



Jersey

BANKING BUSINESS (AMENDMENT No. 8) (JERSEY) LAW 2012

A LAW to amend further the Banking Business (Jersey) Law 1991.

Adopted by the States 25th September 2012

Sanctioned by Order of Her Majesty in Council 12th December 2012

Registered by the Royal Court 21st December 2012

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

1 Article 37 of Banking Business (Jersey) Law 1991 amended

In Article 37 of the Banking Business (Jersey) Law 1991¹ –

- (a) in paragraph (2) after the words “Regulations may in particular make provision” there are inserted the words “in respect of any scheme so established”;
- (b) for paragraphs (2)(a) to (h) there are substituted the following sub-paragraphs –
 - “(a) for the determination and regulation of matters relating to the scheme, whether by any specified person or otherwise;
 - (b) for appointing or constituting a person who is to have any function in relation to the scheme, whether or not any bank is insolvent, or any other event has occurred, or is expected to occur, that would give rise to any right to compensation;
 - (c) conferring on a person so appointed or constituted, or on any other person, any function in relation to the scheme, including the power to delegate any such function to any other person;
 - (d) for determining entitlement to compensation, including provision as to –

- (i) classes of depositor entitled or not entitled to compensation, and priorities in entitlement as between entitled classes,
 - (ii) postponement or cancellation of all compensation rights in relation to a particular bank, if an alternative means of protecting its depositors appears more effective in the circumstances, and
 - (iii) limits on the amount payable, whether by reference to a specified maximum amount or to a maximum amount calculated in a specified manner, or by reference to the effects of the number of banks involved or to the effects of any shortfall in funds available for compensation, or otherwise;
- (e) for the procedure for assessing eligibility for compensation, whether requiring the making of an application or providing for the processing of compensation without application or otherwise;
- (f) for the procedure for paying compensation, including –
 - (i) interim payment before entitlement is finally determined,
 - (ii) payment by instalments or otherwise,
 - (iii) payment to or through a person other than the depositor, and
 - (iv) the application, to payment of compensation in respect of a deposit, of any prohibition, restriction or postponement applying to payment of the deposit to the depositor;
 - (v) postponement, restriction or cancellation of payment of compensation in respect of a deposit, on any grounds related to the particular deposit or depositor, including whether a solvent bank might postpone, restrict or refuse payment of that deposit to a person claiming to be entitled to it;
- (g) as to the effect of the scheme in relation to rights or obligations arising out of a deposit in respect of which compensation is payable –
 - (i) whether by way of subrogation of those rights or obligations or otherwise, and
 - (ii) whether on the occurrence of any event in relation to a bank or on an application for compensation being made or accepted or on payment of compensation being made or otherwise;
- (h) for levies to be imposed on registered persons for the purpose of meeting expenses incurred, or expected to be incurred in relation to the scheme, whether related to establishing the scheme, to maintaining it, to any person having any function under the scheme, to payment of compensation, or otherwise;

- (i) conferring on a scheme manager a right of recovery in respect of levies, overpaid compensation or any other matter relating to the finances of the scheme, whether against a bank, a liquidator, a person applying for or receiving compensation or any other person having a connection with the scheme;
 - (j) for the establishment and operation of compensation funds or other funds in relation to the scheme, including provision as to what may be paid into or out of such a fund;
 - (k) for such treatment of a body, fund or other money in connection with a scheme as is provided for by any reference to an 'enactment' in any definition in Article 1(1) of the Public Finances (Jersey) Law 2005², or to an 'other enactment' in any of Articles 3(2), 21(1), 23(1), 24(1) and 33(2) of that Law;
 - (l) for appeals against decisions on any matter relating to the scheme.”;
- (c) after paragraph (2) there are added the following paragraphs –
- “(3) Regulations under this Article may provide –
 - (a) that a person who contravenes a provision of the Regulations commits an offence, for which the person is liable, unless the Regulations provide for a lesser penalty, to imprisonment for 2 years and a fine;
 - (b) that Article 52 applies to that offence as it applies to an offence under this Law, subject to any modification provided for in the Regulations.
 - (4) Regulations under this Article may provide for any of Articles 7, 22(1), (2) and (5), 26(1) to (3), (5) and (13) to (15), 27 and 42 to 45 to apply in relation to a scheme under this Article –
 - (a) with the substitution, for references to the Commission, of references to a scheme manager; and
 - (b) with any other modification appearing to the States to be necessary or expedient for the purposes of the scheme.
 - (5) Without prejudice to the generality of paragraphs (3) and (4) the provision that may be made under those paragraphs includes provision –
 - (a) rendering any act an offence by the application of any provision in those Articles that relates to offences;
 - (b) applying to a bank any duty to provide information or give access to information relevant to the operation of the scheme –
 - (i) whether or not that bank is insolvent,
 - (ii) whether in response to a demand, at regular intervals, on the occurrence of an event, or otherwise,

- (iii) including the imposition of any requirement as to the format in which such information is to be kept by the bank in readiness for prompt provision, and
 - (iv) including a power, in exceptional cases specified in the Regulations, for a scheme manager to alter the format in which the bank is keeping such information, so that the format meets a requirement referred to in clause (iii); and
 - (c) without prejudice to paragraph (9) and to the generality of Article 45A, to amend any of Articles 42 to 45 to make provision relating to disclosure of information held by a scheme manager under the Regulations.
- (6) The liquidator of a bank shall work with any scheme manager so as to ensure that all compensation under the scheme is paid out as soon as is reasonably practicable, and in particular –
 - (a) shall comply with every reasonable requirement of the scheme manager to provide any assistance in relation to the scheme; and
 - (b) shall give precedence to the duties imposed under this paragraph over any other duties relating to the winding up of the affairs of the bank, but shall begin working towards compliance with both such classes of duty immediately upon appointment.
- (7) Nothing in this Article is to be read as preventing provision being made for a person to be a scheme manager in relation to a bank, by virtue only of that person being the liquidator of the same bank, and paragraph (6) (other than sub-paragraph (a)) applies accordingly in respect of the duties of such a person.
- (8) In this Article –
 - (a) ‘bank’ means a registered person or former registered person;
 - (b) references to bankruptcy include –
 - (i) the winding up of an insolvent bank under Article 155 of the Companies (Jersey) Law 1991³, and
 - (ii) a state equivalent or similar to bankruptcy under the law of a jurisdiction outside Jersey;
 - (c) ‘insolvent’ means unable, or likely to be unable, to satisfy claims as described in paragraph (1);
 - (d) ‘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;
 - (e) ‘scheme manager’ means a person on whom a function in relation to a scheme has been conferred, or to whom such a function has been delegated.”.

2 Citation and commencement

This Law may be cited as the Banking Business (Amendment No. 8) (Jersey) Law 2012 and comes into force 7 days after it is registered.

A.H. HARRIS

Deputy Greffier of the States

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- ¹ *chapter 13.075*
² *chapter 24.900*
³ *chapter 13.125*