

STATES OF JERSEY



DRAFT BANKRUPTCY (DÉSASTRE) (AMENDMENT No. 6) (JERSEY) LAW 201-

**Lodged au Greffe on 14th August 2012
by the Minister for Economic Development**

STATES GREFFE



DRAFT BANKRUPTCY (DÉSASTRE) (AMENDMENT No. 6) (JERSEY) LAW 201-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Deputy Chief Minister, for and on behalf of the Minister for Economic Development, has made the following statement –

In the view of the Deputy Chief Minister, the provisions of the Draft Bankruptcy (Désastre) (Amendment No. 6) (Jersey) Law 201- are compatible with the Convention Rights.

(Signed) **Senator B.I. Le Marquand**

REPORT

1. The Jersey Bank Depositors Compensation Scheme (“DCS”) was established by the Banking Business (Depositors Compensation) (Jersey) Regulations 2009 (“the DCS Regulations”) along with the Jersey Bank Depositors Compensation Board (“the Board”), which will administer the scheme.
2. In the unlikely event of a Jersey bank failure, the DCS would pay compensation to depositors to prevent hardship resulting from lack of access to funds. Compensation is limited to £50,000 per depositor per banking group and is subject to an overall cap of £100 million in any 5 year period.
3. The Bankruptcy (Désastre) (Amendment No. 6) (Jersey) Law 201- (“the draft Law”) will amend the Bankruptcy (Désastre) (Jersey) Law 1990 (“the Bankruptcy Law”) to change the order of priority for a bank insolvency, such that in the unlikely event of a Jersey bank failure, the DCS Board would be a priority creditor and would receive recoveries from the liquidator before any other unsecured creditor.
4. The DCS is designed to provide compensation to depositors as quickly as possible, so that they do not suffer hardship from being cut off from their funds.
5. Although a loan agreement is in place for the States of Jersey to provide up to £100 million liquidity funding to the DCS Board, it is considered desirable to increase the liquidity of the DCS further.
6. The policy behind the proposal to introduce priority was set out in the public consultation carried out by the Economic Development Department in May – July 2010. No objections were received in relation to the proposal.
7. Rather than giving priority to all depositors, the draft Law will give priority to depositors’ rights that have been vested in the Board. At the moment, this happens when depositors submit a claim form to the DCS Board, but following the introduction of a faster payment system which is currently being worked on, this will happen automatically without the need for a claim form to be submitted in certain circumstances.
8. The Board ‘stands in the shoes’ of the depositors who have vested their rights in the Board and is entitled to receive recoveries from the liquidator as a creditor of the failed bank.
9. Other jurisdictions have depositor priority, including Hong Kong, Malaysia, Australia, Russia and Argentina.
10. In the UK, until 2001 the Deposit Protection Board (which was akin to the DCS) was automatically entered as a creditor of the failed bank and had preferential rights to recoveries due to depositors.
11. That changed when the Financial Services Compensation Scheme (“FSCS”) replaced the Deposit Protection Board, but the UK government is now proposing to re-introduce depositor priority.
12. The draft Law will give the payment due to the DCS Board a higher level of priority than debts due to other preferred creditors, such as debts due –
 - (i) to the Health Insurance Fund under Article 25 of the Health Insurance (Jersey) Law 1967;

- (ii) to the Social Security Fund under Article 41 of the Social Security (Jersey) Law 1974;
 - (iii) under Article 45(3) of the Income Tax (Jersey) Law 1961;
 - (iv) under Article 47(8) of the Goods and Services Tax (Jersey) Law 2007; and
 - (v) as parochial rates due to a Jersey Parish.
13. All consultees who have responded have indicated their support for this proposal. It is considered that this is justified because these other debts may take the liquidator some time to identify and calculate. This would significantly delay the payment of recoveries to the DCS Board, and thus the payment of compensation to depositors, unless the Board had a high level of priority.
14. The amount of priority will be limited to £50,000 of each depositor's rights that are vested in the Board. The total amount that is entitled to priority will therefore be the same as the total amount of eligible deposits.
15. Because the amount of total eligible deposits in any one bank is relatively small compared to the total amount of deposits held by that bank, affording priority to the total amount of eligible deposits should not have a significant effect on the payment of other preferred creditors.
16. Other preferred creditors could still therefore expect to receive payment of all of the debt owing to them by the bank in due course. This will of course depend on the eventual rate of recovery in the liquidation, which is typically high for banks.
17. For example, the liquidators of Kaupthing Singer & Friedlander Limited currently estimate that total recoveries to non-preferential creditors will be 83 – 86% (see <http://www.kaupthingsingers.co.uk>). Thus, all secured and preferred creditors have been paid in full.
18. The Viscount's Department also support the proposed amendment.
19. The order of priority in a company winding-up procedure is the same as that which applies in désastre proceedings, so there is no need for a separate amendment to the winding-up provisions of the Companies (Jersey) Law 1991.

Financial and manpower implications

20. Giving priority to the payment due to the DCS Board over debts due to other preferred creditors, such as tax due to the Income Tax Department, may delay payment to the other preferred creditors. However, provided the eventual rate of recovery in the liquidation is sufficient, there should be no financial loss to the other preferred creditors. There are no manpower implications for the States of Jersey.

Human Rights compliance

21. The Law Officers' Department has reviewed the draft Law and has confirmed that the provisions are compliant with the European Convention on Human Rights.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). On 10th August 2012 the Deputy Chief Minister, for and on behalf of the Minister for Economic Development, made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Deputy Chief Minister, the provisions of the Draft Bankruptcy (Désastre) (Amendment No. 6) (Jersey) Law 201- are compatible with the Convention Rights.

Explanatory Note

This Law amends Article 32 of the Bankruptcy (Désastre) (Jersey) Law 1990 to vary the order of priority of classes of creditor in a *désastre*. Under Articles 166 and 186 of the Companies (Jersey) Law 1991, the amendments to the order of priority in a *désastre* also apply to the order of priority in a creditors' winding up under Chapter 4 of Part 21 of that Law.

Article 1 amends Article 32 of the Bankruptcy (Désastre) (Jersey) Law 1990 to give priority in a bank default to certain payments to the Jersey Bank Depositors Compensation Board under the Banking Business (Depositors Compensation) (Jersey) Regulations 2009. Those payments are payments to the Board where it gives compensation to a depositor in return for taking over the depositor's rights against the bank. However, this Article limits the priority to the total amount the Board is liable to pay in compensation, which may be less than the amount it can claim from the bank's administrator (any excess will fall to be treated as an ordinary unsecured debt). The priority given is that the payments come after the expenses of the Viscount but before all other payments (other than certain secured debts), including payments to uncompensated depositors, as well as payments for wages, taxes, rates, social security, health insurance and rent.

Article 2 names this Law and brings it into force 7 days after it is registered.



DRAFT BANKRUPTCY (DÉSASTRE) (AMENDMENT No. 6) (JERSEY) LAW 201-

A LAW to amend further the Bankruptcy (Désastre) (Jersey) Law 1990.

Adopted by the States

[date to be inserted]

Sanctioned by Order of Her Majesty in Council

[date to be inserted]

Registered by the Royal Court

[date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Amendment of Article 32 of the Bankruptcy (Désastre) (Jersey) Law 1990

After Article 32(1)(a) of the Bankruptcy (Désastre) (Jersey) Law 1990¹ there is inserted the following sub-paragraph –

“(aa) where under the Banking Business (Depositors Compensation) (Jersey) Regulations 2009² –

- (i) the debtor is a bank in default, and
- (ii) a right of an eligible depositor in respect of an eligible deposit held by the debtor is vested in the Jersey Bank Depositors Compensation Board,

in payment to that Board of the total amount due to the Board by virtue of all such vested rights in relation to that debtor, but not exceeding the total amount payable by the Board in respect of that debtor as compensation to depositors under those Regulations;”.

2 Citation and commencement

This Law may be cited as the Bankruptcy (Désastre) (Amendment No. 6) (Jersey) Law 201- and comes into force 7 days after it is registered.

¹

chapter 04.160

²

chapter 13.075.30