

STATES OF JERSEY



Jersey

DRAFT BANK (RECOVERY AND RESOLUTION – AMENDMENT OF LAW) (JERSEY) REGULATIONS 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

These draft Regulations should be considered in parallel with the Draft Bank (Recovery and Resolution – Commencement of Law) (Jersey) Act 202-, which has been lodged to bring the [Bank \(Recovery and Resolution\) \(Jersey\) Law 2017](#) into force. The background to the 2017 Law is set out in the report accompanying the Commencement of Law Act.

With the exception of Article 72, the Commencement of Law Act proposes to bring the 2017 Law into force in the form it was adopted by the States Assembly. Article 72 of the 2017 Law, however, contains a provision which, if enacted as drafted would, for the reasons set out below, immediately render Jersey banks (to at least some extent) in breach of the Law. This issue concerns contractual-recognition of bail-in.

Bail-in is a tool developed by policy makers to provide relief to a financial institution on the verge of failing. It requires that creditors of banks write down their debt, in turn reducing the risk that taxpayer support will be called on to support the bank. In a number of respects bail-in is the opposite of a taxpayer bail-out – the bank’s creditors are required to support the bank rather than a bail-out being requested from the taxpayer.

Article 72 of the Law requires banks to contractually recognise the possibility that instruments may be converted via bail-in in their contractual terms with investors. As the majority of Jersey banks are part of international banking groups headquartered in large jurisdictions with sophisticated resolution frameworks, they will to some extent be complying with the Article. However, this may not be in a way which specifically meets the Jersey Law. Accordingly, this is a matter that banks will need to work with alongside the Resolution Authority, once it is established.

As such, it is proposed to amend Article 72 so that it can be brought in to force at a later date than the date on which the Law comes in to force. This would be achieved by means of an Order specifying that commencement date. This Order, and the accompanying date, would be developed on the advice of the Authority, having worked with each bank in Jersey. Notice would be given to the Jersey Bankers’ Association, and to this Assembly in the usual manner.

Financial and manpower implications

There are no immediate financial or manpower implications arising from the adoption of these Regulations.

EXPLANATORY NOTE

These Regulations if passed will amend Article 72 of the Bank (Recovery and Resolution) (Jersey) Law 2017 (“the Law”). When the Law comes into force, that Article will require banks to include in their contractual documents a contractual term by which the other party recognises that certain liabilities may be subject to the write down or conversion power (the “bail-in”) in the Law.

As enacted, the Law sets the date from which the term must be included in any new contract (and from which any pre-existing contract must be amended, if possible, to include the term) as the date on which the Law comes into force.

The amendment alters that so that the requirement applies only from a date (after the Law comes into force) that is to be prescribed by the Chief Minister by Order.

These Regulations would come into force on the commencement of the Law.



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

THE STATES make these Regulations under Article 172 of the [Bank \(Recovery and Resolution\) \(Jersey\) Law 2017](#) –

1 Article 72 (contractual recognition of bail-in) of [Bank \(Recovery and Resolution\) \(Jersey\) Law 2017](#) amended

For Article 72(1)(d) of the [Bank \(Recovery and Resolution\) \(Jersey\) Law 2017](#) there is substituted –

- “(d) issued or entered into –
- (i) on or after the date, if any, prescribed by the Minister by Order for the purpose of this Article, or
 - (ii) before that date, if on or after that date the bank has the ability to amend the contract to include such a contractual term.”.

2 Citation and commencement

These Regulations may be cited as the Bank (Recovery and Resolution – Amendment of Law) (Jersey) Regulations 202- and come into force on the commencement of the [Bank \(Recovery and Resolution\) \(Jersey\) Law 2017](#).