Economic and International Affairs Scrutiny Panel
BY EMAIL

01 September 2025

Dear Chair,

Draft Bank (Recovery and Resolution) (Jersey) Amendment Law 202-

I am writing in response to your letter dated 22 August regarding your follow-up questions on the Draft Bank (Recovery and Resolution) (Jersey) Amendment Law 202- [P.42/2025] (the Draft Law).

In line with our plans to review Scheme particulars as discussed at the Scrutiny hearing on 14th August, I have instructed the Jersey Resolution Authority (JRA) to initiate a review in Q2 2026. While we recognise the importance of this review, the instruction also reflects the JRA's need to deliver other resolution work and onboard its new compensation scheme functions, given their greater relevance to Islanders.

Please find below responses to the specific queries raised.

Payment postponement
As previously outlined, there are several legitimate reasons for the postponement of payments. These powers are clearly set out in the Draft Law, particularly in proposed Article 142S. The JRA will develop processes for implementing postponements or refusals to pay compensation in accordance with the proposed legislation, subject to the adoption of the Draft Law by the States Assembly.
Regarding the possibility of an expedited process for postponement due to probate, the JRA will assess the necessity of such procedures, taking a holistic view of all risks associated with the scheme and its operation as it develops a broader suite of internal procedure.
Provisions for appealing against postponement decisions are included in Article 41 of the Draft Law, which introduces a new Article 168A. Appeals may be made to the court on the grounds that the JRA's decision was unreasonable based on the facts available to the JRA.

Vesting of rights and insolvency
A key mechanism of the compensation scheme is the vesting of rights within the JRA. Under the current scheme, once an application is received from a depositor, their rights to the full eligible deposit vest in the Jersey Bank Depositors Compensation Board (the DCS Board).
Under the Draft Law, upon activation of the Scheme, rights to the compensatable portion of the deposit will automatically vest in the JRA. This vesting is essential to ensure the orderly management, protection, and redistribution of depositor claims in line with the priorities established in Draft Law.
As previously communicated, a notable change in the Draft Law is that rights exceeding the compensatable amount (excess rights) do not automatically vest in the JRA. Vesting of such excess rights is expected to be rare and will only occur when the JRA determines that doing so would help maximise recoveries from the liquidation of the failed bank, thereby enhancing depositor compensation.

In relation to ongoing bank insolvency procedures, the JRA will engage on behalf of the rights vested in it. The Scheme's focus remains on recovering sufficient funds from the liquidator to pay compensation. For excess rights not vested in the Scheme, depositors will retain responsibility for pursuing their claims independently.

Eligible liabilities

The Draft Law introduces a power for the Minister to guide setting the minimum requirement for own funds and eligible liabilities (MREL) for Jersey banks. Specifically, new Article 26(1A) grants the Minister authority to prescribe criteria for eligible liabilities, which the JRA will use when determining MREL for individual banks.

This amendment follows consultation work undertaken by the JRA with the banking industry, which highlighted the need for clearer eligibility criteria and calibration methods for MREL. As a critical regulatory tool, MREL ensures banks maintain sufficient loss-absorbing capacity to support effective resolution in times of financial distress.

The amendment was made at the JRA's request, and any orders issued under this new power will be subject to consultation with the Authority. The intention is to ensure that the definition and application of MREL evolve in line with international standards, reflecting changes made to the EU's Bank Recovery and Resolution Directive and the UK's Banking Act.

Consultation and communication

As outlined in the proposition report, formal responses to the consultation were limited due to the technical nature of the proposals. Nonetheless, adequate opportunities for engagement were provided. The Draft Law was developed in close consultation with the JRA and the DCS Board. Following the second consultation, further direct engagement was held with members of the banking industry and insolvency professionals.

To ensure the public is appropriately informed - particularly regarding the JRA's new role in administering the compensation scheme - a communications plan will be developed following adoption of the Draft Law by the States Assembly.

Yours sincerely,

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Minister for External Relations

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