



Jersey

R&O – 100/2004

BANKING BUSINESS (GENERAL PROVISIONS) (AMENDMENT) (JERSEY) ORDER 2004

Made

14th September 2004

Coming into force

1st October 2004

THE ECONOMIC DEVELOPMENT COMMITTEE, in pursuance of Articles 8 and 48 of the Banking Business (Jersey) Law 1991,¹ and on the recommendation of the Jersey Financial Services Commission, orders as follows –

1 Interpretation

In this Order, “principal Order” means the Banking Business (General Provisions) (Jersey) Order 2002.²

2 Article 9 substituted

For Article 9 of the principal Order there shall be substituted the following Article –

“9 Application for registration

- (1) A person may apply for registration under Article 8 of the Law³ by delivering to the Commission, in duplicate, an application in the form approved or provided by the Commission.
- (2) The application shall be made –
 - (a) if the person is not registered under the Law at the time when the application is made, before the person carries on or holds himself or herself out as carrying on a deposit-taking business; or
 - (b) if the person is already registered under the Law when the application is made, during October in each year.
- (3) For the purposes of Article 8(1) of the Law,⁴ the prescribed fee is –

-
- (a) in the case of a person not registered under the Law at the time when the application is made, £10,000 plus the annual fee prescribed in paragraph (4); or
 - (b) in the case of a person already registered under the Law at that time, the annual fee prescribed in paragraph (4).
- (4) The annual fee is the sum of the following components –
- (a) a component calculated on the basis of £5,000 for each country (other than Jersey) where the person carries on a deposit-taking business through an office of the person based in the country, if the Commission is a home country supervisor in relation to that business of the person in that country;
 - (b) a component calculated on the basis of £5,000 for each of the person's subsidiary companies that has its registered office outside Jersey and carries on a deposit-taking business, if the Commission is a home country supervisor in relation to that business of the subsidiary company;
 - (c) a component calculated on the basis of £5,000 for each country where a subsidiary company of the person carries on a deposit-taking business through an office of the subsidiary company based in the country, if –
 - (i) the country is not Jersey, nor the country where the subsidiary company has its registered office, and
 - (ii) the Commission is a home country supervisor in relation to that business of the subsidiary company in that country;
 - (d) a component calculated on the basis of £5,000 for each subsidiary company (hereafter called 'X') of a subsidiary company of the person, if –
 - (i) X has its registered office outside Jersey and carries on a deposit-taking business, and
 - (ii) the Commission is a home country supervisor in relation to that business of X;
 - (e) the following component calculated on the basis of the consolidated income of the person –
 - (i) for a consolidated income not exceeding £5,000,000 (or a loss or an income of zero), a component of £15,000,
 - (ii) for a consolidated income exceeding £5,000,000 but not exceeding £10,000,000, a component of £17,500,
 - (iii) for a consolidated income exceeding £10,000,000 but not exceeding £20,000,000, a component of £20,000,
 - (iv) for a consolidated income exceeding £20,000,000, a component of £25,000.
- (5) For the purposes of this Article, the component referred to in paragraph (4)(a), (b), (c) or (d) shall be calculated on the basis of the factors mentioned in that sub-paragraph –
-

-
- (a) in the case of a person not registered under the Law at the time when the application is made (or of a person registered under the Law at that time, but whose business to which the application relates has not started operations at that time), as the person expects the factors to be when the business of the person to which the application relates starts operations; or
 - (b) in any other case, as the factors are when the application is made.
 - (6) For the purposes of this Article, the consolidated income referred to in paragraph (4)(e) is –
 - (a) in the case of a person not registered under the Law at the time when the application is made, the consolidated income that the person expects to report as at the end of the year starting at midnight on 31st December following the making of the application (whether the application relates to that year or to another period);
 - (b) in the case of a person registered under the Law at the time when the application is made whose business to which the application relates did not operate for the whole of the year ending at midnight on 31st December in the year preceding the making of the application, the consolidated income that the person expects to report as at the end of the year starting at midnight on 31st December following the making of the application; or
 - (c) in any other case, the consolidated income that the person to whose business the application relates reported as at midnight on 31st December preceding the making of the application.
 - (7) If an application is made in respect of a period of less than a year, the annual fee referred to in paragraph (4) shall be varied to a proportion of the fee that would have been payable in respect of a year, being a proportion that corresponds to the proportion that the period bears to a year.
 - (8) For the purposes of this Article –
 - (a) a territory is taken to be a country if the territory is co-extensive with a discrete jurisdiction concerned with the supervision of deposit-taking business;
 - (b) Jersey is a country;
 - (c) Guernsey is a country and Alderney and Sark are parts of that country;
 - (d) the Isle of Man is a country;
 - (e) each member state (however described) of the following federations is taken to be a separate country –
 - (i) the United Arab Emirates;
 - (ii) the United States of America.
 - (9) In this Article –
-

‘consolidated income’ of a person means the total annual income of the person and the person’s subsidiary companies arrived at after determining each item set out in column 2 of Schedule 1A in respect of the person and each subsidiary company, and using the guidance set out opposite that item in column 3 of that Schedule;

‘home country supervisor’ means, in relation to a deposit-taking business, and to a person –

- (a) who carries on the deposit-taking business in another country;
- (b) who is the holding company of a subsidiary company that carries on the deposit-taking business in another country; or
- (c) who is the holding company of a subsidiary company that in turn is the holding company of a subsidiary company that carries on the deposit-taking business in another country,

an authority that –

- (i) is based in the country where the person is registered; and
- (ii) exercises supervision of the deposit-taking business for the purposes of international agreements, or norms, for the regulation of deposit-taking by international banking groups and their cross-border establishments.

- (10) For the avoidance of doubt, it is hereby stated that income of a person (or subsidiary company) includes all income of the person (or subsidiary company) arrived at in accordance with Schedule 1A, and not just income from the deposit-taking business of the person (or subsidiary company).”.

3 Article 10 amended

In Article 10(1) of the principal Order for the words “in accordance with Article 9(3)(a)” there shall be substituted the words “in accordance with the Law and prescribed by Article 9(4)”.

4 Schedule 1A added

After Schedule 1 of the principal Order there shall be inserted the Schedule set out in the Schedule to this Order.

5 Citation and commencement

This Order may be cited as the Banking Business (General Provisions) (Amendment) (Jersey) Order 2004 and shall come into force on 1st October 2004.

M.N. DE LA HAYE

Greffier of the States.

SCHEDULE

(Article 4)

“SCHEDULE 1A

(Article 9(9))

INCOME

| Column 1 | Column 2 | Column 3 |
|-----------------|-----------------------|--|
| <i>Line No.</i> | <i>Item</i> | <i>Guidance</i> |
| 142 | Income | |
| 143 | Interest income | Include under these headings both interest actually received and paid and interest receivable and payable which has accrued but has not yet been received or paid. Amounts accrued should be based on the latest date to which these calculations were made; thus for an institution which accrues profits on a daily basis, accruals should include amounts up to and including the reporting date. Also include under this heading income accrued in respect of the amortisation of discounts (and premiums) on the purchase of fixed maturity investments which are not held for dealing (e.g. Treasury Bills). |
| 144 | Interest expenses | |
| 145 | Dividend income | Dividends received from investments etc. |
| 146 | Fees etc income | Income from fees and commissions (except fiduciary income). Include charges made for services, e.g. for the provision of current account facilities, corporate advice, investment management services, guarantees and indemnities, commission on the sale of insurance or travellers' cheques etc. |
| 147 | Fees etc expenses | Expenses in connection with line 146. |
| 148 | Investment securities | Net income. Include all profits or losses (including revaluation profits or losses) other than those arising from the sale of investments in subsidiary or associated companies, trade investments or the amortisation of premiums or discounts on the purchase of fixed maturity investments which are not held for dealing. |

| Column 1 | Column 2 | Column 3 |
|----------|-----------------------------|---|
| 149 | Currency dealing | Net income. Revaluations of foreign exchange positions and, if identifiable, fees and commissions of foreign exchange business should be included under this heading. If it is not possible to identify fees and commissions derived from this activity separately, they should be included with other fees and commissions. Where the registered person or any of its subsidiaries is engaged in deposit swap dealing (also sometimes known as interest arbitrage dealing) and does not distinguish between profits and losses on the foreign exchange element of the transaction and the interest differential, the whole transaction should be shown as interest income. A deposit swap profit should be treated as income and a loss as an expense. |
| 150 | Fiduciary cash and deposits | Income arising from acting in a fiduciary capacity in the management of cash and deposits. |
| 151 | Fiduciary securities | Income arising from acting in a fiduciary capacity in the management of securities. |
| 152 | Fiduciary other | Income arising from acting in a fiduciary capacity in the management of assets other than amounts in lines 150 and 151. |
| 153 | Other income | Any income which does not fall into any of the other categories should be included here. |
| 154 | Total income | ” |

¹ *Recueil des Lois, Volume 1990-1991, pages 495 and 540, Volume 1998, page 267, Volume 1999, page 525 and Volume 2004, page 777.*

² *No. 95/2002.*

³ *Recueil des Lois, Volume 1990-1991, page 495, Volume 1998, page 267 and Volume 2004, page 777.*

⁴ *Recueil des Lois, Volume 1990-1991, page 495 and Volume 2004, page 777.*