

**Jersey R&O 95/2002**

**BANKING BUSINESS (GENERAL PROVISIONS)  
(JERSEY) ORDER 2002**

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**ARRANGEMENTS OF ARTICLES**

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**95/2002**

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**Banking Business (Jersey) Law 1991**

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**THE FINANCE AND ECONOMICS COMMITTEE**, in pursuance of Articles 5, 7, 8, 10, 19, 33 and 48 of the Banking Business (Jersey) Law 1991,<sup>1</sup> as amended,<sup>2</sup> on the recommendation of the Jersey Financial Commission and having consulted with such persons as appear to the Committee to represent the interests of accountants and registered persons, orders as follows -

**Interpretation**

1.-(1) In this Order “the Law” means the Banking Business (Jersey) Law 1991.<sup>3</sup>

(2) A reference in this Order to an enactment, including an enactment of the United Kingdom, is a reference to that enactment as amended by or under any other enactment.

(3) A reference in this Order to an Article or a Schedule by number only is a reference to the Article or Schedule of that number contained in this Order.

**Exempt transactions defined**

2. A transaction described as an exempt transaction in Articles 3 to 7, inclusive, is prescribed for the purposes of Article 7(3) of the Law<sup>4</sup> as a transaction to which the prohibition in Article 7(1) of the Law<sup>5</sup> does not apply.

<sup>1</sup> Recueil des Lois, Volume 1990-1991, pages 492, 493, 495, 498, 508, 528 and 540.

<sup>2</sup> Recueil des Lois, Volume 1998, pages 266 to 268 and 685 and Volume 1999, page 525.

<sup>3</sup> Recueil des Lois, Volume 1990-1991, page 477, Volume 1992-1993, pages 93 to 95, Volume 1996-1997, page 551, Volume 1998, pages 265 to 267 and 685 to 691, Volume 1999, pages 420 and 525 and Volume 2002, page 95.

<sup>4</sup> Recueil des Lois, Volume 1990-1991, page 494.

<sup>5</sup> Recueil des Lois, Volume 1990-1991, page 493.

### **Charities**

3.-(1) It is an exempt transaction for a charity to accept a sum if -

- (a) the sum is paid by another charity; or
- (b) no interest or premium is payable in respect of the sum.

(2) In this Article “charity” means an institution, trust or undertaking, whether corporate or not, that is established for charitable purposes.

### **Industrial and Provident Societies**

4.-(1) It is an exempt transaction for an industrial and provident society to accept a sum in the form of withdrawable share capital.

(2) In this Article “industrial and provident society” means a society registered or deemed to be registered under the Industrial and Provident Societies Act 1965 of the United Kingdom as applied to the Island by the Industrial and Provident Societies (Channel Islands) Order 1965.<sup>6</sup>

### **Advocates and solicitors**

5.-(1) It is an exempt transaction for a practising advocate or a practising solicitor to accept a sum in the course of his or her profession.

- (2) In this Article -
  - (a) “practising advocate” means an advocate who is qualified to act as such under the Advocates (Jersey) Law 1968;<sup>7</sup>
  - (b) “practising solicitor” means -
    - (i) a solicitor who is qualified to act as such under the Solicitors (Jersey) Law 1971,<sup>8</sup> or

<sup>6</sup> Recueil des Lois, Volume 1966-1967, page 43, Volume 1968-1969, pages 166, 187 and 189, Volume 1975-1978, page 385 and Volume 1979-1981, page 166.

<sup>7</sup> Recueil des Lois, Volume 1968-1969, page 123 (repealed by Volume 1996-1997, page 585).

<sup>8</sup> Recueil des Lois, Volume 1970-1972, page 223 (repealed by Volume 1996-1997, page 585).

- (ii) a person who is qualified to act as a solicitor under any of section 1 of the Solicitors Act 1974 of the United Kingdom, article 4 of the Solicitors (Northern Ireland) Order 1976 or section 4 of the Solicitors (Scotland) Act 1980 and who is, for the time being, practising as such from or within the Island.

### **Investment dealers**

**6.-(1)** It is an exempt transaction for a person to accept a sum -

- (a) to engage in any form of investment dealing activity for or on behalf of the person by whom or on whose behalf the sum was paid; or
- (b) to engage in any service activity on behalf of that person.

**(2)** In this Article -

“investment dealing activity” means to buy, sell, subscribe for or underwrite investments or to offer or agree to do so either as principal or as agent;

“service activity” means any of the following activities -

- (a) to make or agree to make -
  - (i) arrangements with a view to another person buying, selling, subscribing for or underwriting a particular investment, or
  - (ii) arrangements with a view to a person who participates in the arrangements, buying, selling, subscribing for or underwriting investments;
- (b) to manage, or offer to manage, assets, belonging to another person if -
  - (i) the assets consist of or include investments, or

- (ii) the arrangements for their management are such that the assets may consist of or include investments at the discretion of the person managing or offering or agreeing to manage them and either they have at any time done so or the arrangements have at any time been held out as arrangements under which they would do so;
- (c) to establish, operate or wind up a collective investment scheme, including acting as a trustee or custodian of a recognized fund, as that term is defined in the Collective Investments Funds (Recognized Funds) (General Provisions) (Jersey) Order 1988.<sup>9</sup>

### **Trustees**

7. It is an exempt transaction for a person to accept a sum as a trustee -
- (a) to lend it, in such a way that it is segregated from his or her own assets, to one or more persons in any part of the world duly authorized to carry out a deposit taking business; or
  - (b) in the course of carrying on the business of a trustee.

### **Exempt persons**

8. A body listed in Schedule 1 is an exempt person for the purposes of Article 7(2)(d) of the Law<sup>10</sup> subject to the conditions specified in that Schedule in relation to that body.

### **Application for registration under the Law**

9.-(1) A person may apply for registration under Article 8 of the Law<sup>11</sup> by delivering to the Commission, in duplicate, an application in the prescribed form.

- (2) The application must be made -

<sup>9</sup> Nos. 7815, 7844, 7875, 8048, 8124, 8148, 8414, 8890 and 9258.

<sup>10</sup> Recueil des Lois, Volume 1990-1991, page 494 and Volume 1998, page 266.

<sup>11</sup> Recueil des Lois, Volume 1990-1991, page 495 and Volume 1998, pages 267 and 685.

- (a) if the person has not previously been registered, before the person carries on or holds himself out as carrying on a deposit taking business; or
- (b) if a registration certificate is in force in respect of the person, during October in each year.
- (3) An application must be accompanied by -
  - (a) the appropriate fees;
  - (b) the latest information required by Article 8 of the Law;<sup>12</sup> and
  - (c) such other information or documents as the Commission may require under that Article.
- (4) An application is in the prescribed form for the purpose of paragraph (1) if it is made on a form approved or provided for the purpose by the Commission.
- (5) In paragraph (3)(a) “appropriate fee” means, in the case of a first registration -
  - (a) an application fee of £10,000; and
  - (b) a basic annual fee of £13,500 plus an additional £5,000 for each subsidiary company or branch of the applicant, situated outside the Island, to which the application refers, to a maximum additional annual fee of £50,000,

or, in the case of a subsequent registration, the total annual fee calculated in accordance with sub-paragraph (b).

### **Refund of annual fee**

**10.**-(1) The Commission must refund to an applicant the annual fee paid in accordance with Article 9(3)(a) if the application -

<sup>12</sup> Recueil des Lois, Volume 1990-1991, page 495 and Volume 1998, pages 267 and 685.

- (a) is refused; or
- (b) withdrawn by the applicant before it is granted or refused.

(2) If an application for registration is refused, the annual fee shall not be refunded until after -

- (a) the expiration of the period within which, under Article 17 of the Law,<sup>13</sup> notice of appeal may be given; or
- (b) if notice of appeal is given, the appeal is determined or abandoned.

### **Conditions of registration**

11.-(1) It is a condition of every registration under the Law that the registered person -

- (a) must not commence without the Commission's consent a new activity in the Island, being activity that has or may have a significant effect on the business or profitability of the registered person;
- (b) must remove a director, controller or manager of the registered person appointed under Article 23(1) of the Law<sup>14</sup> if the Commission so requires on the grounds that the Commission does not consider the director, controller or manager to be a fit and proper person to hold such office; and
- (c) must comply promptly with a notice issued under Article 25(1) of the Law.<sup>15</sup>

(2) If the registered person is a branch of an organization it is an additional condition of registration of the registered person under the Law that the registered person -

<sup>13</sup> Recueil des Lois, Volume 1990-1991, page 506 and Volume 1998, page 267.

<sup>14</sup> Recueil des Lois, Volume 1990-1991, page 513 and Volume 1998, pages 267 and 686.

<sup>15</sup> Recueil des Lois, Volume 1990-1991, page 514 and Volume 1998, page 267.



- (a) must appoint a senior officer, approved by the Commission, outside the Island to fulfil the obligations imposed by the Law on the registered person;
- (b) must ensure that the person so appointed informs the Commission of the name of the principal manager of the registered person in the Island and that of any deputy and, within 14 days, notifies the Commission of any change in those offices; and
- (c) must, unless exempted by the Commission, appoint a branch auditor approved by the Commission.

(3) If the registered person is a subsidiary of an organization it is an additional condition of registration of the registered person under the Law that the registered person -

- (a) must not establish or acquire a representative office, a branch or a subsidiary outside the Island without the Commission's approval;
  - (b) must not participate with others in a joint venture outside the Island involving a deposit taking, banking or investment business without the Commission's approval;
  - (c) must not enter into an exposure to any one person or a group of connected persons that exceeds 25% of the registered person's agreed capital resources without the Commission's approval; and
  - (d) must publish and provide to the Commission relevant accounts.
- (4) In paragraph (3)(d) "relevant accounts" means accounts -
- (a) that have been prepared in accordance with generally accepted accounting principles;
  - (b) that show a true and fair view of the profit or loss of the registered person for the relevant accounting period, and of the state of the registered person's affairs at the end of the period; and

- (c) that comply with any other requirements of the Law and of the Companies (Jersey) Law 1991.<sup>16</sup>

(5) The relevant accounts referred to in paragraph (3)(d) must be published within 3 months of the date of the balance sheet although a registered person may instead publish for the use of depositors and potential depositors -

- (a) summarized accounts of the registered person in a form determined by the Commission; or
- (b) “true and fair” audited accounts.

### **Control of advertising**

**12.**-(1) This Article applies to a deposit advertisement issued by -

- (a) a registered person that is a company incorporated in the Island;
- (b) a registered person that is a branch of a company incorporated outside the Island;
- (c) a person other than a registered person, who issues or intends to issue a local deposit advertisement.

(2) It does not apply to a deposit advertisement issued in a place outside the Island by a registered person that is a company incorporated outside the Island if the advertisement is for -

- (a) the business of the company as a whole; or
- (b) a branch or other office of the company outside the Island, if the sole mention in the advertisement of the branch or other office in the Island is as a part of a geographical list of the places where that company carries on its business.

<sup>16</sup> Recueil des Lois, Volume 1990-1991, page 875, Volume 1992-1993, page 63, Volume 1994-1995, page 351, Volume 1996-1997, pages 552 and 683, Volume 1998, pages 499 and 594, Volume 1999, pages 107 and 525, Volume 2000, page 746, Volume 2002, pages 177 and 439 and Nos. 8326, 8941 and 68/2002.

(3) A deposit advertisement must not be issued in the Island unless it complies with the conditions specified in Schedule 2.

(4) In this Article “local deposit advertisement” means a deposit advertisement -

- (a) published in a newspaper, magazine or journal circulating principally in the Island;
- (b) published by means of a broadcast (whether in sound or vision or a combination of sound and vision) received principally in the Island; or
- (c) published by means of any other electronic communication, as that term is defined by the Electronic Communications (Jersey) Law 2000,<sup>17</sup> where Jersey is featured as an essential element of the advertisement.

**Circumstances in which matters are to be reported directly  
to Commission**

**13.**-(1) This Article applies to a person who -

- (a) is the auditor of a registered person; or
- (b) has been appointed under Article 25 of the Law<sup>18</sup> to make a report in respect of a registered person.

(2) The person must immediately report to the Commission without informing the registered person if the person becomes aware of the probable existence of exceptional circumstances.

(3) Exceptional circumstance are circumstances in which the interests of depositors in the registered person could be prejudiced if there were to be made known to the management of the registered person the fact that a person to whom this Article applies was aware of the existence of the circumstances.

<sup>17</sup> Recueil des Lois, Volume 2000, page 821.

<sup>18</sup> Recueil des Lois, Volume 1990-1991, page 514 and Volume 1998, pages 267 and 686.

(4) So, for example (but without limiting the generality of the paragraph (3)), a report must be made to the Commission under paragraph (2) if the person has reason to believe -

- (a) that the directors or members of the senior management of a registered person have committed fraud or misappropriated property or intend to do so;
- (b) that the directors or members of the senior management are acting in an irresponsible or reckless manner with respect to the registered person's affairs, or intend to do so; or
- (c) that there has been, or is likely to be, an occurrence of material significance for the exercise in relation to the registered person of the Commission's powers or functions under the Law.

(5) A person to whom this Article applies must also report circumstances in respect of a registered person directly to the Commission if having advised the registered person to inform the Commission of those circumstances within a specified period the person is satisfied that the registered person has not done so or has not done so fully or in an adequate manner.

### **Revocation**

**14.** The following Orders are revoked -

- (a) Banking Business (General Provisions) (Jersey) Order 1991;<sup>19</sup>
- (b) Banking Business (General Provisions) (Amendment) (Jersey) Order 1994;<sup>20</sup>
- (c) Banking Business (General Provisions) (Amendment No. 2) (Jersey) Order 1998;<sup>21</sup>

<sup>19</sup> No. 8277.

<sup>20</sup> No. 8717.

<sup>21</sup> No. 9255.

- (d) Banking Business (General Provisions) (Amendment No. 3) (Jersey) Order 1998;<sup>22</sup>
- (e) Banking Business (General Provisions) (Amendment No. 4) (Jersey) Order 1999.<sup>23</sup>

**Citation and commencement**

**15.** This Order may be cited as the Banking Business (General Provisions) (Jersey) Order 2002 and shall come into force on 1st October 2002.

By Order of the Finance and Economics Committee,

**C.M. NEWCOMBE**

*Greffier of the States.*

18th September 2002.

<sup>22</sup> No. 9320.

<sup>23</sup> No. 9351.

*SCHEDULE 1*

**(Article 8)**

**Exempt persons**

**1. The Channel Islands Co-operative Society Limited (“the Society”).**

Subject to the following conditions -

1. The exemption only applies to the acceptance of deposits from members of the Society from time to time and from persons who (on the date of the coming into force of the Law) were depositors with the Society.
2. The Society shall limit deposits to 100% of its most recently published capital and reserves.
3. The Society may only issue deposit advertisements to persons who are members of the Society or to persons who on the coming into force of the Law were depositors with the Society, except that this condition shall not prevent the Society from advertising its deposit taking services in any of its premises and shall not prevent the Society from placing notices in any newspaper of changes in any rate of interest payable in respect of deposits with the Society.
4. The Society’s auditors shall provide to the Commission an annual statement in writing that conditions 1 and 2, above, have been complied with.
5. The Society shall provide the Commission with such information about its business as the Commission may request.
6. The Society shall permit persons authorized by the Commission for the purpose to carry out inspections of any part of its activities and shall give any such persons such assistance in the inspection as they may reasonably require.

**2. Community Savings & Credit Limited (“the Company”).**

Subject to the following conditions -

1. The Company shall not change its auditors without the prior consent of the Commission.
2. All Board members and directors must be approved by the Commission.
3. The Commission shall be free to impose such additional conditions on the activities of the company as it considers necessary for the protection of the members.
4. The Company shall operate according to rules which are consistent with those used by Credit Unions operating in the United Kingdom.
5. The Company shall enter into an Insurance Bond in a format acceptable to the Commission to protect the savings of members from fraud or theft.
6. The Company shall provide the Commission with such information about its business/activities at such frequency as the Commission may request.
7. The Company shall permit Officers of the Commission or persons authorized by it for the purpose to carry out inspections of any part of the Company’s activities and shall give such persons such assistance in inspection as they may reasonably require.
8. The Company shall submit copies of its annual audited accounts to the Commission within 3 months of its financial year end.

*SCHEDULE 2*

(Article 12(3))

**Conditions applicable to a deposit advertisement**

GENERAL

1.-(1) A deposit advertisement must state -

- (a) the full name of the deposit taker; and
  - (b) the business address of the deposit taker in the Island.
- (2) It must also state -
- (a) if the deposit taker is not a company incorporated in the Island, its place of incorporation, or in the case of a body other than a company, the place of its head office; or
  - (b) if the deposit taker is a company incorporated in the Island, that copies of the deposit taker's latest audited accounts are available for inspection on request; or
  - (c) if the deposit taker is not a registered person, that fact together with details its place of registration, if any.

(3) Paragraph (2)(b) shall not apply in relation to a deposit advertisement issued by the exhibition of a cinematograph film or by way of sound or television broadcasting if the advertisement contains a statement that further particulars will be sent if application is made to the address specified in the advertisement, and those particulars include the information specified in that sub-paragraph.

INTEREST

2.-(1) If a deposit advertisement specifies a rate of interest payable on deposits the advertisement must state -

- (a) any minimum amount that must be deposited to earn the rate of interest;



- (b) any period of time during which no interest will be payable;
- (c) any minimum period of time during which a deposit must be retained by the deposit-taker in order to earn the rate of interest;
- (d) any minimum period of notice that must be given before repayment may be required of a deposit earning the rate of interest; and
- (e) the intervals at which the interest will be paid.

(2) If the rate of interest that is specified is not an annual rate of simple interest, the advertisement must state the basis on which the rate will be calculated.

(3) If the rate of interest that is specified may be varied during the period for which the deposit will be held this must be stated in the advertisement.

(4) If interest will or may not be paid in full at the rate that is specified, this must be stated in the advertisement, and the advertisement must state the nature and the amount of or rate of any deductions that will or may be made from the interest before payment.

(5) If the rate of interest that is specified is or may not be the rate at which interest will be payable in respect of deposits on the date on which the advertisement is issued this must be stated in the advertisement, and the advertisement must state the date on which interest was payable at the rate that is specified, such date being as close as reasonably practicable to the date on which the advertisement is issued.

(6) If an advertisement specifies more than one rate of interest payable in respect of deposits of a particular amount the advertisement must contain the information required by any of the foregoing sub-paragraphs in relation to each such rate.

(7) If different rates of interest apply to deposits of different amounts, the advertisement must contain the information required by any of the foregoing sub-paragraphs in relation to each such rate.

## ASSETS AND LIABILITIES

3.-(1) If a deposit advertisement contains a reference to the amount of the paid-up capital and reserves of a holding company of a registered person, or of a group of which the registered person is a member, the advertisement must also state with equal prominence the amount of the paid-up capital and reserves of the registered person, described as such.

(2) If an advertisement contains a reference to the amount of the assets of a holding company of a registered person, or of a group of which the registered person is a member -

(a) the advertisement must, unless that amount relates to the net assets of that holding company or group and is so described, state with equal prominence the amount of the liabilities of that holding company or group described as such; and

(b) the advertisement must state with equal prominence the amount of the net assets of the registered person, described as such.

(3) In this paragraph -

(a) “liabilities” includes provisions;

(b) the net assets of a company or a group shall be taken to be the total assets less the liabilities;

(c) a group means a company and all its subsidiaries; and

(d) a company also means a building society.

## DEPOSIT PROTECTION

4. A deposit advertisement must not state or imply that the repayment of any deposits or the payment of any interest payable on any deposits is guaranteed or secured unless the advertisement also states the nature and extent of the guarantee and the name of the guarantor, or the nature and extent of the security, as the case may be.

## CURRENCY

5. A deposit advertisement must state the currency in which the deposits are to be made.

## SUPPLEMENTARY PROVISIONS

6. The matters required to be included in a deposit advertisements by virtue of this Schedule must be shown clearly and legibly, or in the case of an advertisement issued by the exhibition of a cinematograph film or by way of sound or television broadcast, spoken clearly.