

# STATES OF JERSEY



## **DRAFT BANKING BUSINESS (DEPOSITORS COMPENSATION) (JERSEY) REGULATIONS 200- (P.86/2009): THIRD AMENDMENT**

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Lodged au Greffe on 20th October 2009  
by the Economic Affairs Scrutiny Panel

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STATES GREFFE



**1 PAGE 11, REGULATION 1 –**

- (a) for the definition “administrative costs” substitute the following definition –
  - “ ‘administrative costs in respect of the bank in default’ means, in relation to the Board, its costs incurred in the administration of the scheme in relation to a bank in default;”
- (b) after the definition “administrator” insert the following definition –
  - “ ‘annual levy’ means the levy that a bank is required to pay under Regulation 25A;”
- (c) after the definition “administrator” insert the following definition –
  - “ ‘Appointments Commission’ means the Commission established under Article 17 of the Employment of States of Jersey Employees (Jersey) Law 2005;”
- (d) after the definition “function” insert the following definition –
  - “ ‘general administrative costs’ means, in relation to the Board –
    - (a) all costs incurred by the Board in the discharge of its functions under these Regulations, apart from its administrative costs in respect of a bank in default; and
    - (b) the remuneration and expenses of the Board;”
- (e) after the definition “relevant date” insert the following definitions –
  - “ ‘standing fund’ means the fund established under Regulation 15A(1);
  - ‘standing fund limit’ shall be construed in accordance with Regulation 25A(12);”.

**2 PAGE 14, REGULATION 7 –**

For Regulation 7 substitute the following Regulation –

**“7 Date of liability to pay levy**

A liability of a bank to pay a levy in respect of a bank in default arises on the relevant date in respect of the bank in default.”

**3 PAGE 15, REGULATION 8 –**

For paragraph (1) substitute the following paragraphs –

“(1) There is established a Board, called the Jersey Bank Depositors Compensation Board.

- (2) The functions of the Board are –
  - (a) to keep eligible depositors and persons who may become eligible depositors informed of the benefits and limitations of the scheme;
  - (b) to advise banks on how the scheme may be promoted;
  - (c) to keep under review international developments in bank depositor compensation and developments in banking business in Jersey;
  - (d) to make recommendations to the Minister in respect of the scheme; and
  - (e) to administer the scheme.”

**4 PAGE 15, REGULATION 10 –**

- (a) for paragraphs (1) to (3) substitute the following paragraphs –
  - “(1) The Board must have at least 3 members.
  - (2) The members of the Board shall be appointed by the States on the recommendation of the Minister made after consulting with the Appointments Commission.”;
- (b) in paragraph (4) for the words “The Minister may not appoint as a member of the Board a person who is” substitute the words “A person shall not be eligible for appointment as a member of the Board if the person is”;
- (c) for paragraphs (7) and (8) substitute the following paragraph –
  - “(7) The Minister shall discharge the functions of the Board until such time as the first members of the Board are appointed.”

**5 PAGE 16, REGULATION 11 –**

- (a) in paragraph (1)(a) for the words “agreed between the person and the Minister” substitute the words “approved by the States”;
- (b) in paragraph (2) for the words “the Minister” substitute the words “the States”.

**6 PAGE 16, REGULATION 12 –**

- After paragraph (3) insert the following paragraph –
- “(4) The Minister must present to the States a copy of any determination made under paragraph (3).”

**7 PAGE 17, NEW REGULATION –**

After Regulation 12 insert the following Regulation –

**“12A Annual contribution to general administrative costs**

- (1) The Board shall, for each calendar year, calculate a contribution to be paid by each bank liable to pay a contribution to the Board’s general administrative costs for that year.
- (2) The Board shall, for this purpose, estimate its general administrative costs for the year.
- (3) A bank is liable to pay a contribution to the Board’s general administrative costs if, on 1st January of the year for which the contribution is to be paid, the bank holds eligible deposits.
- (4) The Board may by notice require each bank liable to pay a contribution to the Board’s general administrative costs to provide it, within 15 working days of receipt of the notice, with such information as it may reasonably require to determine the amount of that bank’s contribution.
- (5) The Board shall notify a bank of the amount of the contribution it is liable to pay and specify in the notice a date when the contribution becomes payable.
- (6) A bank to which a notice has been sent under paragraph (5) must pay the contribution within 15 working days of the date specified in the notice as the date when the amount of the contribution becomes payable.
- (7) A contribution that has become payable is a debt due to the Board and therefore can be sued for accordingly.”

**8 PAGE 18, REGULATION 15 –**

Delete paragraph (1).

**9 PAGE 19, NEW REGULATION –**

At the beginning of Part 3 insert the following Regulation –

**“15A Board must establish standing fund**

- (1) The Board must establish and maintain a standing fund.
- (2) The Board must pay into the standing fund annual levies received by the Board under Regulation 25A.
- (3) The Board may, in accordance with these Regulations, pay out of the standing fund –
  - (a) amounts into a fund established, under Regulation 18, in respect of a bank in default;
  - (b) its general administrative costs.
- (4) The Board may invest money standing to the credit of the standing fund.”

**10 PAGE 20, REGULATION 18 –**

- (a) at the end of the heading add the words “in respect of a bank in default”;
- (b) in paragraph (3)(b) after the words “its administrative costs” insert the words “in respect of the bank in default”.

**11 PAGE 23, SUBSTITUTE CROSS HEADING AND INSERT NEW REGULATIONS –**

Substitute the cross heading following Regulation 25 and insert new Regulations as follows –

*“Levies on banks*

**25A Annual levies**

- (1) Subject to paragraphs (4) and (5), the Board shall, for each calendar year, calculate an annual levy to be paid by each bank liable to pay an annual levy.
- (2) A bank is liable to pay an annual levy if, on 1st January of the year for which the levy is to be paid, the bank holds eligible deposits.
- (3) The Board may by notice require each bank liable to pay an annual levy to provide it, within 15 working days of receipt of the notice, with such information as it may reasonably require to determine –
  - (a) the total annual levies to be payable in respect of a year; and
  - (b) the amount of that bank’s annual levy.
- (4) The total annual levies payable by the banks liable to pay an annual levy in respect of a year shall not be such that, if they are paid in full, the balance on the standing fund would exceed the standing fund limit.
- (5) Accordingly, if the balance on the standing fund on 1st January in a year equals or is more than the standing fund limit, the Board shall not collect an annual levy.
- (6) The Board may, in its discretion, decide not to collect an annual levy.
- (7) The Board, in deciding the manner in which the liability of a bank liable to pay an annual levy is to be calculated, shall have regard to the prevailing economic conditions in the banking business sector generally and the financial status of the bank in question.
- (8) The Board shall publish the reasons for its decision under paragraph (7) and the manner in which the liability of each bank liable to pay an annual levy is to be calculated.
- (9) The Board shall notify a bank of the amount of the annual levy it is liable to pay and specify in the notice a date when the levy becomes payable.

- (10) A bank to which a notice has been sent under paragraph (9) must pay the annual levy within 15 working days of the date specified in the notice as the date when the amount of the levy becomes payable.
- (11) An annual levy that has become payable is a debt due to the Board and therefore can be sued for accordingly.
- (12) The standing fund limit is £20 million.
- (13) The Board may make recommendations to the Minister regarding the standing fund limit.
- (14) The Minister shall present to the States any recommendations under paragraph (13).

**25B Payment from standing fund into fund in respect of bank in default**

- (1) This Regulation applies if a bank becomes bankrupt and the Board has published under Regulation 16 a notice specifying the relevant date in respect of the bank.
- (2) The Board must estimate the amount that is necessary to meet –
  - (a) the payment by it of compensation in respect of the bank in default; and
  - (b) its administrative costs in respect of the bank in default.
- (3) The Board must estimate the amount required to pay its general administrative costs for the 12 months following the relevant date.
- (4) For the purposes of this Regulation the net amount of the standing fund is the amount held in that fund on the relevant date net of the amount estimated under paragraph (3).
- (5) The Board must pay from the standing fund into the fund established in respect of a bank in default the amount estimated under paragraph (1) or, if the net amount of the standing fund is less than that amount, the net amount of the standing fund.
- (6) No payment is to be made under paragraph (5) where the amount held in the standing fund is equal to or less than the amount estimated under paragraph (3).”

**12 PAGE 23, REGULATION 26 –**

In paragraph (1) delete the word “and” at the end of sub-paragraph (a) and add the word “and” and the following sub-paragraph after sub-paragraph (b) –

- “(c) the amount (if any) paid into the fund established in respect of the bank is, in accordance with Regulation 25B(5), less than the amount estimated under Regulation 25B(2).”

**13 PAGE 24, REGULATION 27 –**

- (a) after the words “such amount as the Board estimates will be necessary” insert the words “, in addition to the amount (if any) paid into the fund established in respect of the bank in default from the standing fund.”;
- (b) at the end of paragraph (b) add the words “in respect of the bank in default”.

**14 PAGE 24, REGULATION 29 –**

For Regulation 29 substitute the following Regulation –

**“29 Limitation on amount the Board may expend in respect of bank in default**

The maximum amount that the Board may expend, in respect of a bank in default, by way of compensation and to meet the Board’s administrative costs in respect of the bank in default, is £65 million.”

**15 PAGE 24, REGULATION 30 –**

- (a) in paragraph (2) for the words “in respect of one or more banks in default in respect of a period of 5 years is” substitute the words “in respect of a bank in default is”;
- (b) delete paragraphs (4) and (5);
- (c) at the end add the following paragraph –
  - “(–) In this Regulation ‘levy’ includes –
    - (a) in paragraph (1), so much of the annual levies (if any) that the bank required to pay a levy has paid and which, in accordance with Regulation 25B(5), have been paid from the standing fund into the fund in respect of the bank in default;
    - (b) in paragraphs (2) and (3), any annual levy that a bank may be required to pay in respect of a calendar year, or part of a calendar year, falling within the period to which the paragraph refers.”

**16 PAGE 25, REGULATION 31 –**

- (a) in paragraph (1) after the words “This Regulation applies if, on a relevant date in respect of a bank in default,” insert the words “the aggregate of the amount (if any) paid into the fund in respect of that bank under Regulation 25B(5) and”;
- (b) for paragraph (3)(a) substitute the following sub-paragraph –
  - “(a) the aggregate of –
    - (i) the amount (if any) paid, under Regulation 25B(5), into the fund in respect of the bank in default, and



- (ii) the total amount that the banks liable to pay a levy are liable to pay by way of levy in respect of the bank in default; and”.

*Note: if the Panel’s proposals regarding the removal of the 5 year cycle were adopted, the Panel would oppose Regulation 31.*

**17 PAGE 26, REGULATION 32 –**

At the end of paragraph (1) add the words “in respect of a bank in default”.

**18 PAGE 26, REGULATION 33 –**

- (a) in paragraph (1) for the words “during or after a period of 5 years,” substitute the words “in respect of a bank in default,”;
- (b) in paragraph (1) after the words “administrative costs” insert the words “in respect of the bank in default”;
- (c) in paragraph (2) delete the words “secondly to repay any shortfall paid to the Board by the States under Regulation 31”;
- (d) in paragraph (2) before the words “and finally to pay” insert the words “then to repay to the standing fund any amount paid from it in respect of the bank in default in accordance with Regulation 25B(5) (or, if repayment of that amount would cause the standing fund to exceed the standing fund limit, so much of that amount as would increase the standing fund to equal the standing fund limit)”.

**19 PAGE 27, REGULATION 36 –**

- (a) after paragraph (1) insert the following paragraphs –
  - “(1A) A bank that is dissatisfied by a decision of the Board requiring the bank to pay an annual contribution to the Board’s general costs may appeal to the Royal Court against the decision on the grounds that –
    - (a) the bank is not liable to pay the annual contribution; or
    - (b) the Board has miscalculated the amount of the annual contribution.
  - (1B) Unless the Royal Court otherwise directs, an appeal by a bank under paragraph (1A) does not suspend the operation of a notice sent to the bank under Regulation 12A.”;
- (b) after paragraph (3) insert the following paragraphs –
  - “(3A) A bank that is dissatisfied by a decision of the Board requiring the bank to pay an annual levy may appeal to the Royal Court against the decision on the grounds that –
    - (a) the bank is not liable to pay the annual levy;
    - (b) the Board has miscalculated the amount of the annual levy;
  - or

(c) the Board has miscalculated the date on which the annual levy becomes payable.

(3B) Unless the Royal Court otherwise directs, an appeal by a bank under paragraph (3A) does not suspend the operation of a notice sent to the bank under Regulation 25A.”;

(c) delete paragraphs (4) and (5).

*In accordance with Standing Order 74(7) renumber the provisions of the Regulations and any internal cross references accordingly.*

ECONOMIC AFFAIRS SCRUTINY PANEL

## REPORT

The purpose of these amendments is to strengthen the protection of depositors in the Island by establishing an active, permanent depositor compensation board that will create and manage a standing depositor compensation fund of up to £20 million that will be used as the first line of funding in the event of a bank failure in Jersey.

The fund, which will be built up over a period of time, from the contributions that will be made to it by banks holding eligible deposits i.e. those deposits which would be protected under the scheme, would also be used to cover the general administrative expenses of the board.

In the event of a bank failure the board will create a separate fund for the bank in default and transfer funds from the standing fund into this new fund. This money shall be used to make compensation payments to eligible depositors.

If the amount of money paid into the fund for the failed bank is insufficient to cover the level of claims from depositors the board will levy all the surviving banks at a rate of 0.3% of the eligible deposits for additional funds which will be paid into the fund for the failed bank, to cover the additional administration costs that will be incurred as a result of the failure and to pay compensation to depositors.

Under these amendments the responsibility for paying compensation to the depositors of the failed bank(s) will rest solely with the banks themselves, rather than upon the banks and the Jersey taxpayer as is currently envisaged. The only role envisaged for State funds is for a loan of up to £100 million to the board from the consolidated fund to enable depositors to be paid out quickly. The board would then repay the loan to the States over time out of the levies paid to the board by the banks.

This hybrid funding scheme has been achieved by removing the £100 million cap on the scheme overall and by removing the 5 year limit on the number of years the banks would be expected to pay levies to the board. Although it retains a limit on the maximum amount of money that a bank can be expected to pay by way of levy in any one year to give them certainty as to how much money they will be required to pay into the scheme during that period.

The amendments also impose a new cap on the amount of compensation that can be paid out in the event of a bank failure from £100 million in a 5 year period irrespective of the number of bank failures to £65 million per bank no matter the time period.

The Panel believes that the amendments it is proposing will make the scheme more credible in the eyes of depositors than the one being proposed in the regulations and also meet the concerns being expressed by the public that their taxes will be used to bail out the banks in the event of a failure. It would also meet the public awareness concerns expressed by the International Monetary Fund in its recent report and likely to be expressed in Michael Foot's upcoming Review. Namely, that depositors should be fully aware of the coverage and limitations of such schemes.

### **Financial and manpower implications**

These Amendments remove the potential £35 million liability of the States of Jersey in the case of a bank failure. There are no additional manpower implications.