
STATES OF JERSEY



DORMANT BANK ACCOUNTS LAW: CONSULTATION PAPER

Presented to the States on 23rd July 2015
by the Chief Minister

STATES GREFFE

Dormant Bank Accounts

Summary:

A Law has been drafted that would enable dormant bank accounts to be used for good causes. The aim of this consultation is to invite comments on the draft Law before it is submitted to the States of Jersey for debate.

Date published:
21st July 2015

Closing date:
30th September 2015

Supporting documents attached:
Dormant Bank Accounts (Jersey) Law 201-

How we will use your information

The information you provide will be processed for the purpose of consultation. The Department of the Chief Minister will use your information in accordance with the Data Protection (Jersey) Law 2005 and the Freedom of Information Jersey) Law 2011. Please note that we may quote or publish responses to this consultation but we will not publish the names and addresses of individuals. If you do not want any of your response to be published, you should clearly mark it as confidential. Confidential responses will be included in any summary of statistical information received and views expressed.

Outline of consultation

The Assistant Chief Minister invites responses on the Draft Dormant Bank Accounts (Jersey) Law 201- (the "**Dormant Accounts Law**"). The aim of the Dormant Accounts Law is to transfer balances in "dormant" bank accounts (i.e. accounts where contact has been lost with the customer for 15 years) from banks to a central fund called the Jersey Reclaim Fund. The Jersey Reclaim Fund will be administrated by government and used to support a number of good and charitable causes in the local community.

The Dormant Accounts Law does not act to disadvantage the customer because they can still ask for their money back from the Jersey Reclaim Fund (via their bank) at any time. The bank will pay the customer their money and ask for the sum back from the Jersey Reclaim Fund.

Ways to respond

This consultation can be responded to electronically by the following link:

<http://www.surveygizmo.com/s3/2242588/Dormant-Bank-Accounts>

Write to: James Mews
Director, Finance Industry Development, Financial Services Unit
Chief Minister's Department
5th Floor, Cyril Le Marquand House
The Parade, St. Helier,
Jersey JE4 8UL

Telephone: +44 (0) 1534 440413

E-mail: j.mews@gov.je

Responses from the finance industry may be sent to Jersey Finance at the address below:

Write to: William Byrne
Head of Technical, Jersey Finance Limited
4th Floor, Sir Walter Raleigh House
48-50 Esplanade
St. Helier
Jersey JE2 3QB

Telephone: +44 (0) 1534 836021

E-mail: william.byrne@jerseyfinance.je

Responses sent to Jersey Finance will be shared with Government unless the respondent indicates that they wish to remain anonymous.

This consultation paper has been sent to the Public Consultation Register.

Feedback on this consultation

We value your feedback on how well we consult or seek evidence. If you have any comments on the process of this consultation (as opposed to the issues raised), please contact Communications.Unit@gov.je

Consultation on Draft Dormant Bank Accounts (Jersey) Law 201-

Introduction

1. The Assistant Chief Minister invites responses on the draft text of a Dormant Bank Accounts (Jersey) Law 201- (the "**Dormant Accounts Law**"). The aim of the Dormant Accounts Law is 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 "good causes" in the local community.
2. This scheme also has advantages for banks in Jersey as it allows them to remove liabilities from their balance sheets which cannot be utilised. However, the Dormant Accounts Law does not act to disadvantage 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 bank) at any time. Importantly, such persons do not have to find out information about the Jersey Reclaim Fund or to seek new contact details. Instead they can contact their bank and their bank will repay them their funds. The bank will in turn be entitled to ask for the monies paid out to the customer from the Jersey Reclaim Fund to ensure that the bank is not out of pocket.

History of the Dormant Accounts legislation

3. 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 underway in the Isle of Man.
4. In December 2008 a consultation exercise was commenced in respect of a proposed Dormant Accounts Law. The overall response to the consultation was positive but, due to other pressures, the proposal was put to one side for a time. It was also the case that the banking industry favoured moving in tandem with Guernsey and the Isle of Man. Meetings have been held with the other Crown Dependencies in order to see if a co-ordinated timetable could be achieved. However, because the other jurisdictions were at a different stage to Jersey in terms of developing such legislation, a decision was made to progress the legislation in Jersey.

5. The Government of Jersey will continue to work with the other islands to try to standardise any regime across all 3 jurisdictions. A final draft Law is now ready to be considered for adoption.

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 9 and Part 4. The responsibilities and duties focus on 3 areas. Firstly, to ensure that the Jersey Reclaim Fund makes payments to meet reclaims by customers; secondly to manage the Jersey Reclaim Fund appropriately so that it is able to pay claims to customers; and finally to distribute monies to good and charitable causes as set out in Part 4 of the Dormant Accounts Law.
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.

Precious metals and precious stones

8. There is a small extension to the principles regarding coverage. Article 2 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).
9. There is a precedent for the inclusion of precious metals and stones in the Cayman Islands' dormant accounts scheme (under their Dormant Accounts Law 2010). It is thought that it would be helpful, in order to maximise the benefits of the scheme, for the Jersey legislation to enable Jersey banks to have the option of closing dormant safe custody facilities in which precious metals or precious stones are held.

10. Under the Cayman Islands Law, the scheme extends to “the cash from, or proceeds of sale of precious metals and precious stones (excluding jewellery) from, safe deposit boxes upon which the lease or rental period has expired”. Jewellery is excluded because the sentimental value attached to it could be significant and would be difficult to replicate in the event of a reclaim.
11. Similarly, research has not revealed any dormant account scheme which extends more generally to custody accounts. This may be due to the risks involved. Precious metals or precious stones which have been sold can generally be replaced by another item of identical weight and quality. However, if the custody account contains shares and shares in a specific company are sold, there may be circumstances in which identical shares cannot be repurchased in the market. It is also possible that there may be more significant variations in the value of shares than precious metals or precious stones, and this raises questions as to the exposure of a scheme to claims for repayment of the value at the date of the reclaim. Accordingly, it is not proposed to include custody accounts in the scheme for the time being. However, there is the ability to extend the Scheme by Order, and it is possible for custody accounts to be prescribed at a later date.

Question 1: Should precious stones and precious metal custody accounts be included as accounts captured by the Dormant Accounts Law?

Question 2: Should any other types of accounts be captured by the Dormant Accounts Law at this initial stage?

Test for Dormancy

12. 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 for 15 years. This test follows the test set out in the UK scheme.
13. The proposal to adopt a 5 year dormancy period is consistent with the UK legislation. The research carried out in the UK indicates that a very small percentage of people reclaim monies from a scheme once 15 years has passed. A shorter period would lead to an increased possibility of claims for repayment. Accordingly, allowing banks to apply a different (shorter) period would be likely to cause inefficiencies for the Jersey Reclaim Fund by leading to increased numbers of reclaims and administrative activity.

Therefore the draft legislation follows the UK precedent concerning the length of time for an account to be considered dormant.

14. Accounts will be included in the scheme even if their period of dormancy commenced prior to the introduction of the Law. However, transitional provisions will allow banks time to update their systems where they do not have adequate systems in place for such purposes. These transitional provisions are considered further in this paper.
15. Article 5 contains an exception from the UK test for dormancy as a result of the consultation on the principles of the proposed Dormant Accounts Law. 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 on those accounts. Likewise, 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 for the test of dormancy at the end of the first period and at the time that the initial fixed term ends.
16. “No-mail” accounts will be included in the scheme provided that they meet the criteria for dormancy. Although falling outside the UK dormant accounts regime they are included in the Irish scheme. The Jersey draft follows the Irish approach, although it is thought that the number of “no-mail” accounts is likely to be small, as it is understood that they only exist in exceptional circumstances. It is thought that the administrative difficulties caused by special treatment being given to such accounts may be disproportionate to the benefits.

Question 3: Should the period of dormancy match the period of dormancy in the UK?

Question 4: Should the definition of dormancy vary from the UK definition by not including accounts if there are transactions on those accounts?

Question 5: Should “no-mail” accounts be included in the scheme?

Balance of an account

17. Article 3(1) provides that the balance of a customer's account for the purposes of the Dormant Accounts Law will be the amount owing to the customer at that particular time after appropriate adjustments such as interest due, fees and charges payable as at that date. Article 3(3) exempts balances in accounts which are covered by security interests taken under Jersey law over accounts. The reason for this exemption is that if an account is subject to a security interest, then the account may not be able to be operated under the provisions of the security granted, and therefore such accounts should not be classed as dormant.

Transfer of balances and the Jersey Reclaim Fund

18. Article 6 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 which, to minimise costs, will be held and managed (but not distributed) by the Treasury (see below for further details about the distribution of the monies from the Jersey Reclaim Fund).

19. 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 in order to ensure that the Minister has the opportunity to decide whether to decline deposits if accepting them would cause difficulties. The Minister would normally agree to all transfers, and is only likely to decline such transfers if there are issues relating to anti-money laundering, countering the financing of terrorism or sanctions, or exceptionally if a balance or series of balances are so large that they would distort the profile of the dormant balances in the Jersey Reclaim Fund.

20. In such circumstances they could not be utilised for good causes, because of the risk that if the account holder were to reclaim the money, there would be insufficient sums in the Jersey Reclaim Fund to repay the balance (see Article 6(7)).

21. Article 1 defines the end of each relevant year as 30th June. Article 6(1) requires banks to notify the Minister within 3 months (by 30th September) of the number and balances of dormant deposit accounts and a description of other relevant accounts (which are currently limited to safe custody accounts containing precious metal and precious stones).

22. Article 6(3) grants the power for the Minister to prescribe the form or content of the notification return and, separately to this consultation paper, discussion is taking place with the banks concerning the content of this return. It is envisaged that the return should include a statement from the bank that, except to the extent disclosed, it has no unresolved concerns regarding money laundering or terrorist financing in respect of the balances to be transferred and (to the best of its knowledge), none of the account holders are individuals in respect of whom sanctions apply.
23. Under Article 6(5) the Minister may ask for more information from a bank about the notified accounts and the bank must respond within one month to the Minister's enquiries. The Minister will then have until 30th November each year to decide if he wants to refuse to accept the transfer of the funds.
24. A question that was considered is what efforts should be made to contact the customer and how such contact should be made. This is a complicated issue. If the customer has not corresponded from the last-known address, it may be the case that this address is out of date. However, this is not always the case, and the address may be the only communication details that a customer has given the bank in order to enable the bank to make contact.
25. As a matter of policy it is considered appropriate to require each bank to take some action to contact customers. While not a perfect solution, it is considered appropriate to mandate that a bank attempts 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 6(1)(c). The exact details and depth of the search beyond this requirement are not specified in the legislation, and it is left to the banks to decide what is appropriate according to the facts of each case.
26. If the account holder notifies the bank during the notification process, then the account should not be considered dormant and should not be paid across to the Minister. Article 6(6) gives a cut-off time of 30th November in each year for this notification to take place in order to allow the bank the opportunity to pay across dormant accounts to the Jersey Reclaim Fund during the month of December.
27. The process for reclaims from the Jersey Reclaim Fund is discussed further below. It is proposed that all transfers will be made to the Fund on a gross basis. It is understood from the experiences of the Reclaim Fund in the UK that any "netting" could lead to accounting challenges as to whether

balances have been properly transferred, and may not enable the bank to remove the relevant account from its balance sheet.

Question 6: Should there be a requirement on a bank to send a notice to the last-known address, once an account is identified as dormant, in order to attempt to protect customers, by notifying them that their account is being transferred to the Jersey Reclaim Fund?

Non-sterling accounts

28. Government has considered whether accounts that are held in currencies other than pounds sterling should be included in the scheme. As one of the aims of the scheme is to maximise the monies that can be used for good and charitable causes, it would appear appropriate to include such accounts, provided that the consequent currency risks can be managed. Accordingly, Article 2(1)(a) does not limit the scope of the Law only to sterling accounts. But there is a practical issue concerning the ability to manage non-sterling currencies in the Jersey Reclaim Fund. It has been indicated by the States' Treasury (who it is proposed will manage the Jersey Reclaim Fund on a day-to-day basis), that it can only hold limited currencies under the agreed mandate and that trading on multiple accounts would reduce economies of scale.
29. Accordingly, it is proposed that the Minister should accept only pounds sterling balances. Accordingly, Article 7(2) states that if a dormant account consists of money in a currency other than sterling, the banks should convert the balance into sterling before the transfer at the market mid-rate on the day of the conversion.
30. An issue that follows this proposal is how to manage fluctuations in value following the transfer to the Jersey Reclaim Fund when the monies in a foreign currency balance transfers are held in sterling. The effect of fluctuations in the exchange rate could be positive or negative. An account holder that wishes to reclaim their balance is unlikely to complain if the sum is increased as a result of the currency fluctuation, but might complain if the sum is decreased as a result. A policy decision is required over whether the risks arising from currency fluctuation should be borne by the account holder or the Jersey Reclaim Fund.

31. It is considered appropriate to protect the Jersey Reclaim Fund against the risk of currency fluctuations rather than the customer. The relevant accounts have been left dormant for 15 years and the account holder has not responded to a notification of the imminent transfer of their account to the Jersey Reclaim Fund. However, in such circumstances it also seems appropriate for the banks to take reasonable steps to make the customer aware of the risks in converting dormant account balances into pounds sterling.
32. This paper has previously referred to the practical difficulties in communicating with an account holder of a dormant account. The Dormant Accounts Law requires the bank to notify the account holder at the last-known address given by the customer as the address for communication. Therefore, in line with this policy it is considered appropriate that the notification sent by the banks to their dormant account holders immediately before such accounts are transferred should set out the risks of conversion into pounds sterling where an account is a non-sterling account.
33. Article 8(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 7(2). Article 8(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.
34. The consequence of these provisions are that, if a claim is made for repayment in respect of a foreign currency balance, the bank acting as the agent of the Jersey Reclaim Fund will only be liable to repay the equivalent amount in pounds sterling following the conversion and transfer to the Jersey Reclaim Fund.

Question 7: Should non-sterling accounts be included in the scheme?

Question 8: Should the Jersey Reclaim Fund, the bank or the account holder bear the risk of currency fluctuation?

Compulsory or Optional

35. One of the issues considered was whether the scheme should be compulsory or optional for the transfer of dormant accounts to the Jersey Reclaim Fund.

36. Arguments could be advanced that it should be up to each bank to decide whether to utilise the scheme, as the monies have been placed with the bank, not the States of Jersey. Arguments in favour of this position include that there may be situations where the historic nature of documentation, coupled with bank mergers, means that a bank is unable to ascertain whether an account is dormant or the extent of the terms of the account. Others may consider that the banks will do “the right thing” with monies that they are not able to utilise for profit and, accordingly, that there is no need to make the scheme compulsory. Such an approach would also allow each bank to decide on the optimal point of timing in phasing-in IT systems in order to track dormant accounts in accordance with the legislation, rather than with the different policies that have been adopted by each bank.
37. However, the counter-argument is that there is a strong public interest in ensuring that the scheme is effective and has the greatest degree of coverage in order to maximise the amount of funds that are placed into the Jersey Reclaim Fund. As the monies raised and placed into the scheme are to be utilised for good causes, it would seem to be at odds with public policy if such a scheme were not to be made compulsory in the absence of compelling reasons. Having a compulsory scheme would also negate the risk that banks would delay putting the necessary infrastructure in place for longer.
38. Accordingly, 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 6(8) contains the key provision that a bank must transfer such part of a dormant account that is an account under Article 2(1)(a), namely, an account held by a bank as part of its activity of accepting deposits.

Question 9: Should payment of balances into the Jersey Reclaim Fund scheme be compulsory or optional?

Question 10: If optional, do you think that there is a risk that the sum of the balances transferred will be less than if the scheme was compulsory?

The interface with the customer

39. The Jersey Reclaim Fund will be set up with a minimal cost base in order to maximise the monies paid to beneficiaries. It is proposed that the scheme is run by the Chief Minister, his staff and well as utilising the experience and resources of the Treasury and Resources Department, but that it will have no solely dedicated personnel or independent infrastructure. The reasons for this proposal include that it is appropriate for banks to maintain the relationship with their own customers. Accordingly, 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).
40. For a customer who wishes to reclaim the monies placed with a bank, they will need to contact their bank and fill in the requisite forms. On being satisfied that the person is the owner of the account and that there are no legal or regulatory reasons to the contrary, the bank will restore access to the banking facility or transfer the monies to the customer. The bank will then be able to reclaim the funds that were previously transferred to the Jersey Reclaim Fund.
41. This relationship between the bank and the scheme is facilitated in the UK through individually negotiated agency agreements signed by each bank. It seems that such a process is lengthy and costly. Accordingly, the Dormant Accounts Law is designed to enable a simpler and more efficient approach.
42. Article 10 of the Dormant Accounts Law sets out the duties of the bank in respect of the monies transferred to the Fund. Article 10(1) states that the bank must retain records, receive claims for payment, verify claims, calculate the amount that must be paid, determine entitlement, and pay out the amount determined.
43. Article 10(4) enables the Minister to make further provision by Order for the purposes of achieving the functioning of this system. The requirements set out in Article 10 are supplemented by Article 18(1), which states that a bank acts as the agent of the Minister in respect of claims for repayments out of the Jersey Reclaim Fund, client relationships, record-keeping, and the fulfilment of any legal or regulatory obligations arising out of a bank's client relationship.

44. Article 18(2) allows more detailed terms of the relationship between the bank and the Jersey Reclaim Fund to be set out in an Order. The terms of the Order will be subject to consultation with the banking industry prior to its implementation. Having legislation that sets out the key terms of all the agency arrangements will avoid each bank having to enter into separate agency agreements with the Minister (on behalf of the Jersey Reclaim Fund), thereby reducing costs and ensuring a consistent approach where such is appropriate.
45. Article 18(5) states that the agency arrangement will be binding on any liquidator or trustee in bankruptcy and, on any successor of the bank. In order to preserve the ability of a customer to go to the liquidator or agent of a bank that is being closed or has closed and to reclaim their monies, Article 14(5) requires the bank to appoint an agent in Jersey to deal with such matters, including record-keeping, for a 10 year period after the completion of the closure.
46. After 10 years has passed, cases will be dealt with on a case-by-case basis. Where a branch has simply closed in Jersey, the customer can still contact the head office overseas to seek repayment. Where the legal entity has been dissolved, the Minister still retains the power to pay out claims where there is sufficient evidence produced by the customer.

Question 11: Can respondents think of any scenarios where issues may arise through the bank acting as the agent of the Jersey Reclaim Fund?

Question 12: Are the terms of the agency agreement sufficient and comprehensive for the purpose of protecting the Jersey Reclaim Fund?

Liability to the customer

47. Article 8 provides that when a dormant account balance is transferred to the Jersey Reclaim Fund, the liability for repayment of the balance transfers to the Jersey Reclaim Fund. This general principle is subject to the fact that the bank will continue to have the administrative responsibility for dealing with and settling claims in the first instance. Article 8(2) provides for the transfer of the liability and clarifies that there is no longer a debt owed by the bank to the customer. This provision allows the bank to derecognise the liability for balance sheet purposes.

48. The consequences of Article 8 include that the Jersey Reclaim Fund will only be liable to repay to the customer the amount that it receives from the bank (other than monies received in respect of precious stones and metals where the bank is permitted to be reimbursed for the reasonable costs of sale). If, for example, the bank has miscalculated the amount transferred or if there is a dispute with the customer as to the amount of interest that should have been applied, then any amount exceeding the balance transferred to the Fund will remain the liability of the bank.
49. Experience gained from other jurisdictions demonstrates that there may be disputes concerning what interest rate is applicable to a dormant account balance. To avoid such occurrence, Article 8(3) states that customers will not be entitled to interest unless the Minister specifies that a particular rate is applicable by way of Order to the balances post-transfer. In the absence of an Order being passed, interest will not accrue on balances transferred to the Jersey Reclaim Fund. As the terms of many accounts will permit the bank to reduce the rate of interest to zero after a period of time, it would be justifiable to set the rate of interest payable by the Jersey Reclaim Fund at zero. That would permit the proceeds of the balance post-transfer to be utilised for good causes, maximising the benefit that could be gained from dormant accounts.

Question 13: Is it reasonable that the level of interest to be added on dormant accounts after transfer to the Jersey Reclaim Fund is set at zero and the proceeds used for good causes? If not, what is an appropriate level of interest?

Timing of Transfers

50. Article 6 of the Dormant Accounts Law sets out the timing of transfers to the Jersey Reclaim Fund. The year-end is set as 30th June in each year. Within 3 months of the year-end, namely by 30th September, banks must give notice to the Minister of the number and balance of each dormant account. In respect of other types of dormant accounts, Article 6(1)(b) states that banks must give a description of each account to the Minister in order to ensure that the Minister is aware of the value that is being held in other relevant types of dormant account. Unless the Minister prescribes other types of account, this provision applies to custody accounts holding precious metals and precious stones, and the figure given may be an estimate of the current value or the last known valuation.

51. In this same 3 month period, under Article 6(1)(c), banks must give notice to the customers with dormant accounts that their account has become dormant in order to give them a chance to claim the amount prior to transfer.
52. After this 3 month window to allow banks the time to notify customers and calculate which accounts are dormant, Article 6(6) gives the Minister 2 months to decide if he wishes to refuse to accept the transfers. There may be good reasons why it is not in the best interests of the scheme to do so, for example, because of high individual balances. The issue with high balances is that if they constitute a large part of the Jersey Reclaim Fund then there is the prospect that they cannot sensibly be utilised for good causes. The reason is due to the comparative size of the balances. If large balances were to be reclaimed, there might not be enough monies in the Jersey Reclaim Fund to meet the demands.
53. The Minister may have further questions concerning the accounts held and, if further questions are asked of a bank, Article 6(5) gives the bank a further month to respond. Following the end of the periods of notification and then for the Minister to decide whether to refuse the balances, the bank has the month of December to pay monies across to the Minister under Article 6(8).

Question 14: Are the timescales proposed reasonable in order to allow customers to contact their bank and for banks to process the administration of transfers?

Question 15: Should the banks be required to report balances in relation to precious metals and precious stones? If not, then please give reasons.

Customer reclaims

54. As set out above, it is proposed that customer claims will be handled by the banks acting as the agent of the Jersey Reclaim Fund. This policy is consistent with the schemes operating in the UK and Ireland.
55. For administrative simplicity, Articles 11 and 12 have the effect that banks will make an annual claim for reimbursement of the amounts reclaimed by customers from the Jersey Reclaim Fund. This will be within the same 3 month period in which they notify the Jersey Reclaim Fund of the accounts that have become dormant in the last year. It is thought that such a repayment process should not normally give rise to any significant

adverse impact on the banks, as the amounts involved are likely to be *de minimis* from a balance sheet perspective.

56. A bank will, however, be able to seek reimbursement of a single customer claim of a particularly large amount or a particularly large number of individual customer claims at any time. In such cases, reimbursement may be made outside of the annual cycle at the discretion of the Minister, as set out in Article 12(4).

Question 16: Is the proposed mechanism for the Jersey Reclaim Fund to reimburse the banks sufficiently practical?

Distribution of monies from the Jersey Reclaim Fund

57. Article 19 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 shares to be set by Order for the following purposes:

- a. arts;
- b. sport;
- c. the heritage of Jersey;
- d. charitable purposes; and
- e. purposes connected with health, education or the environment.

58. To achieve efficiencies, it is envisaged that the Minister will not generally distribute to good and charitable causes directly. Instead, the Minister may distribute the monies to designated community organisations who will make grants from monies provided by the Jersey Reclaim Fund. In such cases, the Minister will require distributing bodies to report each year on the entities who have received funding and the relevant amounts.

59. Each year, under Article 9(2), the Minister must prepare an annual report on the operation of the Dormant Accounts Law.

Question 17: Do you agree with the proposed use of the funds generated by the Dormant Accounts Law? If not, please state what you would suggest as an alternative. For example, should the funds be divided proportionally or thematically sector by sector?

Timing and Transitional Provisions

60. Following the end of this consultation period, the next steps are for the responses to be analysed and the final amendments made to the Dormant Accounts Law. Then the final legislation will be lodged in late 2015, debated by the States of Jersey and, if passed, will be sent for approval by the Privy Council, which is likely to be in early 2016.
61. 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 proposed 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.
62. 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 6 to build a system.
63. 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.

Question 18: Is the proposed timescale for banks to build systems too long, too short or about right? If your answer is that the timescale is too long or too short, please state what length of time is considered appropriate?

Question 19: If you are a bank, please state:

- a) **What test do you currently apply in determining whether an account is dormant? Please include the length of time that must pass in order for you to class an account as dormant.**

- b) Are your systems able to produce a report identifying a list of accounts where there have been no transactions on each account for 15 years? If you are able to produce such a report in respect of a shorter period of time then please state what this period of time is.
- c) Are your systems able to produce a report identifying a list of accounts where there has been no transactions on each account and no contact from the clients holding those accounts for 15 years? If you are able to produce such a report in respect of a shorter period of time then please state what this period of time is.
- d) Are your systems able to produce a report identifying a list of accounts where there have been no transactions on each account and no activity on another account held by the same customer for 15 years? If you are able to produce such a report in respect of a shorter period of time then please state what this period of time is.
- e) If your answer to the first part of the question in either 19 b), 19 c) or 19 d) is no, please state an estimate of the cost to amend your systems to be able to produce the reports set out in b), c) and d), and the time that it would take to implement such a change.
- f) If there is any other information about your systems which would be relevant to a decision on the proposed implementation time as set out in the transitional provisions, please give comments.

Questions

Readers of the consultation paper are invited to give their comments on all aspects of the draft of the Dormant Accounts Law.

Particular questions as stated above are:

- Question 1:** Should precious stones and precious metal custody accounts be included as accounts captured by the Dormant Accounts Law?
- Question 2:** Should any other types of accounts be captured by the Dormant Accounts Law at this initial stage?
- Question 3:** Should the period of dormancy match the period of dormancy in the UK?
- Question 4:** Should the definition of dormancy vary from the UK definition by not including accounts if there are transactions on those accounts?
- Question 5:** Should “no-mail” accounts be included in the scheme?
- Question 6:** Should there be a requirement on a bank to send letters to the last known address, once an account is identified as dormant, in order to attempt to protect customers by notifying them that their account is being transferred to the Jersey Reclaim Fund?
- Question 7:** Should non-sterling accounts be included in the scheme?
- Question 8:** Should the Jersey Reclaim Fund, the bank or the account holder bear the risk of currency fluctuation?
- Question 9:** Should payment of balances into the Jersey Reclaim Fund scheme be compulsory or optional?
- Question 10:** If optional, do you think that there is a risk that the sum of the balances transferred will be less than if the scheme was compulsory?
- Question 11:** Can respondents think of any scenarios where issues may arise through the bank acting as the agent of the Jersey Reclaim Fund?

Question 12: Are the terms of the agency agreement sufficient and comprehensive for the purpose of protecting the Jersey Reclaim Fund?

Question 13: Is it reasonable that the level of interest to be added on dormant accounts after transfer to the Jersey Reclaim Fund is set at zero and the proceeds used for good causes? If not, what is an appropriate level of interest?

Question 14: Are the timescales proposed appropriate to allow customers to contact their bank and for banks to process the administration of transfers?

Question 15: Should the banks be required to report balances in relation to precious metals and precious stones? If not, then please give reasons.

Question 16: Is the proposed mechanism for the Jersey Reclaim Fund to reimburse the banks sufficiently practical?

Question 17: Do you agree with the proposed use of the funds generated by the Dormant Accounts Law? If not, please state what you would suggest as an alternative. For example, should the funds be divided proportionally or thematically sector by sector?

Question 18: Is the proposed timescale for banks to build systems too long, too short or about right? If your answer is that the timescale is too long or too short, please state what length of time is considered appropriate.

Question 19: If you are a bank, please state:

- a) What test do you currently apply in determining whether an account is dormant? Please include the length of time that must pass in order for you to class an account as dormant.
- b) Are your systems able to produce a report identifying a list of accounts where there have been no transactions on each account for 15 years? If you are able to produce such a report in respect of a shorter period of time, then please state what this period of time is.

- c) Are your systems able to produce a report identifying a list of accounts where there has been no transactions on each account and no contact from the clients holding those accounts for 15 years? If you are able to produce such a report in respect of a shorter period of time, then please state what this period of time is.
- d) Are your systems able to produce a report identifying a list of accounts where there have been no transactions on each account and no activity on another account held by the same customer for 15 years? If you are able to produce such a report in respect of a shorter period of time, then please state what this period of time is.
- e) If your answer to the first part of the question in either 19 b), 19 c) or 19 d) is no, please state an estimate of the cost to amend your systems to be able to produce the reports set out in b), c) and d), and the time that it would take to implement such a change?
- f) If there is any other information about your systems which would be relevant to a decision on the proposed implementation time as set out in the transitional provisions, please give comments below.

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Jersey

DRAFT DORMANT BANK ACCOUNTS (JERSEY) LAW 201-

REPORT

Explanatory Note



Jersey

DRAFT DORMANT BANK ACCOUNTS (JERSEY) LAW 201-

Arrangement

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Jersey

DRAFT DORMANT BANK ACCOUNTS (JERSEY) LAW 201-

A **LAW** to provide for the transfer, to a fund, of balances in dormant accounts, and for the charitable distribution of money in that fund, subject to a right to reclaim those balances from the fund.

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>

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

PART 1

INTERPRETATION

1 Interpretation

(1) In this Law –

“account” has the meaning given by Article 2;

“account holder” or “holder” means, in respect of an account, a person (whether or not an individual) –

- (a) in whose name the account is held by a bank;
- (b) who is beneficially entitled to the account or has the power to operate it or control it; or
- (c) who is entitled to demand repayment of an amount on the account;

“balance” has the meaning given by Article 3;

“bank” has the meaning given by Article 4;

“bankruptcy” has the meaning given by paragraph (2);

“dormant” has the meaning given by Article 5;

“function” includes a power and a duty;

“Fund” means the Jersey Reclaim Fund;

“Jersey Reclaim Fund” means the fund established under Part 3;

“liquidator” means the person (whether the Viscount or some other person) for the time being charged with the administration of the property of a bank by virtue of its bankruptcy;

“Minister” means the Chief Minister;

“Order” means an Order made under this Law by the Minister;

“prescribed” means prescribed by Order;

“relevant year” means the 12-month period starting on 1st July in any calendar year and ending on 30th June immediately following.

- (2) In this Law, and without limiting the operation of Article 8 of the Interpretation (Jersey) Law 1954, references to bankruptcy include –
- (a) the winding up of an insolvent company under Article 155 of the Companies (Jersey) Law 1991; and
 - (b) a process or state equivalent or similar to such winding up, or to bankruptcy (within the meaning of the Interpretation (Jersey) Law 1954), under the law of a jurisdiction outside Jersey.
- (3) For the purposes of this Law a person is still to be treated as the holder of an account despite the fact that the whole or any part of the balance on the account has been transferred to the Fund in accordance with this Law, and whether or not the account is closed.

2 “Account” defined

- (1) For the purposes of this Law, “account” means –
- (a) an account held by a bank as part of its activity of accepting deposits;
 - (b) any one or more of the following held by a bank in its activity of accepting safe custody –
 - (i) precious metal (which includes bullion and coins but excludes jewellery),
 - (ii) precious stones (but not jewellery),
 - (iii) such other things as may be prescribed;
 - (c) a prescribed account; or
 - (d) any other thing, facility or arrangement (whether or not in prescribed circumstances).
- (2) For the purposes of this Law, an account referred to in paragraph (1)(a) includes a current account and a deposit account.

3 “Balance” defined

- (1) For the purposes of this Law, the balance of an account at any particular time is the amount, or value, owing to the holder of the account in respect of the account at that time, after adjustments have been made for sums due to the bank in respect of the account (such as any interest due or any fees or charges payable at that time).

- (2) For clarity, a reference to sums due to the bank is a reference to sums due according to the terms and conditions of the account as in force from time to time and up to the time referred to in paragraph (1).
- (3) However, the balance of an account at any particular time does not include such amount, or value, in that account as is subject to a security interest to which the Security Interests (Jersey) Law 1983 or the Security Interests (Jersey) Law 2012 applies.

4 “Bank” defined

For the purposes of this Law, “bank” means –

- (a) a person who is registered under the Banking Business (Jersey) Law 1991 and carries on deposit taking business within the meaning of that Law;
- (b) a person who, as part of a business, takes safe custody (but not ownership) of anything referred to in Article 2(1)(b); or
- (c) a person prescribed for the purposes of this Article.

5 “Dormant” defined

- (1) Subject to the following provisions of this Article, an account is dormant for the purposes of this Law if –
 - (a) the account has been open throughout the period of 15 years ending at that time; and
 - (b) during that period no transactions have been carried out in relation to the account by or on the instructions of a holder of the account.
- (2) An account referred to in Article 2(1)(a) is dormant for the purposes of this Law even if the period during which no transactions have been carried out in relation to the account is less than 15 years if –
 - (a) an application is made to the Minister by the bank holding the account; and
 - (b) the Minister agrees to treat the account as dormant.
- (3) An account is not to be treated as dormant if at any time during the period mentioned in paragraph (1)(a) –
 - (a) another account in the name of the same person as that first-mentioned account at the same bank was subject to transactions carried out by a holder of that other account; or
 - (b) under the terms and conditions of the account –
 - (i) withdrawals from the account were not permitted, or
 - (ii) there was a financial penalty or other disincentive for making a withdrawal from the account and the financial penalty or other disincentive applied in all circumstances.
- (4) Where either of the restrictions mentioned in paragraph (3)(b)(i) or (ii) applied to an account but the account then continues without such a restriction, the account is treated as having been opened only at the date on which the restriction ceased to apply.

- (5) For the purposes of paragraph (1) an account that is closed before the time referred to in that paragraph is treated as remaining open at that time if it has been closed otherwise than by, or on the instructions of, a holder of the account.
- (6) For the purposes of paragraph (3)(b)(ii), “financial penalty or other disincentive” does not include a reasonable fee for keeping the account or for carrying out a transaction on the account, or a requirement to give a reasonable period of notice of a withdrawal from the account.

PART 2

NOTICES, TRANSFERS AND CLAIMS

6 Notice and transfer of dormant accounts

- (1) Within 3 months of the start of each relevant year a bank must, in relation to every account it holds that falls dormant during the preceding relevant year –
 - (a) in the case of an account referred to in Article 2(1)(a), give notice to the Minister setting out the number of, and balances of, every dormant account;
 - (b) in the case of any other account, give notice to the Minister describing each account; and
 - (c) in the case of all accounts, give notice of the balance on every dormant account held with the bank to the person in whose name the account is held at the person’s last address known to the bank.
- (2) Where a description under paragraph (1)(b) includes a valuation the valuation may be based on an estimate of the current value of the assets or the last-known valuation.
- (3) If requirements have been prescribed in relation to the form or contents of, or information to be included in, a notice under paragraph (1), the notice must comply with those requirements.
- (4) When so requested in writing by the Minister a bank must provide the Minister with further information about dormant accounts held with the bank within 1 month of being notified of that request.
- (5) The bank must not make a transfer of a dormant account under this Article if at any time prior to 30th November in the relevant year –
 - (a) a holder of the account has notified the bank that the account is not dormant;
 - (b) the bank otherwise realises that the account is not dormant; or
 - (c) the Minister refuses to accept the transfer.
- (6) The Minister may refuse to accept the transfer under paragraph (5) only if it appears to the Minister reasonable to do so for the purposes of the good management of the Fund including, for example, because of a suspected breach of the law or because the balance (or part of the balance) is a significant amount in the context of the Fund as a whole.

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- (7) Subject to Article 7, by the end of December in the relevant year a bank –
 - (a) must transfer to the Fund such part of the balance of a dormant account as is an account referred to in Article 2(1)(a);
 - (b) must transfer to the Fund such part of the balance of a dormant account as is not an account referred to in Article 2(1)(a) but is prescribed for the purposes of this sub-paragraph; and
 - (c) may transfer to the Fund such part of the balance of a dormant account as is a part to which sub-paragraph (a) or (b) does not apply.
 - (8) In the case of accounts that are dormant when this Article comes into force –
 - (a) the notice period in paragraph (1) runs from 3 months of the end of the relevant year in which this Article comes into force;
 - (b) if a bank so wishes and the Minister agrees, the bank may make a transfer of a dormant account at any time up to the beginning of the period mentioned in sub-paragraph (a) and this Law shall apply to the transfer as if the foregoing provisions of this Article had been complied with.
 - (9) A bank must ensure that a transfer is accompanied by such information as the Minister may prescribe.
 - (10) If for whatever reason a transfer does not take place by the date mentioned in paragraph (7) it must take place during the next period of 12 months following that date without any further notice being given.
 - (11) If a bank fails, without reasonable excuse, to comply with this Article, it is guilty of an offence and liable to a fine of level 2 on the standard scale.
 - (12) The Minister may, by Order, make the provision of valuations in respect of accounts mandatory.

7 Precious metals, precious stones and foreign currencies

- (1) If a dormant account consists partly or wholly of things referred to in or prescribed under Article 2(1)(b) those things must be sold at reasonable market value as at the time of the sale and their value treated as, respectively, part or the whole of the value of the account (after subtracting the reasonable costs of the sale) before any part of the balance of the account is transferred under Article 6.
- (2) If a dormant account consists in part or in whole of money in a currency other than the currency of Jersey, that money must be converted to the currency of Jersey at the market mid-rate on the day of the conversion (or at such other rate as is prescribed) before any part of the balance of the account is transferred under Article 6.
- (3) Any payment out on a claim as referred to in Article 10 must be made in the currency of Jersey.

8 No further right against bank after transfer of balance to Fund

- (1) After a transfer of any part of the balance of a dormant account under Article 6, a holder of the account –
 - (a) no longer has any right against the bank to payment of the part of the balance; but
 - (b) has against the Minister in respect of the Fund whatever right to payment of the part of the balance as he or she would have had against the bank if the transfer had not occurred.
- (2) However, the Minister may pay the account holder out of the Fund a sum greater than that which he or she would be entitled to under paragraph (1)(b) if the Minister considers it appropriate to do so, having regard to the amount of money held in the Fund in the light of that additional payment out, other possible claims against the Minister in respect of the Fund and any other matter that the Minister considers relevant.
- (3) A part of a balance, being a part transferred under Article 6, is no longer a debt owed, or value due, by the bank.
- (4) However, an account holder is not entitled to interest on the part of the balance in respect of any period during which the part is held in the Fund, except to the extent that the Minister otherwise prescribes (though the bank remains liable in respect of any interest that accrued before the transfer but was not in fact transferred).
- (5) In relation to things referred to in or prescribed under Article 2(1)(b) that have been sold under Article 7(1) –
 - (a) nothing in paragraph (1)(b) or (7) entitles the holder of the account in which those things were held to recover those things *in specie*;
 - (b) nothing in paragraph (7) entitles that holder to compensation over and above the value of those things because they are no longer held *in specie*, or because they were so sold; and
 - (c) a reference in paragraph (1)(b) to the part of the balance (in so far as it relates to the value of those things) means the sum realized by the sale referred to in Article 7(1) after deduction of the reasonable costs of the sale.
- (6) Nothing in paragraph (1)(b) or (7) entitles the holder of an account that consisted (before the part of the balance of the account was transferred under Article 6) in whole or in part of money in a currency other than the currency of Jersey to recover any part of the balance –
 - (a) in that other currency; or
 - (b) at a value calculated in terms of that currency as at any time other than the time of the conversion of that other currency under Article 7(2).
- (7) For the avoidance of doubt, nothing in either paragraph (1) or (3) affects –
 - (a) any liability of the bank to the account holder in respect of an amount, or value, other than the part of the balance referred to in whichever paragraph; or

- (b) the operation of Article 10.
- (8) Subject to paragraph (4) and to the extent that an Order prescribes otherwise, the terms on which a balance was held by a bank apply to any part of it that is held in the Fund.

9 Responsibilities and duties of Minister in relation to Fund

- (1) The Minister's responsibilities in relation to the Fund are limited to –
 - (a) payments out of the Fund to meet claims in accordance with this Part;
 - (b) the management of the Fund in such a way as to enable the meeting of such of those claims as it is prudent to expect;
 - (c) the management of the Fund in accordance with any requirement with regard to its financial resources that is imposed on it by or under any enactment and to defray the expenses of the administration of this Law;
 - (d) the distribution of money under Part 4, subject to subparagraphs (b) and (c); and
 - (e) objects that are incidental or conducive to, or otherwise connected with, any of the above (including in particular the prudent investment of money held in the Fund).
- (2) The Minister must prepare an annual report on the operation of this Law in the preceding year and publish it on a website that the Minister considers appropriate.
- (3) Nothing in paragraph (1) affects a bank's duties referred to in Article 10.

10 Duties of bank in relation to Fund

- (1) Except as otherwise provided by Order, a bank must do the following in relation to any part of a balance, being a part that the bank has transferred to the Fund under this Law –
 - (a) retain the records that the bank has created or acquired relating to the relevant dormant account and to any holder of that account;
 - (b) receive any claim for payment of that part;
 - (c) verify the claim;
 - (d) calculate the amount that should be paid in respect of the claim;
 - (e) determine who is entitled to that amount;
 - (f) pay out the amount to the person so entitled;
 - (g) comply with any written directions of the Minister given to the bank for the purposes of this Part.
- (2) Nothing in this Law affects any duty of a bank to comply, in respect of the account and the claim, with any law that imposes obligations on the bank in relation to taxation, money laundering or terrorist financing, or with any other obligation imposed by law.

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- (3) The Minister may, by instrument in writing, give directions to a bank for the purposes of this Part, which bank must comply with such a direction.
 - (4) The Minister may by Order make provision for the purposes of this Part, including by –
 - (a) amending paragraph (1); and
 - (b) specifying or modifying the duties, liabilities, and rights, under this Part, of a liquidator or other person who acts in relation to a bank in a case where the bank has become bankrupt, has transferred any part of its deposit-taking business or has ceased to trade.
 - (5) A reference in this Article to payment of part of a balance includes payment of any amount of interest that becomes due to the account holder, in relation to the part, as prescribed under Article 8(4).
 - (6) If a bank fails, without reasonable excuse, to comply with this Article, the bank is guilty of an offence and liable to a fine.

11 Bank to make annual statements of repayments

- (1) A bank must give to the Minister, during the 3 months following the end of each relevant year, notice of the amounts that it has repaid as referred to in Article 10 during that year, or if it has not paid out any such amount, notice to that effect.
- (2) If a bank fails to comply with this Article, it is guilty of an offence and liable to a fine of level 2 on the standard scale.

12 Bank may recover payment from Fund

- (1) A bank may, by application in writing to the Minister, recover from the Fund an amount equal to the amount that the bank has paid out on claims made to the bank as referred to in Article 10.
- (2) However, such an application by a bank for payment from the Fund is not in accordance with this Article in relation to any amount to the extent that –
 - (a) the amount paid out has been paid out by the bank on the claim more than 3 years before the application is made;
 - (b) the amount was paid out in error; or
 - (c) the application is not made in relation to the amount within 3 months of the end of the relevant year or by such other time as the Minister may allow in particular circumstances.
- (3) Such an application is not in accordance with this Article unless it meets any prescribed requirements, and those requirements may stipulate that the application –
 - (a) be made in respect of aggregates of amounts instead of individual amounts;
 - (b) be made at or in respect of any specified time or times; and
 - (c) set out the prescribed information.

- (4) The Minister must pay from the Fund any amount that the Minister is satisfied has been the subject of an application made in accordance with this Article.

13 No deductions for bank's expenses

A bank is not entitled –

- (a) to deduct from any amount transferred to the Fund or recovered from the Fund; or
- (b) to be paid from the Fund,

any amount in respect of the bank's costs or expenses in the performance of its functions under this Law unless expressly provided for under this Law.

14 Where bank ceases trading etc.

- (1) Subject to the following provisions of this Article, the operation of this Part is not affected by the fact that a bank has become bankrupt, has transferred any part of its deposit-taking business or has ceased to trade.
- (2) If the Minister believes that any function referred to in Article 10(1)(a) to (f) is not being performed by or in respect of a bank, the Minister may perform the function instead.
- (3) If the Minister performs a function as referred to in paragraph (2), the Minister may deduct from the Fund the Minister's costs and expenses in the performance of the function or may reduce payments out of the Fund by an amount not exceeding those expenses.
- (4) Where a bank –
 - (a) is to transfer any part of its deposit-taking business to another entity or move it to another branch of the same bank, the person to whom that business is transferred or moved must comply with paragraph (5);
 - (b) is to cease to trade in Jersey, the bank must make arrangements to ensure compliance with paragraph (5); or
 - (c) has become bankrupt, the liquidator must comply with paragraph (5).
- (5) The requirements are –
 - (a) to ensure that Article 10(1)(b) to (g) is complied with;
 - (b) to hold the records of the deposit-taking business of the bank and to make them accessible from within Jersey,for a period of 10 years beginning with the date of whichever is the relevant event mentioned in paragraph (4).
- (6) Any expenses of a liquidator in complying with paragraph (5) has the same priority –
 - (a) as the monies chargeable by the Viscount under Article 32(1)(a) of the Bankruptcy (Désastre) (Jersey) Law 1990; and

- (b) as the costs, charges and expenses payable under Article 165 of the Companies (Jersey) Law 1991 in relation to a creditors' winding up.
- (7) In paragraph (6) "liquidator" means the person (whether the Viscount or some other person) for the time being charged with the administration of the property of a bank by virtue of its bankruptcy.

15 Account holder's rights preserved on insolvency etc. of bank

If an account holder has a right to payment under this Part in respect of any part of a balance, being a part transferred by a bank under this Law, and –

- (a) the bank becomes bankrupt, has transferred any part of its deposit-taking business or has ceased to trade; or
- (b) for any reason the liability that the bank would have to the account holder (but for the operation of this Part) is extinguished or reduced,

the bankruptcy, transfer, cessation, extinction or reduction is, for the purposes of this Part, to be disregarded in relation to the account holder's rights.

16 Disclosure of information

- (1) A bank (or any other person who holds any records of a bank that relate to dormant accounts held or formerly held with the bank) must allow the Minister (or another person authorized, by instrument in writing, by the Minister for the purposes of this Article) to have access to any records of the bank where that access is necessary for the performance of the Minister's functions under this Law.
- (2) No obligation as to secrecy or other restriction on disclosure (however imposed) prevents a bank or other person from disclosing those records to the Minister or other person under paragraph (1).
- (3) If a bank fails to comply with paragraph (1), the bank is guilty of an offence and liable to a fine of level 4 on the standard scale.

PART 3

JERSEY RECLAIM FUND

17 Fund

There is established the Jersey Reclaim Fund, being a special fund within the meaning of Article 3 of the Public Finances (Jersey) Law 2005.

18 Bank to act as agent of Fund

- (1) A bank acts as the agent of the Minister in respect of the following matters –
 - (a) any claims from and repayments out of the Fund;
 - (b) client relationships;

-
- (c) record-keeping;
 - (d) the fulfilment of any legal or regulatory obligations arising out of client relationships.
- (2) The Minister may by Order prescribe the terms on which a bank so acts as agent.
 - (3) Despite paragraph (2) the Minister may agree with a bank such additional terms as the Minister considers appropriate.
 - (4) The bank with which the Minister makes an agreement under paragraph (3) must meet the Minister's reasonable costs in reaching the agreement.
 - (5) Unless and until it is terminated with the consent of the Minister on behalf of the Fund the arrangement by which a bank acts as agent under this Article is binding on any liquidator, any trustee in bankruptcy and any successor of the bank.
 - (6) A bank's role as agent under this Article may not be assigned or transferred by contract unless approved by the Minister on behalf of the Fund.

PART 4

DISTRIBUTION OF MONEY

19 Distribution of dormant account money by Minister

- (1) The Minister may use such money from the Fund as he or she considers appropriate for the remuneration or other payment for the services of the Commissioner due under the terms of his or her appointment or for the cost of providing staff, accommodation or equipment that are required for the proper and effective discharge of the Commissioner's functions.
- (2) The Minister may pay out money from the Fund that he or she does not wish to use for the purpose mentioned in paragraph (1) for each or any of the following purposes in such proportions as may be prescribed –
 - (a) the arts in Jersey;
 - (b) sport in Jersey;
 - (c) the heritage of Jersey;
 - (d) the activities of any registered charity in Jersey;
 - (e) health, education, and the environment, in Jersey.
- (3) The Minister may make grants or loans, or make or enter into other arrangements, for the purpose of facilitating the performance of the function referred to in paragraph (2).
- (4) Such a grant or loan may be subject to conditions (which may, in particular, include conditions as to repayment with interest).

- (5) For the purposes of this Part, paying out money for a purpose includes paying out money in order to establish, or contribute to, endowments (including permanent endowments) in connection with the purpose.
- (6) In this Article, “Commissioner” and “registered charity” have the same meaning as in Article 1 of the Charities (Jersey) Law 2014.

20 Orders about functions under this Part

- (1) In exercising any of his or her functions under this Part the Minister must comply with any requirement prescribed by Order under this Article.
- (2) An Order under this Article may do any of the following –
 - (a) specify matters to be taken into account in determining the persons to whom the Minister distributes money;
 - (b) specify purposes for which (or matters to be taken into account in determining the purposes for which) the Minister may or may not distribute money under this Part;
 - (c) make provision as to the process used to determine what payments to make;
 - (d) make provision as to –
 - (i) the terms and conditions on which the Minister makes grants or loans under this Part, or
 - (ii) other arrangements that the Minister makes under this Part;
 - (e) amend Article 19(2) in relation to the purposes for which, or shares in which, money may be paid out of the Fund;
 - (f) make provision generally for the purposes of this Part.

PART 5

MISCELLANEOUS

21 Functions under Law not deposit-taking or financial service business

If the Minister or another person performs any function that the Minister may perform under this Law, he or she does not, by so doing, carry on deposit-taking business within the meaning of the Banking Business (Jersey) Law 1991 or financial service business within the meaning of the Financial Services (Jersey) Law 1998.

22 Limitation of liability

- (1) Despite Article 18(1) the Minister, his or her servants or agents are not liable for the actions of the bank, its servants or agents in respect of any of the bank’s obligations under this Law, other than in respect of its obligation under Article 10(1)(f).
- (2) The Minister, his or her servants or agents are not liable to a bank or any of its account holders as a result of any action taken in relation to the

Fund that would otherwise arise outside of any obligation imposed by or under this Law.

- (3) Without limiting paragraphs (1) and (2), the Minister, his or her servants or agents are not liable in damages for anything done or omitted in the discharge or purported discharge of any function under, or authorized by or under, this Law unless it is shown that the act or omission was in bad faith.
- (4) For clarity, this Article applies to any person to whom the Minister has delegated any function under Article 28 of this Law or under Article 28 of the States of Jersey Law 2005 in relation to any of his or her functions under this Law.

23 Orders

- (1) The Minister may make Orders, not inconsistent with this Law, relating to any matter required or permitted by this Law to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Law.
- (2) In particular the Orders may make provision for or with respect to any of the following –
 - (a) amending any expression of time (whether numerical or otherwise) in this Law;
 - (b) notices to be given under this Law;
 - (c) procedures, requirements, and other matters, that relate to such notices, including how notice is to be given, the matters in respect of which notices are required and the form or contents of, or information to be included in, the notices;
 - (d) forms in general for the purposes of this Law;
 - (e) returns and reports, to be furnished by banks to the Minister for the purposes of this Law;
 - (f) the circumstances in which a bank is not to transfer, to the Fund, part or all of a balance on a dormant account;
 - (g) procedures for making and determining appeals against any decision made under this Law by the Minister, a bank or another person;
 - (h) the performance of the functions of a bank under this Law in the case where the bank has become bankrupt, has transferred any part of its deposit-taking business or has ceased to trade;
 - (i) the rights and priorities of holders of dormant accounts, and of other persons with interests in those accounts, in the case where the bank has become bankrupt, has transferred any part of its deposit-taking business or has ceased to trade;
 - (j) the appointment or constitution, and functions under this Law, of a person who may perform the functions of the relevant bank under this Law in a case referred to in sub-paragraph (g) or (h);

- (k) the remuneration or funding of such a person in such a case, including remuneration or funding from the bankrupt estate of the bank or from the bank's assets or former assets or from the Fund;
 - (l) making provision for priority in such a case as between such a person and creditors of the relevant bank;
 - (m) subject to the Public Finances (Jersey) Law 2005 and any enactment made under that Law, the structure and operation of the Fund;
 - (n) for fees to be charged in prescribed circumstances for the benefit of the Fund for processing a claim for repayment to a former account holder whose dormant account has been transferred to the Fund;
 - (o) the functions of the Minister under this Law;
 - (p) the administration of this Law;
 - (q) procedures, requirements, and other matters, in respect of the operation of this Law.
- (3) Orders may create an offence punishable by a fine of level 4 on the standard scale.
- (4) Orders may contain such transitional, consequential, incidental or supplementary provisions, or such savings, as appear to the Minister to be necessary or expedient for the purposes of the Order.
- (5) A reference in this Article to procedures does not include the procedure of any court.

24 Offences: false information and failure to supply information

A person is guilty of an offence and liable to imprisonment for a term of 2 years and to a fine if –

- (a) the person provides information to the Minister, or to any other person entitled to information under this Law –
 - (i) in connection with an application or claim,
 - (ii) in purported compliance with a requirement imposed under this Law or any enactment made under this Law, or
 - (iii) otherwise than as mentioned in sub-paragraphs (i) and (ii) but in circumstances in which the person providing the information intends, or could reasonably be expected to know, that the information would be used by the Minister or other person for the purpose of exercising his or her functions under this Law;
- (b) that information is false or misleading in a material particular; and
- (c) the person knows that, or is reckless as to whether, the information is false or misleading in a material particular.

25 Criminal responsibility of partners and officers

- (1) Where an offence under this Law committed by any form of partnership that is a legal person or by a body corporate is proved to have been

committed with the consent or connivance of, or to be attributable to any neglect on the part of –

- (a) a person who is a general partner of the partnership or other partner participating in the management of the partnership, or director, manager, secretary or other similar officer of the body corporate; or
- (b) any person purporting to act in any such capacity,

the person is also guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.

- (2) Where the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

26 *Bona vacantia*

- (1) Nothing in this Law affects the operation of the rule of law regarding *bona vacantia* or any claim that the Receiver-General may have in respect of *bona vacantia*.
- (2) Accordingly, the Receiver-General may claim, and be paid, from the Fund any amount of a balance paid to the Fund where the amount corresponds to the value of property that is *bona vacantia*.

27 Recovery of Minister's expenses

The Minister may recover from the Fund his or her expenses in the performance of any of his or her functions under this Law.

28 Power of Minister to delegate functions

- (1) The Minister may, by instrument in writing, delegate, wholly or partly, the functions conferred upon or vested in the Minister by or under any provision of this Law (except Part 4) to any person to whom the Minister cannot make such a delegation under Article 28 of the States of Jersey Law 2005.
- (2) A Minister must not so delegate –
 - (a) any power to make an enactment;
 - (b) any power to decide an appeal under an enactment;
 - (c) any function the delegation of which is prohibited by an enactment.
- (3) The delegation of functions by a Minister under this Article does not prevent the Minister exercising those functions personally.

29 Transitional provision

- (1) This Article applies where a bank has, before the coming into force of this Article –

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- (a) a system in place that identifies accounts held by the bank that are dormant for a shorter period than 15 years; or
 - (b) no system is in place for identifying dormant bank accounts.
- (2) Where this Article applies no offence is committed under Article 6 –
- (a) where paragraph 1(a) applies, until a period of time has elapsed that is equivalent to the time difference between the length of time after which the system identifies accounts as dormant and 15 years;
 - (b) where paragraph 1(b) applies, until 5 years after the coming into force of Article 6.
- (3) However, paragraph (2) does not apply if the bank were able to discover whether or not any accounts held by it are dormant (within the meaning of Article 5) other than by a manual check of each account it holds (for example by means of a computerized search using its existing systems).

30 Amendment of enactments

- (1) At the end of Article 32(1)(a) of the Bankruptcy (Désastre) (Jersey) Law 1990 there shall be added the words “(and any expenses of a liquidator under Article 14(6)(a) of the Dormant Bank Accounts (Jersey) Law 201-)”.
- (2) In Article 165 of the Companies (Jersey) Law 1991 after the word “liquidator” there shall be inserted the words “(and any expenses of a liquidator under Article 14(6)(a) of the Dormant Bank Accounts (Jersey) Law 201-)”.
- (3) In Schedule 1 to the Charities (Jersey) Law 2014 at the beginning of paragraph 2(4)(a) and paragraph 4(7) there shall be inserted the words “subject to Article 19(1) of the Dormant Bank Accounts (Jersey) Law 201-”.

31 Citation and commencement

- (1) This Law may be cited as the Dormant Bank Accounts (Jersey) Law 201-.
- (2) This Law shall come into force on such day or days as the States may by Act appoint.

