Briefing for Scrutiny Panel

Dormant Bank Accounts (Jersey) Law 201-

Introduction and Recommendation

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

2. The Dormant Accounts Law aims to avoid disadvantaging the customer because the rights of the customer are preserved. The customer can still make a claim for repayment from the Jersey Reclaim Fund (via his or her bank) at any time. Customers do not have to find out information about the Jersey Reclaim Fund. Instead they can simply contact their bank and their bank will repay them their funds. The bank will in turn be entitled to claim the monies paid out to the customer from the Jersey Reclaim Fund to ensure that the bank is not out of pocket.

3. It has been requested that the draft Law is debated on 26 April 2016 in order to try to realise monies this year and to utilise them for good causes.

4. Dormant account schemes already exist in a number of jurisdictions, including the UK, Ireland and the Cayman Islands. The introduction of a dormant accounts scheme is also understand to be underway in the Isle of Man.

5. The law was developed in consultation with the public and with considerable input from the UK Reclaim Fund who administer the UK scheme.

Summary of key aspects of the Dormant Accounts Law

The Objectives of the Jersey Reclaim Fund

6. The Dormant Accounts Law establishes the Jersey Reclaim Fund as a special fund within the meaning of Article 3 of the Public Finances (Jersey) Law 2005. The responsibilities, duties and functions to run the dormant accounts scheme are given to the Chief Minister under Article 10. The responsibilities and duties focus on three areas. Firstly, to ensure that the Jersey Reclaim Fund makes payments to customers to meet reclaims; secondly to manage the Jersey Reclaim Fund appropriately so that it can pay claims to customers; and finally to distribute monies to charitable purposes as set out in Part 3 of the Dormant Accounts Law.

Definitions

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

as companies, partnerships and trusts) regardless of the residence of the customer.

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

Test for Dormancy

9. Article 5 states the test concerning whether an account is dormant. It provides that an account will be dormant if no transactions have been carried out by or on the instructions of the customer in relation to the account by or on the instructions of a holder of the account for 15 years. This test follows that set out in the United Kingdom scheme.

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

Transfer of balances and the Jersey Reclaim Fund

11. Article 7 provides for the mechanism for the transfer of the dormant balances to the Jersey Reclaim Fund. The Jersey Reclaim Fund will be a separate fund held and managed (but not distributed) initially by Treasury, to minimise costs. However there is the possibility that a third party will be permitted to run the fund in the future.

12. It is proposed that banks will transfer dormant balances to the Jersey Reclaim Fund annually, in December of each year. Prior to the transfer there is a process that needs to be undertaken. Article 1 defines the start of each relevant year as 1 July. After that time, Article 7(1) requires banks to notify the Minister within 3 months of this date each year of the number and balances of dormant deposit accounts.

13. The Dormant Accounts Law requires each bank to contact customers unless there is a risk of fraud. While not a perfect solution, it is considered good practice for the bank to contact the customer one last time at the last known address in order to notify them that the account is going to be transferred to the Jersey Reclaim Fund. This is a *de minimis* process which is set out in Article 7(1).

Non-sterling accounts

14. The Dormant Accounts Law includes accounts that are held in currencies other than pound sterling to maximise the monies that can be used for charitable purposes subject to a mechanism for managing the consequent currency risks. The Dormant Accounts Law states

that the Minister should accept only pound sterling balances. Accordingly, Article 8(2) states that if a dormant account consists of money in a currency other than sterling the banks should convert the balance into pound sterling before the transfer at the market mid-rate on the day of the conversion. It is considered appropriate to protect the Jersey Reclaim Fund against the risk of currency fluctuations rather than the customer. Article 9(6) implements the aim of protecting the Jersey Reclaim Fund by stating that the customer is only entitled to reclaim payment of the value in pounds sterling as at the date of conversion under Article 8(2). Article 9(4) also states that customers will not be entitled to interest in respect of a transfer of the balance or part of the balance of an account to the Jersey Reclaim Fund unless the Minister prescribes otherwise.

Compulsory Scheme

15. The Dormant Accounts Law makes the Jersey scheme compulsory, subject to appropriate transitional provisions, so all banks registered by the Jersey Financial Services Commission for the conduct of deposit-taking business will be required to participate. Accordingly, Article 7(7) contains the key provision that a bank must transfer such part of a dormant account that is an account under Art 2(1)(a) namely, an account held by a bank as part of its activity of accepting deposits.

Duties of Bank and agency relationship

16. The Jersey Reclaim Fund will be set up with a minimal cost base in order to maximise the monies paid to beneficiaries. The legislation is drafted to enable each bank to act as the agent of the Jersey Reclaim Fund in respect of matters such as customer relationship management, record-keeping, customer claims for repayment and any dispute or complaint from the customer (including any legal and regulatory compliance aspects).

Distribution of monies from the Jersey Reclaim Fund

17. Article 20 of the Dormant Accounts Law sets out the proposed uses of the Jersey Reclaim Fund. The provisions permit monies to be used to cover the costs of the Commissioner of Charities and other related expenses under the Charities (Jersey) Law 2014. Further, they permit monies from the Jersey Reclaim Fund to be distributed in equal shares for charitable purposes.

Timing and Transitional Provisions

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

transitional provisions enable the bank to wait a further 8 years (15 years minus the 7 years already recorded) until the accounts are classed as dormant.

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

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

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