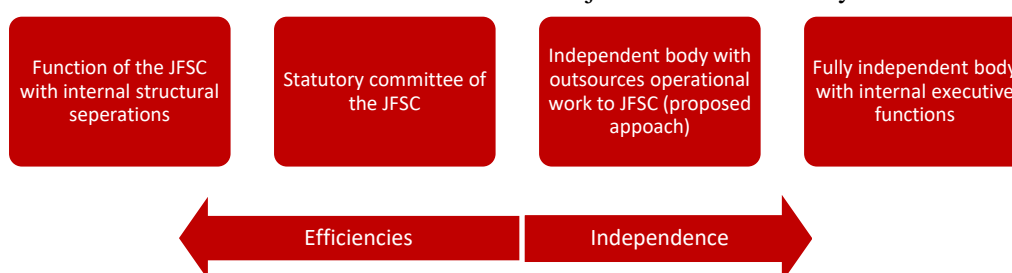
STATES GREFFE

REPORT

The [Bank \(Recovery and Resolution\) \(Jersey\) Law 2017](#) was adopted by the States on 14th February 2017. It was sanctioned by Order of Her Majesty in Council on 3rd May 2017, and Registered in the Royal Court on 12th May 2017.

The reason for the implementation of the new Law is set out in detail in the report attached to [P.134/2016](#). In summary it implements a framework to plan for, and mitigate the impact of, the risks to the public associated with a bank failing. The design of the legislation is shaped by international standards developed since the 2008 financial crisis. It particularly replicates the UK and EU approach to implementation.

In the years since the Law was adopted a number of different approaches to implementing the Law have been explored. There are many potential structures, the most evident of which are outlined below. Broadly speaking these sit between operational independence and cost effectiveness. The former is a key principle for an effective resolution authority, operating independently from supervisory decisions and not accountable for any real or perceived supervisory actions that may occur in advance of a bank failure. The latter is essential in a small jurisdiction like Jersey.



It is proposed to establish an independent Jersey Resolution Authority (“the Authority”) whose core operational functions, including the employment of staff, takes place within the Jersey Financial Services Commission (“the JFSC”). The States have been given notice of the Minister for External Relations and Financial Services’ intention to appoint Mike Mitchell the Chair of Authority in [R.116/2021](#). Subsequently the States have been given notice of the Minister’s intention to appoint Katherine Hitchins, Monique O’Keefe, and Jill Britton to be Members of the Authority in [R.173/2021](#).

The proposed approach achieves the following:

- **Independence:** Ensures that the Authority has fully independent decision-making capabilities. Particularly in a small jurisdiction the risk of conflicts of interest, real or perceived, can be material. Having the Authority as a legally separate body ensures that if a resolution scenario emerges it can act independently without its judgement being blurred, or being seen to be blurred, by the actions of any other body.
- **Cost effectiveness:** The proposal will incur more cost than simply appointing the JFSC as the Authority due to Board costs and the core costs of operating a legal entity. However, establishing an accountable Authority under the Law whilst outsourcing the majority of its operational functions to the JFSC ensures that duplication of cost is minimalised. It is materially more cost effective than establishing a fully stand-alone Authority.
- **Operational maturity:** Having the operational work of the Authority carried out by the JFSC benefits from the JFSC’s operational maturity. The JFSC has

existing management processes, human resources, IT, premises and a collective body of expertise. It has credibility locally and internationally, with public authorities, the public, and industry.

- **Technical expertise:** The JFSC already houses considerable expertise at both an institutional and individual level. The proposal maintains the benefit of skills and expertise sitting within the same organisation on a day to day working basis. The occasional movement and secondment of staff between the supervisory and resolution parts of the JFSC could further enhance knowledge building.
- **Information sharing:** Article 156(1)(a) allows the Authority to share information with the JFSC, and Article 44(1) of the [Banking Business \(Jersey\) Law 1991](#) allows the JFSC to share information with the Authority. Given the sensitive nature of data collected by the bodies there are a number of protections in place, and information can only be shared to assist each body in the advancement of their statutory functions.

Physical and operational proximity created by bringing work of the resolution authority within the JFSC should facilitate information sharing between the functions. This will in turn assist with effective resolution planning, and is likely to be vital to success in a pressurised resolution scenario.

The proposed approach achieves as many cost efficiencies as are realistically achievable whilst ensuring that the independence of the decision making is beyond dispute.

If approved, the Commencement of Law Act would bring the Law and Authority in to force on 31st January 2022.

Financial and manpower implications

Up to £55,400 has been allocated to fund the initial set-up of the Authority, which largely funds remuneration for Designate Members of the Authority. The introduction of the Law would end the need for this funding, as from 31st January 2022 the Authority would be funded by levies on banks with a licence to provide banking services in Jersey. As such, there are no immediate financial or manpower implications arising from the introduction of this Law.

It should be noted that the introduction of the Law provides a framework within which bank failure operates. Whilst the core purpose of the law is to protect Islanders and taxpayers from the risks of bank failure, public money has been used in some jurisdictions to support banks. This is discussed in [P.134/2016](#).

EXPLANATORY NOTE

This Act, if passed, will bring the Bank (Recovery and Resolution) (Jersey) Law 2017 into force at the start of 31st January 2022.



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Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES make this Act under Article 178 of the [Bank \(Recovery and Resolution\) \(Jersey\) Law 2017](#) –

1 Commencement of Law

The [Bank \(Recovery and Resolution\) \(Jersey\) Law 2017](#) comes into force on 31st January 2022.

2 Citation

This Act may be cited as the Bank (Recovery and Resolution – Commencement of Law) (Jersey) Act 202-.