

BANK (RECOVERY AND RESOLUTION) (JERSEY) LAW 2017

Official Consolidated Version

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BANK (RECOVERY AND RESOLUTION) (JERSEY) LAW 2017

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Jersey

BANK (RECOVERY AND RESOLUTION) (JERSEY) LAW 2017

A LAW to provide for bank recovery and resolution and for connected purposes.

Commencement [see endnotes]

PART 1

PRELIMINARY

1 Interpretation[1]

In this Law unless the context otherwise requires –

"1991 Law" means the Banking Business (Jersey) Law 1991;

"2009 Regulations" means the Banking Business (Depositors Compensation) (Jersey) Regulations 2009;

"Additional Tier 1 or Tier 2 capital" shall have the same meaning as in the Directive;

"Additional Tier 1 instruments" shall have the same meaning as in the Directive;

"affected creditor" means a creditor whose claim relates to a liability that is reduced or converted to shares by the exercise of the write down or conversion power pursuant to the application of the bail-in tool;

"annual administration levy" means the levy referred to in Article 16(1);

"associate" shall be construed in accordance with Article 116(2);

"asset management vehicle" means a legal person that meets the following requirements –

(a) it is wholly or partially (directly or indirectly) owned by the Authority;

(b) it is controlled by the Authority; and

(c) it has been created for the purpose of receiving some or all of the assets, rights and liabilities of one or more banks in resolution or bridge banks or both;

"asset separation tool" means the mechanism described in Article 63(1) for effecting a transfer of assets, rights or liabilities of a bank in resolution to an asset management vehicle;

"Authority" means the Jersey Resolution Authority established under Article 4;

"bail-in tool" means the mechanism described Article 65(1) for recapitalizing a bank or exercise of the write down or conversion power;

"bank" means a person to whom this Law applies under Article 3(1);

"bank depositors compensation scheme" has the meaning given by Regulation 1 of the 2009 Regulations;

"bank in resolution" means a bank in respect of which resolution action is being taken;

"bank liquidation committee" shall be construed in accordance with Article 101;

"bank liquidator" means a person appointed as such under Article 98;

"bank winding up" means the winding up of a bank under to a bank winding up order under Part 7;

"bank winding up order" means an order for the winding up of a bank for which an application may be made under Article 90;

"branch" means a place of business which forms part of a bank and which carries out directly all or some of the transactions inherent in the business of that bank but does not have a legal personality separate from the bank;

"bridge bank" mean a company referred to in Article 58(1);

"bridge bank tool" means the mechanism for transferring one or more shares of one or more banks that meet the resolution conditions or all or any assets, rights or liabilities of one or more banks in resolution described in Article 58(2);

"business reorganization plan" means a business reorganization plan drawn up and implemented in accordance with Article 70;

"cause" has the meaning assigned to it by the customary law of Jersey;

"client assets" means assets which a bank has undertaken to hold for a client (whether or not on trust, and whether or not the undertaking has been complied with);

"Commission" means the Jersey Financial Services Commission established under Article 2 of the Financial Services Commission (Jersey) Law 1998;

"Common Equity Tier 1 capital" shall have the same meaning as in the Directive;

"Common Equity Tier 1 capital ratio" shall have the same meaning as in the Directive;

"Common Equity Tier 1 instruments" shall have the same meaning as in the Directive;

"Common Equity Tier 1 items" shall have the same meaning as in the Directive;

"connected with a bank" shall be construed in accordance with Article 116(1);

"conversion rate" means the factor that determines the number of shares into which a liability of a specific class will be converted, by reference either to a single instrument of the class or to a specified unit of value of a debt claim;

"core business lines" means business lines and associated services which represent material sources of revenue, profit or franchise value for a bank or a bank's group;

"Court" means the Royal Court;

"covered bond" means a bond issued by a bank where sums deriving from the issue of those bonds must be invested in assets which, during the whole period of validity of the bonds, are capable of covering claims attaching to the bonds and which, in the event of failure of the bank, would be used on a priority basis for the reimbursement of the principal and payment of the accrued interest;

"covered deposit" means the part of an eligible deposit, or the part of a deposit that would be an eligible deposit of a bank incorporated in Jersey if it was not held in a

bank account in a branch outside Jersey, that does not exceed the maximum amount of compensation payable to any depositor –

(a) under the 2009 Regulations; or

(b) under the laws of the bank's home jurisdiction or relevant jurisdiction up to a maximum of £85,000,

whichever is greater;

"crisis management measure" means –

(a) the exercise of a stabilization power in relation to a bank by the Authority;

(b) the recognition of a foreign resolution action by the Authority;

(c) the exercise of a stabilization power in support of a foreign resolution action by the Authority;

"crisis prevention measure" means –

(a) the imposition by the Authority or Commission of a requirement to take specified measures with respect to a bank's recovery plan;

(b) the imposition by the Authority or Commission of a requirement to take measures to remove impediments to recoverability of a bank;

(c) the imposition of an early intervention measure described in Article 31(4);

(d) the appointment of a temporary administrator under Article 32(1); or

(e) the exercise of the write down or conversion power described in Article 74;

"critical functions" means activities, services or operations the discontinuance of which is likely to lead to the disruption of services that are essential to the real economy in Jersey or the disruption of financial stability due to the size, market share, external and internal interconnectedness, complexity, or cross-border activities of a bank or bank's group, with particular regard to the substitutability of those activities, services or operations;

"debt instruments" means bonds and other forms of transferable debt, instruments creating or acknowledging debt, and instruments giving rights to acquire debt instruments;

"definitive valuation" shall be construed in accordance with Article 46;

"deposit" has the meaning given by Article 2 of the 1991 Law, and "depositor" shall be construed accordingly;

"Depositors Compensation Fund" means the compensation fund established in respect of the bank under Regulation 17 of the 2009 Regulations;

"derivative contracts" means –

(a) options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash;

(b) options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event);

(c) options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled if they are traded on a regulated market or a multilateral trading facility;

(d) options, futures, swaps, forwards and any other derivative contracts relating to commodities that can be physically settled, not otherwise mentioned in paragraph (c) and not being for commercial purposes, and which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are cleared and settled through recognized clearing houses or are subject to regular margin calls;

(e) derivative instruments for the transfer of credit risk;

(f) financial contracts for differences; or

(g) options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event), as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market or a multilateral trading facility, are cleared and settled through recognized clearing houses or are subject to regular margin calls;

"difference of treatment valuation" means a valuation carried out under Article 77(1);

"Directive" means Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190);

"early intervention measure" shall be construed in accordance with Article 31;

"eligible deposit" has the meaning given by Regulation 1 of the 2009 Regulations;

"eligible depositor" has the meaning given by Regulation 1 of the 2009 Regulations;

"eligible liabilities" means liabilities and capital instruments that do not qualify as Common Equity Tier 1 instruments, Additional Tier 1 instruments or Tier 2 instruments of a bank that are not excluded from the exercise of the write down or conversion power under Article 65(7);

"extraordinary public financial support" shall be construed in accordance with Article 73;

"financial contracts" includes the following contracts and agreements –

(a) securities contracts, including –

(i) contracts for the purchase, sale or loan of a security, a group or index of securities,

(ii) options on a security or group or index of securities, and

(iii) repurchase or reverse repurchase transactions on any such security, group or index;

(b) commodities contracts, including –

(i) contracts for the purchase, sale or loan of a commodity or group or index of commodities for future delivery,

(ii) options on a commodity or group or index of commodities, and

(iii) repurchase or reverse repurchase transactions on any such commodity, group or index;

(c) futures and forwards contracts, including contracts (other than a commodities contract) for the purchase, sale or transfer of –

(i) a commodity or property of any other description,

(ii) a service, or

(iii) a right or interest,

for a specified price at a future date;

(d) swap agreements, including –

(i) swaps and options relating to interest rates, spot or other foreign exchange agreements, currency, an equity index or equity, a debt index or debt, a commodity index or commodity, weather, emissions or inflation,

(ii) total return, credit spread or credit swaps, and

(iii) any agreements or transactions that are similar to an agreement referred to in clause (i) or (ii) which is the subject of recurrent dealing in the swaps or derivatives markets;

"foreign bank" means a bank, the head office of which is established in a jurisdiction other than Jersey;

"foreign resolution action" means an action under the law of a jurisdiction, other than Jersey, to manage the failure or likely failure of a foreign bank where such action is comparable, in terms of objectives and anticipated results, to a resolution action under this Law;

"foreign resolution instrument" means an instrument made by the Authority under Article 89(1);

"Fund" means the Jersey Bank Resolution Fund established under Article 22;

"general principles of resolution" shall be construed in accordance with Article 35;

"government financial assistance tool" means the mechanism described in Article 73 for providing extraordinary public financial support to a bank;

"group" means a parent and its subsidiaries;

"group entity" means a legal person that is part of a group;

"holding company" has the meaning given by Article 2(4) of the Companies (Jersey) Law 1991;

"home jurisdiction", in relation to a bank, means the jurisdiction in which the bank is incorporated;

"home regulatory supervisor", in relation to a bank, means the supervisor of banks in the bank's home jurisdiction;

"home resolution authority" in relation to a bank, means the resolution authority in the bank's home jurisdiction;

"inspector" means a person appointed to investigate the affairs of a bank under Article 143;

"instruments of ownership" mean shares, instruments that are convertible into or give the right to acquire shares, and instruments representing interests in shares;

"international obligations notice" means a notice served by the Authority under Article 86(1);

"intragroup financing agreement" means a contract by which one group entity guarantees the obligations to a third party of another group entity within the same group;

"Jersey bank" means a person referred to in Article 3(1)(a);

"Jersey Bank Depositors Compensation Board" means the Board established under Regulation 8(1) of the 2009 Regulations;

"management", in relation to a bank, includes the directors and senior managers, and, if applicable, former directors or former senior managers of a bank who are responsible both individually and collectively;

"mandatory reduction instrument" means an instrument issued by the Authority in accordance with Article 74(1) to exercise the write down or conversion power;

"Minister" means the Minister for External Relations;

"netting arrangement" means an arrangement under which a number of claims or obligations can be converted into a single net claim, including close-out netting arrangements under which, on the occurrence of an enforcement event (however or wherever defined) the obligations of the parties are accelerated so as to become immediately due or are terminated, and in either case are converted into or replaced by a single net claim, and "netting right" shall be construed according;

"own funds" shall have the same meaning as in the Directive;

"parent", in relation to a bank, means the body that wholly owns and manages the bank;

"pre-resolution valuation" shall be construed in accordance with Article 44;

"prescribed" means prescribed by an Order made by the Minister;

"property transfer instrument" means an instrument for the transfer of assets, rights or liabilities;

"provisional valuation" shall be construed in accordance with Article 45;

"qualifying holding", in relation to a bank, means a shareholding that entitles the holder either alone or with any associate of the holder to exercise, or control exercise of, more than 3% of the voting power in a general meeting of the bank or the bank's holding company;

"recipient" means the person or entity to which shares, debt instruments, assets, rights or liabilities, or any combination of those items are transferred from a bank in resolution;

"recognized foreign resolution action" means a foreign resolution action which is, or part of which is, recognized by the Authority under Article 89(1);

"recovery plan" mean a recovery plan drawn up and maintained by a Jersey bank in accordance with Article 23;

"Registrar" means the registrar appointed pursuant to Article 196 of the Companies (Jersey) Law 1991;

"regulated market" means a multilateral system operated or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments in the system and in accordance with its non-discretionary rules in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules or systems, and which is authorized and functions regularly and in accordance with the provisions of Title III of the Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending

Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1);

"Regulations" means Regulations made under this Law;

"relevant capital instruments" means Additional Tier 1 instruments and Tier 2 instruments;

"relevant insolvency proceedings" means –

(a) proceedings for a bank winding up order under Part 7;

(b) where the Authority recognizes the resolution action of a home resolution authority or the relevant resolution authority, proceedings for making a bank insolvent under the laws of the bank's home jurisdiction or relevant jurisdiction, as the case may be; or

(c) in the case of the application of a stabilization tool by the Authority, proceedings for a bank winding up order under Part 7 or proceedings for making a bank insolvent under the laws of the bank's home jurisdiction or relevant jurisdiction whichever is chosen by the Authority;

"relevant jurisdiction", in relation to a bank, means the jurisdiction in which the bank's relevant resolution authority is located;

"relevant regulatory supervisor" in relation to a bank, means the supervisor of banks in the bank's relevant jurisdiction;

"relevant resolution authority" in relation to a bank, means –

(a) a resolution authority (other than the home resolution authority) in a jurisdiction in which the bank has a branch, where that resolution authority can take a resolution action with respect to the branch; and

(b) a resolution authority (other than the home resolution authority) in a jurisdiction in which a holding company of which the bank is a subsidiary is incorporated, where that resolution authority can take a resolution action with respect to the holding company;

"residual bank" means, in circumstances where part of the business of a bank has been sold to a private sector purchaser using the sale of business tool, or transferred to a bridge bank using the bridge bank tool, the non-sold or non-transferred part of the bank;

"resolution" means the application under this Law of a resolution tool to achieve one or more of the resolution objectives;

"resolution action" means a decision to place a bank (that satisfies the resolution conditions) in resolution, the application of a resolution tool or the exercise of a resolution power;

"resolution authority" means the Authority or any other authority in a jurisdiction other than Jersey authorized by the law of that jurisdiction to exercise the powers and to carry out functions similar to that of the Authority;

"resolution conditions" means the conditions set out in Article 34(1);

"resolution instrument" means an instrument effecting the decision of the Authority regarding the resolution of a bank;

"resolution objectives" means the resolution objectives specified in Article 33;

"resolution plan" means a resolution plan drawn up for a Jersey bank by the Authority under Article 24;

"resolution power" means a power specified in Article 29;

"resolution safeguard" means a safeguard set out under Articles 76 to 85 or any other prescribed resolution safeguard;

"resolution tool" means a stabilization tool or a bank winding up;

"resolvability assessment" means an assessment carried out under Article 25(1);

"sale of business tool" means the mechanism for effecting a sale of all or part of the business of a bank that meets the resolution conditions to one or more purchasers that are not bridge banks in accordance with Article 51(1);

"secured liability" means a liability where the right of the creditor to payment or other form of performance is secured by a hypothec, security interest, charge, pledge or lien or collateral arrangements, including liabilities arising from repurchase transactions and other title transfer collateral arrangements;

"security interest" means –

(a) a continuing security interest to which, as referred to in Article 1A of the Security Interests (Jersey) Law 1983, that Law applies; or

(b) a security interest within the meaning of the Security Interests (Jersey) Law 2012;

"senior manager", in relation to a bank, means a natural person who exercises executive functions within the bank and who is responsible and accountable to the management for the day-to-day management of the bank and "senior management shall be construed" accordingly;

"set-off arrangement" means an arrangement under which 2 or more claims or obligations owed between the bank in resolution and a counterparty can be set off against each other, and "set-off right" shall be construed according;

"shareholder" means a holder of shares or holders of other instruments of ownership;

"shares" includes shares and other instruments of ownership;

"share transfer instrument" means an instrument for the transfer of shares;

"share transfer order" means an order for the transfer of shares;

"stabilization power" means a resolution power which relates specifically to the application of a stabilisation tool;

"stabilization tool" means the sale of business tool, bridge bank tool, asset separation tool, bail-in tool or government financial assistance tool;

"States' employee" has the meaning given by Article 2 of the Employment of States of Jersey Employees (Jersey) Law 2005;

"States Police Force" has the meaning given by Article 1 of the States of Jersey Police Force Law 2012;

"subsidiary" shall be construed in accordance with Article 2 of the Companies (Jersey) Law 1991;

"temporary administrator" means a person appointed as such under Article 32(1);

"Tier 1 capital" shall have the same meaning as in Directive;

"Tier 2 capital" shall have the same meaning as in the Directive;

"Tier 2 capital instruments" shall have the same meaning as in the Directive;

"Tier 2 instruments" shall have the same meaning as in the Directive;

"title transfer financial collateral arrangement" has the meaning given by Article 2.1(97) of the Directive;

"transfer power" means the power to transfer shares, debt instruments, assets, rights or liabilities, or any combination of those items, from a bank in resolution to a recipient;

"valuation" means a pre-resolution valuation; provisional valuation, definitive valuation or difference of treatment valuation;

"winding up" means, in relation to a bank, the realization of the assets of the bank and the distribution of the assets to those entitled to receive them;

"write down or conversion power" means the power to write down or convert relevant capital instruments of a bank in accordance with Article 74.

2 Circumstances in which a bank is deemed to be failing or likely to fail

For the purposes of this Law, a bank shall be deemed to be failing or likely to fail in one or more of the following circumstances –

(a) the bank has failed to continue to satisfy the Commission that it is a fit and proper person to be registered to undertake deposit-taking business in accordance with Article 10(3)(a) of the 1991 Law (including that the bank has incurred or is likely to incur losses that will deplete all or a significant amount of its own funds);

(b) the value of the assets of the bank determined in accordance with the pre-resolution valuation of the bank is less than the value of its liabilities as so determined;

(c) the bank is unable to pay its debts as they fall due;

(d) one or more of sub-paragraphs (a) to (c) will, in the near future, apply to the bank; or

(e) extraordinary public financial support is required in respect of the bank except when, in order to remedy a serious disturbance in the economy of Jersey and preserve financial stability, the extraordinary public financial support is provided temporarily to a solvent bank and takes any of the following forms –

(i) a States guarantee –

(A) to back liquidity facilities, or

(B) of newly issued liabilities,

in accordance with the Public Finances (Jersey) Law 2019, or

(ii) an injection of own funds or purchase of capital instruments at prices and on terms that do not confer an advantage upon the bank, where the circumstances referred to in sub-paragraphs (a), (b) or (c) are not present and the write down or conversion power has not been exercised at the time that the extraordinary public financial support is granted.[2]

3 Application

(1) Subject to paragraph (2), this Law applies to –

(a) a person registered to carry on deposit-taking business in or from within Jersey under the 1991 Law; or

(b) a company incorporated under the Companies (Jersey) Law 1991 that is a holding company or a subsidiary of a person specified in paragraph (1)(a).

(2) Where a stabilization power is exercised in respect of a bank, it does not cease to be a bank for the purposes of this Law if it is no longer registered as referred to in paragraph (1)(a) as a result of a resolution action.

PART 2

JERSEY RESOLUTION AUTHORITY

4 Establishment of the Authority

(1) There shall be established a body to be known as the Jersey Resolution Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal and may –

(a) sue and be sued in its corporate name;

(b) enter into contracts and acquire, hold and dispose of any property; and

(c) so far as possible for a body corporate, exercise the rights, powers and privileges and incur the liabilities and obligations of a natural person of full age and capacity.

(3) The application of the common seal of the Authority shall be authenticated by the signature of a person authorized by the Authority to sign on its behalf and every document bearing the imprint of the common seal of the Authority shall be deemed to be properly sealed unless the contrary is proved.

(4) Except as this Law provides to the contrary, the Authority shall be independent of the Minister and of the States and neither the Minister nor the States shall be liable for any act or omission, or debt or other obligation, of the Authority.

5 Appointment of members of the Authority

(1) The Authority shall comprise at least 3 members appointed by the Minister, at least one of whom represents the Commission.[3]

(2) The Minister shall designate a member of the Authority to be the Chairman.

(3) The functions, powers, rights and obligations of the Authority shall not be affected by any vacancy in its membership or a defect in the appointment of any member.

(4) Where no appointment is made by the Minister under paragraph (1), the Minister may appoint a States' employee, public authority or other person to discharge the functions of the Authority.

(5) A person appointed under paragraph (4) shall have all the functions, powers, rights and obligations of the Authority under this Law and shall notwithstanding paragraphs (1), (2), (6) and (7) be deemed to be the Authority for the purposes of this Law.

(6) A member of the Authority other than the Chairman, may designate a person to be an alternate member to attend, in place of the member, meetings of the Authority that the member is for any reason unable to attend.

(7) When attending meetings of the Authority, an alternate member designated under paragraph (6) shall for all purposes be deemed to be a member of the Authority.

6 Terms of appointment of members and procedures at meetings of the Authority

(1) Schedule 1 shall have effect with respect to the terms of appointment of members of the Authority and the procedures at meetings of the Authority.

(2) Subject to the provisions of this Law, the Authority may regulate its own procedures.

7 Functions of the Authority

The Authority shall have the following functions –

(a) to make preparations to facilitate the resolution of banks;

(b) to administer the resolution of banks;

(c) to carry out such functions in relation to bank resolution or recovery or such incidental or ancillary matters as are required or authorized by this Law or the Regulations; and

(d) to carry out such other functions as are conferred on it by this Law or any other enactment.

8 Guiding principles

In exercising any of its functions, the Authority may take into account any matter which it considers appropriate but shall, in particular, have regard to –

(a) the reduction of the risk to the public of financial loss due to the financial unsoundness of a person to whom this Law applies;

(b) the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters; and

(c) the best economic interests of Jersey.

9 General powers of the Authority

(1) The Authority has the power to do anything that is calculated to facilitate, or that is incidental or conducive to, the exercise of any of its functions under this Law including –

(a) the exercise of its resolution powers under Article 29;

(b) the exercise of its powers of investigation under Part 8; and

(c) the power to routinely examine a bank, including the power –

(i) to require the bank to supply information in a format and at times specified by the Authority, or

(ii) to give a direction to the bank to take measures which, in the opinion of the Authority, are required to address impediments to the effective exercise of the resolution powers.

(2) Without prejudice to the generality of paragraph (1), the Authority may, in connection with the carrying out of its functions –

(a) subject to Part 9, seek and exchange information relating to resolution carried on in or outside Jersey;

(b) consult and seek the advice of such persons or bodies, whether inside or outside Jersey, as it considers appropriate;

(c) subject to Part 9, publish, in such manner as it considers appropriate, such information relating to its functions as it thinks fit; and

(d) provide advice, assistance or services to any person with a view to securing the efficient and effective carrying on of deposit-taking business in or from within Jersey.

10 Limitation of liability of Authority

(1) A person or body to whom this Article applies shall not be 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 or any other enactment unless it is shown that the act or omission was in bad faith.

(2) This Article applies to –

(a) the Authority, any member or alternate member of the Authority or any person who is, or is acting as, an officer, employee or agent of the Authority or who is performing any duty or exercising any power on behalf of the Authority or under the control of the Authority;

(b) the States or any Minister in respect of any delegation of functions to the Authority; and

(c) a person appointed under Article 5(4) in respect of the discharge of the functions of the Authority or any member or any person who is, or is acting as, an officer, employee or agent of the person appointed under Article 5(4) or who is performing any duty or exercising any power on behalf of that person or under the control of that person.

(3) The limitation of liability under this Article does not apply so as to prevent an award of damages made in respect of an act on the ground that the act was unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000.

11 Appointment and remuneration of staff

(1) The Authority may appoint such officers, employees and agents as it considers necessary for carrying out its functions.

(2) The Authority may –

(a) make appointments under paragraph (1) on such terms as to remuneration, expenses, pensions and other conditions of service as it thinks fit; and

(b) establish and maintain such schemes or make such other arrangements as it thinks fit for the payment of pensions and other benefits in respect of its officers and employees.

12 Delegation to members and officers

(1) Where any functions or powers are conferred upon or vested in the Authority by or under this Law or any other enactment, the Authority may delegate such functions or powers wholly or partly to –

(a) the Chairman;

(b) one or more members; or

(c) an officer of the Authority.

(2) Nothing in this Article shall authorize the Authority to delegate –

(a) its power of delegation under paragraph (1); or

(b) the review of any of its decisions.

(3) The delegation of any functions under this Article –

(a) shall not prevent the exercise of those functions by the Authority itself; and

(b) may be amended or revoked by the Authority.

13 Guidance and directions

(1) The Minister may, after consulting the Authority and where the Minister considers that it is necessary in the public interest to do so, give to the Authority guidance or give, in writing, general directions in respect of the policies to be followed by the Authority in relation to the resolution of a bank in Jersey and the manner in which any function of the Authority is to be carried out.

(2) The Authority shall, in carrying out any of its functions, have regard to any guidance and act in accordance with any directions given to it by the Minister under this Article.

14 Publication of information and advice

(1) The Authority may publish information or give advice or arrange so to do in such form and manner as it considers appropriate with respect to –

(a) the operation of this Law, or any other enactment in connection with resolution of banks, including, in particular, the rights of depositors, the duties of a bank and the steps to be taken for enforcing those rights or complying with those duties;

(b) any matters relating to the functions of the Authority under this Law or any other enactment; or

(c) any other matters relating to the resolution of a bank about which it appears to it to be desirable to publish information or give advice concerning –

(i) the reduction of the risk to the public of financial loss due to dishonesty, incompetence or malpractice by, or the financial unsoundness of, persons carrying on deposit-taking business in or from within Jersey,

(ii) the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters, or

(iii) the best economic interests of Jersey.

(2) The Authority may offer for sale copies of information published under this Article and may, if it thinks fit, make a reasonable charge for advice given under this Article at any person's request.

(3) Nothing in this Article shall be construed as authorizing the disclosure of information in any case where, apart from the provisions of this Article, its disclosure is prohibited under another law.

15 Funding of the Authority

The funds and resources of the Authority are –

(a) the annual administration levy payable under Article 16;

(b) any grant paid to the Authority under Article 17;

(c) any money borrowed by the Authority accordance with Article 18; and

(d) any other money or property, and any income derived from such money or property, as is lawfully vested in the Authority through the exercise of its powers under this Law.

16 Annual administration levy

(1) A levy may be raised by the Authority in any year to enable the Authority to do any of the following –

(a) to meet the Authority's expected recurring administrative costs in that year;

(b) to provide or maintain a reserve, of an amount appearing to the Authority to be prudent in that year, against potential administrative costs in future years (whether by way of contingency, allowance for depreciation, or otherwise); and

(c) to provide or maintain a reserve, of an amount appearing to the Authority to be prudent in that year, against the possibility, in the event of resolution action in respect of a bank in that year or any subsequent year, of the Authority wishing to pay administrative costs without needing to wait for receipt of other funding for those costs.

(2) The provisions of this Article apply to any year irrespective of whether any resolution action in respect of any bank is applied by the Authority.

(3) The Authority –

(a) shall review, in the light of its budget referred to in Article 21(1), whether it will need to raise an annual administration levy;

(b) may, in the light of the review under paragraph (a), decide to raise an annual administration levy; and

(c) must, if it decides to raise an annual administration levy under paragraph (b), decide the amount to be raised as such annual administration levy.

(4) A Jersey bank is liable to pay to the Authority an annual administration levy in respect of a year –

(a) for which the Authority decides to raise an annual administration levy under paragraph (3); and

(b) if the Jersey bank is registered during any part of that year, irrespective of whether or not it is registered during any other part of that year.

(5) The Minister may, by notice to the Authority, direct the Authority not to raise more than a specified amount of annual administration levy for a specified year.

(6) An amount specified under paragraph (5) applies to years subsequent to the specified year, unless the Minister withdraws or amends the notice.

(7) The Authority –

(a) must decide and apply the method of calculation of the annual administration levy to be paid by each Jersey bank liable to pay an annual administration levy; and

(b) must, as soon as practicable, send a written notice to each Jersey bank, requiring it to pay the annual administration levy.

(8) The notice must specify –

(a) the annual administration levy the Jersey bank is required to pay;

(b) the method of calculation of the annual administration levy; and

(c) the date or dates on which the annual administration levy or any instalment of the annual administration levy becomes payable.

(9) If, at any time, the Authority is satisfied that it has become necessary to do so, it may, by written notice sent to each Jersey bank required to pay the annual administration levy, increase the amount of the annual administration levy and require each Jersey bank to pay an additional amount as an instalment of the increased annual administration levy.

(10) A Jersey bank to which a notice has been sent under this Article must pay the annual administration levy or any instalment of the annual administration levy within 5 working days of the date specified in the notice as the date when the amount of the annual administration levy or any instalment of the amount becomes payable.

(11) An annual administration levy that has become payable is recoverable as a debt due to the Authority.

(12) If the Authority has accepted a payment as a contribution from a Jersey bank towards the Authority's recurring administrative costs, other than as an annual administration levy, the Authority shall –

(a) disregard the contribution in deciding the amount under paragraph (3)(c), and give credit for the contribution against the amount calculated under paragraph (7) in respect of that Jersey bank; or

(b) reduce the levy raised under paragraph (1) to reflect the payment before calculating the amount due in respect of each Jersey bank under paragraph (7).

(13) For the purpose of paragraph (4) "registered" means registered to carry on deposit-taking business in or from within Jersey under the 1991 Law.

17 Grants to the Authority

(1) In respect of each financial year, the States may make a grant to the Authority from their annual income towards the expenses of the Authority in carrying out any of its functions.

(2) The amount of any grant under paragraph (1) shall be determined by the Minister after consultation with the Authority, and in determining that amount the Minister shall have regard to the financial position and projected financial position of the Authority.

18 Borrowing by the Authority

(1) For the purpose of enabling the Authority to carry out its functions, the Authority may borrow monies up to such amount as may be prescribed.

(2) The Minister may, on such terms as the Minister may determine, on behalf of the States –

(a) guarantee the liabilities of the Authority; or

(b) lend monies to the Authority,

up to the maximum amount the Authority may borrow under paragraph (1).

19 Investment of surplus funds

The Authority may invest any of its funds which are not immediately required by the Authority.

20 Exemption from income tax and GST

(1) The income of the Authority shall not be liable to income tax under the Income Tax (Jersey) Law 1961.

(2) The Authority shall not be liable under the Goods and Services Tax (Jersey) Law 2007 to GST on goods and services supplied or goods imported for the purposes of carrying out its functions under this Law.

(3) In this Article "GST" has the meaning given by Article 1 of the Goods and Services Tax (Jersey) Law 2007.

21 Accounts, audit and reports

(1) The Authority shall adopt a budget for each financial year, and may vary its budget at any time during the financial year.

(2) The Authority shall –

(a) keep proper accounts and proper records in relation to its accounts that permit its financial position to be ascertained with reasonable accuracy at any time; and

(b) in accordance with paragraph (4), prepare accounts in respect of each financial year and a report on its operations during each financial year.

(3) The Authority's accounts must set out the income and expenditure of the Fund separately from any other money received, held or expended by the Authority.

(4) The accounts of the Authority must be prepared in accordance with generally accepted accounting principles and show a true and fair view of the profit or loss of the Authority for the financial year and of the state of the Authority's affairs at the end of the financial year.

(5) The Authority shall, within 3 months after the end of the financial year, have its accounts audited by an auditor.

(6) The Authority shall, within 3 months after its accounts have been audited, provide the Minister with –

(a) its audited accounts;

(b) the report of the auditor; and

(c) the report prepared by the Authority under paragraph (2)(b).

(7) The report provided to the Minister under paragraph (6)(c) must contain –

(a) details of the Authority's activities during the financial year; and

(b) such other information as the Minister may direct the Authority to provide.

(8) The Minister must lay a copy of the audited accounts and the reports provided to him or her under paragraph (6) before the States not later than 7 months after the end of each financial year.

(9) In this Article "financial year" means the period beginning with the day on which this Law comes into force and ending with the 31st day of December next following

and each subsequent period of 12 months ending with the 31st day of December in each year.

(10) In this Article "auditor" has the meaning given by Article 102(1) of the Companies (Jersey) Law 1991.

PART 3

JERSEY BANK RESOLUTION FUND

22 Establishment and management of Fund

(1) There is established a fund to be known as the Jersey Bank Resolution Fund for the purpose of ensuring the effective exercise by the Authority of the resolution powers and application by the Authority of the resolution tools.

(2) The Fund shall be controlled, managed and administered by the Authority.

(3) The Authority shall have the power –

(a) to recover from a bank any funds paid or payable out of the Fund by the Authority in respect of –

(i) any action taken by the Authority in order to consider whether to take a resolution action or recognize a foreign resolution action in respect of the bank, or

(ii) the taking of a resolution action or recognition of a foreign resolution action in respect of the bank;

(b) in accordance with paragraph (8), to raise contributions from Jersey banks, other than the bank referred to in paragraph (a), where funds referred to in sub-paragraph (a) are insufficient and shall –

(i) decide and apply the method of calculating the amount of the contributions to be paid by each Jersey bank liable to pay such contributions,

(ii) determine the date by which the contributions must be paid, and

(iii) give written notice to each Jersey bank requiring it to pay the contributions and specifying –

(A) the amount of the contribution the Jersey bank is required to pay,

(B) the method of calculation of the contribution, and

(C) the date or dates on which the contribution becomes payable;

(c) to borrow from any source, including the strategic reserve fund (as continued by Article 4(1) of the Public Finances (Jersey) Law 2019).[4]

(4) All monies received by or on behalf of the Authority under this Article, whether by way of contributions, loans or otherwise, shall be paid into the Fund.

(5) Subject to paragraphs (6), (7) and (8), the Authority may only use the Fund –

(a) in accordance with the general principles of resolution;

(b) where reasonable effort has been made by the Authority to raise the required funds for a bank resolution from private funds and every source of such private funds has been exhausted or the Authority is satisfied that there is no

reasonable prospect of the required funds being available within the timeframe in which they will be required;

(c) where the use of the Fund is necessary to achieve the resolution objectives; and

(d) to the extent necessary to ensure the effective application of a stabilization tool for the following purposes –

(i) to guarantee the assets or liabilities of a bank in resolution, its subsidiaries, a bridge bank or an asset management vehicle or, where a sale of business tool is applied, a purchaser,

(ii) to purchase assets of a bank in resolution,

(iii) to make contributions to a bridge bank or an asset management vehicle or, where a sale of business tool is applied, a purchaser,

(iv) to pay contributions to a bridge bank or an asset management vehicle,

(v) to pay compensation to shareholders or creditors in accordance with the general principle of resolution under Article 35(g) and the resolution safeguard in Article 78,

(vi) to make a contribution to a bank in resolution in lieu of the exercise of the write down or conversion power, when the bail-in tool is applied and the Authority decides to exclude certain creditors from the scope of the bail-in in accordance with Article 65(8), and

(vii) to take any combination of the actions referred to in clauses (i) to (vi).

(6) The Fund shall not be used to directly absorb the losses of a bank in resolution or to recapitalize such a bank unless otherwise provided in this Law.

(7) Any amounts withdrawn from the Fund and used for the purposes set out in paragraph (5) (including use which results in part of the losses of a bank in resolution being passed on to the Fund) shall be recoverable from the bank in resolution in accordance with the general principles of resolution and may be recovered as contributions in accordance with paragraph (3)(b).

(8) The maximum aggregate amount that the Jersey banks, other than the bank in resolution, must contribute to the Fund under paragraph (3)(b) for the Authority to exercise the resolution powers and apply the resolution tools is one hundred million pounds during any 5 year period or such other amount or period as may be prescribed.

(9) Where any creditor has a right arising as a result of the exercise by the Authority of a resolution power or application of a resolution tool and the monies in the Fund have been exhausted to the extent of the contributions received under paragraph (3)(a) and (b), the right arising as a result of the exercise of the resolution power shall be exercisable against the bank in resolution and the Authority shall not be liable in respect of that right.

PART 4

RECOVERY AND RESOLUTION PLANNING

23 Recovery plan

(1) A Jersey bank shall, at such times as the Commission may specify, draw up and submit to the Commission a recovery plan setting out measures that would be taken by the Jersey bank for the restoration of its financial position in the event of a significant deterioration of such financial position.

(2) A recovery plan shall be drawn up and maintained in accordance with such codes of practice in respect of recovery planning as may be issued by the Commission in accordance with Article 19A of the 1991 Law.

(3) The Commission shall submit a copy of a recovery plan submitted to it by a Jersey bank under paragraph (1) to the Authority and the Authority may –

(a) examine the recovery plan with a view to identifying any actions in the recovery plan which may adversely impact the resolvability of the Jersey bank; and

(b) make recommendations to the Commission regarding the matters referred to in paragraph (a).

(4) A Jersey bank that fails to comply with a requirement under paragraph (1) shall be guilty of an offence and liable to a fine of level 3 on the standard scale.

24 Resolution plan

(1) The Authority shall, as far as practicable and as it deems necessary, subject to Article 25 and in consultation with the Commission and the home resolution authority and relevant resolution authority in relation to a Jersey bank, draw up a resolution plan for the Jersey bank which shall be proportionate to the systemic importance of the Jersey bank or Jersey bank's group.

(2) The Authority shall draw up a resolution plan under paragraph (1) in pursuit of the resolution objectives and in accordance with the general principles of resolution.

(3) Subject to Part 9, the Authority shall provide relevant information regarding the resolution plan for a Jersey bank to the resolution authorities in jurisdictions in which the Jersey bank operates branches or subsidiaries and to the home regulatory supervisor and relevant regulatory supervisor of the Jersey bank's group.

(4) Where the Authority is required under this Article to draw up a resolution plan which includes within its scope branches or subsidiaries of a Jersey bank in jurisdictions other than Jersey, the Authority shall, in drawing up the resolution plan, have regard to the potential impact of the resolution measures in such other jurisdictions.

(5) The Authority shall, as far as practicable, communicate to a home resolution authority or a relevant resolution authority in relation to a Jersey bank any decision to deviate from that home resolution authority's, or relevant resolution authority's, resolution plan for the Jersey bank.

(6) The Authority may require a Jersey bank (whether directly or through the Commission) to cooperate, assist and provide the information specified in Part 1 of Schedule 2 for the purpose of drawing up, implementing and updating a resolution plan for the Jersey bank.

(7) Details of the resolution plan may be submitted by the Authority to the Jersey bank concerned.

(8) The Authority shall review, and where appropriate update, a resolution plan for a Jersey bank at least annually and after any material changes to the legal or organizational structure of the Jersey bank or to its business or its financial position that could have a material effect on the effectiveness of the resolution plan or which otherwise necessitate a revision of the resolution plan.

(9) A resolution plan shall –

(a) outline the resolution actions which the Authority plans to take if the Jersey bank concerned meets the resolution conditions;

(b) set out the options for applying a resolution tool and a resolution power to the Jersey bank concerned;

(c) take into consideration relevant scenarios including that the event of a Jersey bank failure may be unusual or may occur at a time of broader financial instability or system-wide events;

(d) include procedures for informing and consulting employee representatives throughout the resolution process, where appropriate; and

(e) contain the information specified in Part 2 of Schedule 2.

(10) The Minister may by Order make further provision for resolution planning by the Authority.

(11) A Jersey bank that fails to comply with a requirement under paragraph (6) shall be guilty of an offence and liable to a fine of level 3 on the standard scale.

25 Resolvability

(1) In drawing up a resolution plan for a Jersey bank, the Authority shall, subject to paragraph (3), carry out an assessment to determine the extent to which the Jersey bank is resolvable and for that purpose shall consider the matters set out in Part 3 of Schedule 2.

(2) The Authority shall carry out a resolvability assessment in pursuit of the resolution objectives and in accordance with the general principles of resolution.

(3) A resolvability assessment shall be simplified (or may not be required) where the Jersey bank concerned is subject to a resolvability assessment in its home jurisdiction or relevant jurisdiction.

(4) Where a Jersey bank is a group entity, a simplified resolvability assessment under paragraph (3) shall take into account the proposed group-wide resolution plan, if any, and consider the resolvability of the elements of the Jersey bank's group which are relevant to the functions of the Authority.

(5) A resolvability assessment shall identify material impediments to resolvability which, once identified, shall be notified in writing to the Jersey bank and to the relevant resolution authorities in other jurisdictions in which the bank operates.

(6) A Jersey bank shall, within 4 months of the date of receipt of a notification under paragraph (5), propose to the Authority possible measures to address or remove the substantive impediments identified in the notification and the Authority shall, in consultation with the Commission, determine whether the measures referred to effectively address or remove the substantive impediments.

(7) If the Authority assesses that the measures proposed under paragraph (6) do not effectively reduce or remove the impediments, the Authority shall directly or indirectly through the Commission –

(a) subject to paragraph (9), require the Jersey bank to take alternative measures, including any measure specified in paragraph (8) that may achieve that objective, and notify the Jersey bank in writing of those measures and propose a plan to comply with them; and

(b) explain to the Jersey bank how the measures proposed by the bank would not have adequately removed the impediments to resolvability and how the alternative measures are proportionate in removing them.

(8) As an alternative measure referred to in paragraph (7), the Authority may –

(a) if applicable, require the Jersey bank to review any intragroup financing agreements or review the absence of an intragroup financing agreement and may require the Jersey bank to enter into agreements which provide for financial support to be given by the Jersey bank's parent in its home jurisdiction or relevant jurisdiction to its subsidiary in Jersey;

(b) require the Jersey bank to limit its maximum individual and aggregate exposures;

(c) impose specific or regular additional information requirements relevant for resolution purposes;

(d) require the Jersey bank to divest specific assets;

(e) require the Jersey bank to limit or cease specific existing or proposed activities;

(f) require the Jersey bank to restrict or prevent the development of new or existing business lines or sale of new or existing products;

(g) require changes to legal or operational structures of the Jersey bank or entities in its control so as to reduce complexity to ensure that critical functions may be legally and operationally separated from other functions through the application of a resolution tool; or

(h) require the Jersey bank to issue eligible liabilities or take other steps to meet any minimum requirement for own funds and eligible liabilities set under Article 26.

(9) The Authority's power to require a Jersey bank to take measures under paragraph (7) or (8) shall be limited to what is necessary in the public interest to simplify the structure and operations of the Jersey bank solely to improve its resolvability.

(10) A Jersey bank shall be deemed to be resolvable if it is feasible and credible for the Authority to liquidate it under a bank winding up order or to resolve it by applying a stabilization tool to, and exercising resolution powers in respect of, the Jersey bank while avoiding to the maximum extent possible any significant adverse effect on the financial system, including in circumstances of broader financial instability or system-wide events, with a view to ensuring the continuity of critical functions carried out by the Jersey bank.

(11) A Jersey bank that fails to comply with paragraph (6) or a requirement under paragraph (7) or (8) shall be guilty of an offence and liable to a fine of level 3 on the standard scale.

26 Minimum requirement for own funds and eligible liabilities

(1) The Authority shall, in consultation with the Commission, set for each Jersey bank a minimum requirement for own funds and eligible liabilities.

(2) A Jersey bank shall, at all times meet the minimum requirement for own funds and eligible liabilities set or adopted for that Jersey bank by the Authority under paragraph (1).

(3) A Jersey bank that fails to comply with paragraph (2) shall be guilty of an offence and liable to a fine.

27 Minimum authorized share capital or other Common Equity Tier 1 instruments

(1) The Authority may require a Jersey bank to maintain at all times a minimum amount of authorized share capital or other Common Equity Tier 1 instruments so that, in the event of the Authority exercising a write down or conversion power in respect of the bank, the Jersey bank shall not be prevented from issuing sufficient new shares to ensure that the conversion of liabilities into shares can be carried out effectively.

(2) An assessment by the Authority to determine whether to impose a requirement under paragraph (1) shall be carried out in conjunction with the development of a resolution plan under Article 24.

(3) A Jersey bank that fails to comply with a requirement under paragraph (1) shall be guilty of an offence and liable to a fine.

PART 5

RESOLUTION MATTERS

28 Requirement for notice

(1) The management of a bank shall notify the Commission and the Authority if the management consider that the bank is failing or likely to fail.

(2) The Commission shall notify the Authority of any notifications received under paragraph (1) and of any early intervention measure that the Commission requires a bank to take to prevent its failure or likely failure.

(3) On receiving a notification under paragraph (2), the Authority shall determine whether the resolution conditions are met in respect of that bank and shall record its decision together with reasons for the decision and the actions that the Authority intends to take as a result of it.

(4) If the Authority determines that the resolution conditions are met in relation to a bank, the Authority shall give notice of that determination and the Authority's decision based on that determination, together with reasons for the decision and the actions that the Authority intends to take as a result of it, as soon as practicable, to the following –

(a) the Commission;

(b) the bank;

(c) the Jersey Bank Depositors Compensation Board;

(d) the Minister;

(e) the Minister for Treasury and Resources;

(f) the Viscount;

(g) the home resolution authorities and relevant resolution authorities in relation to the bank's group;

(h) the home regulatory supervisors and relevant regulatory supervisors in relation to the bank's group;

(i) the resolution authorities of any branches of the bank, if it is a bank incorporated in Jersey;

(j) the regulatory supervisors of any branches of the bank, if it is a bank incorporated in Jersey;

(k) the central bank in the home jurisdiction and relevant jurisdiction of the bank's group; and

(l) the depositors guarantee scheme in the home jurisdiction and relevant jurisdiction of the bank's group.

29 Resolution powers

(1) The Authority shall have all the powers necessary to apply the resolution tools to a bank which meets the resolution conditions and, in particular, shall have the following resolution powers which may be exercised, individually or in any combination, for the purpose of enabling the Authority to achieve the resolution objectives –

(a) the power to require any person to provide any information required for the Authority to decide upon and prepare a resolution action, including updates and supplements of information provided in the resolution plans and including requiring information to be provided through on-site inspections;

(b) the power to take control over a bank in resolution and exercise all the rights and powers conferred upon the shareholders, other owners and management of the bank in resolution, including control over the bank in resolution so as to –

(i) operate and conduct the activities and services of the bank in resolution with all the powers of its shareholders and management, and

(ii) manage and dispose of the assets and property of the bank in resolution,

whether directly by the Authority or indirectly by a person or persons appointed by the Authority;

(c) the power to take a resolution action without taking control over the bank in resolution, if preferred, having regard to the resolution objectives and the general principles of resolution and the specific circumstances of the bank in resolution;

(d) the power to transfer to another entity, with the consent of that entity shares issued by a bank in resolution to another entity;

(e) the power to transfer to another entity, with the consent of that entity, rights, assets or liabilities of a bank in resolution;

(f) the write down and conversion power under Article 74;

(g) the power to alter the maturity of debt instruments and other eligible liabilities issued by a bank in resolution or amend the amount of interest payable under such debt instruments and other eligible liabilities, or amend the date on which

the interest becomes payable, including by suspending payment for a temporary period, except for secured liabilities referred to in Article 65(7);

(h) the power to close out and terminate financial contracts or derivative contracts for the purposes of applying Article 69;

(i) the power to remove or replace the management of a bank in resolution;

(j) the power to require the Commission to assess the buyer of a qualifying holding in a timely manner by way of derogation from any applicable time limits;

(k) subject to Article 82, the power to provide for a transfer to take effect free from any liability or encumbrance affecting the financial instruments, rights, assets or liabilities transferred (and for these purposes any right of compensation in accordance with the resolution safeguards shall not be considered to be a liability or encumbrance);

(l) the power to remove rights to acquire further shares;

(m) the power to request that a relevant authority discontinue or suspend the admission to trading on a regulated market of financial instruments relating to a bank in resolution;

(n) the power to provide for the recipient of shares, assets, rights or liabilities under the sale of business tool or bridge bank tool to be treated as if it were the bank in resolution for the purposes of any rights or obligations of, or actions taken by, the bank in resolution, including, subject to the provisions relating to the application of the sale of business tool and the bridge bank tool, any rights or obligations relating to participation in market infrastructure;

(o) the power to require the bank in resolution or the recipient of transferred shares, assets, rights or liabilities to provide the other with information and assistance;

(p) the power to cancel or modify the terms of a contract to which the bank in resolution is a party or substitute a recipient as a party;

(q) the power to provide for continuity arrangements necessary to ensure that the resolution action is effective and that, where relevant, the business transferred may be operated by the recipient, including, in particular –

(i) the continuity of contracts entered into by the bank in resolution so that the recipient of shares, assets, rights or liabilities assumes the rights and liabilities of the bank in resolution relating to any financial instrument, right, asset or liability that has been transferred and is substituted for the bank in resolution, expressly or implicitly in all relevant contractual documents, and

(ii) the substitution of the recipient for the bank in resolution in any legal proceedings relating to any financial instrument, right, asset or liability that has been transferred;

(r) the power to require a bank in resolution or any of its group entities to provide any services or facilities (that is, operational services and facilities, not financial support) that are necessary to enable the recipient of transferred shares, assets, rights or liabilities to operate the transferred business effectively, including where the provider of such services or facilities has entered into insolvency proceedings;

(s) the power to suspend any payment or delivery obligations pursuant to any contract to which a bank in resolution is party from the time notice is given,

under Article 28(4), of that suspension (as an action the Authority intends to take) until midnight in Jersey at the end of the business day following the giving of the notice, except that –

(i) where a payment or delivery obligation would have been due during the suspension period, the payment or delivery obligation shall be due immediately upon expiry of the suspension period,

(ii) where a payment or delivery obligation has been suspended the payment and delivery obligations of the counterparty under the contract shall also be suspended for the same period, and

(iii) any suspension under this paragraph shall not apply to –

(A) eligible deposits, or

(B) payment and delivery obligations owed to payment and securities settlement systems, central counterparties or central banks, and

when exercising this power, the Authority shall have regard to the impact the exercise of the power might have on the orderly functioning of financial markets;

(t) the power to restrict secured creditors of a bank in resolution from enforcing security interests in relation to any assets of that bank from the time notice is given, under Article 28(4), of that restriction (as an action the Authority intends to take) until midnight in Jersey at the end of the business day following that notice, except that –

(i) the Authority shall not exercise this power in relation to any security interest of payment and securities settlement systems, central counterparties or central banks over assets pledged or provided by way of margin or collateral by the bank in resolution,

(ii) where Article 85 applies, the Authority shall ensure that any restrictions imposed under this power are consistent for all group entities in the same group in relation to which a resolution action is taken, and

(iii) when exercising this power, the Authority shall have regard to the impact that the exercise of that power might have on the orderly functioning of financial markets.

(2) The services and facilities provided under paragraph (1)(r) shall be on the following terms –

(a) where the services and facilities were provided under an agreement to the bank in resolution immediately before the resolution action was taken and for the duration of that agreement, on the same terms; or

(b) where there is no agreement for provision of the services and facilities or where the agreement has expired, on reasonable terms.

(3) The exercise of the resolution powers set out in this Article shall be without prejudice to –

(a) the right of an employee of the bank in resolution to terminate a contract of employment; or

(b) subject to paragraph (1)(s) and (t) and Article 75(1), any right of a party to a contract to exercise rights under the contract, including the right to terminate, where entitled to do so in accordance with the terms of the contract by virtue of an act or omission by the bank in resolution prior to the relevant transfer, or by the recipient after the relevant transfer.

(4) Except as otherwise provided in this Law, the following requirements do not apply to the application of a resolution tool –

(a) subject to any requirements set out in this Law to seek the approval of another public authority in Jersey, the requirement to obtain approval or consent from any person either public or private, including the shareholders or creditors of the bank in resolution; and

(b) prior to the application of a resolution tool, procedural requirements to notify any person including any requirement to publish any notice or prospectus or to file or register any document with any other authority.

(5) The Authority may exercise the resolution powers irrespective of any restriction on, or requirement to obtain consent for, the transfer of the financial instruments, rights, assets or liabilities in question that might otherwise apply.

(6) The Authority may exercise a resolution power under this Article without –

(a) the approval of a third party in advance of a transfer;

(b) complying with any applicable equitable or mandatory bid rule;

(c) the consent of shareholders.

30 Priority of claims

(1) Except as provided by paragraph (2) and (3), a bank's hypothecary creditors shall be entitled to preference over any unsecured debts of the bank in the order of the date of creation of their respective judicial or conventional hypothecs upon the proceeds of sale of any corporeal hereditament or incorporeal hereditament upon which their respective judicial or conventional hypothecs are secured.

(2) If the bank liquidator sells a corporeal hereditament that is subject to a judicial or conventional hypothec, the proceeds of sale shall be applied first in payment of the costs, disbursements and other charges necessarily incurred by the bank liquidator in connection with the sale and the bank liquidator's fees in connection with the sale.

(3) If the proceeds of sale of a corporeal hereditament or incorporeal hereditament upon which a judicial or conventional hypothec is secured is insufficient to meet in full the claim of a hypothecary creditor, the balance shall rank for payment on the same footing as other debts mentioned in paragraph (5)(h).

(4) Where any property of the bank being wound up is subject to a continuing security interest within paragraph (a) of the definition of "security interest" in Article 1 or a security interest within paragraph (b) of that definition, the proceeds of sale of the property shall be applied in the manner provided by, respectively, Article 8(6) of the Security Interests (Jersey) Law 1983 or Part 7 of the Security Interests (Jersey) Law 2012.

(5) Notwithstanding Article 111, the priority ranking for the payment of claims for unsecured debts of a bank under this Law shall be in the following order –

(a) all the costs, charges and expenses properly incurred or payable in a bank winding up, including the remuneration of the bank liquidator;

(b) all costs, charges and expenses properly incurred or payable by the Authority, Commission, Minister or Viscount as a result of the taking of resolution action against a bank;

(c) where a right of –

(i) an eligible depositor in respect of an eligible deposit held by a bank is vested in the Jersey Bank Depositors Compensation Board,

(ii) a depositor in respect of a deposit that –

(A) is held in a branch outside Jersey of a bank incorporated in Jersey,

(B) would be an eligible deposit if it was held in Jersey, and is vested in a bank depositors compensation scheme outside Jersey,

the total amount owing to the Jersey Bank Depositors Compensation Board or bank depositors compensation scheme , as the case may be, by virtue of the vested right, but not exceeding £50,000 per depositor;

(d) the following which shall rank equally between themselves –

(i) sums owing to an employee of a bank at the date of commencement of the bank winding up order, in respect of arrears of –

(A) wages or salary for services rendered to the debtor, and

(B) holiday pay and bonuses,

(ii) sums owing to a commercial or trade creditor arising from the provision to a bank of goods and services including information technology services, utilities and rental, servicing and upkeep of premises,

(iii) sums owing by a bank by way of –

(A) tax and social security services in Jersey, or

(B) parochial rates to any parish in Jersey for a period not exceeding 2 years;

(e) that part of a covered deposit that is not vested in the Jersey Bank Depositors Compensation Board or is not vested in a depositors compensation scheme outside Jersey or is re-vested back to the depositor by the Jersey Bank Depositors Compensation Board or by a depositors compensation scheme outside Jersey;

(f) that part of –

(i) an eligible deposit that exceeds the total amount given priority under paragraph (c) and (e), or

(ii) a deposit –

(A) that is held in a bank account in a branch of a bank incorporated in Jersey that would otherwise be an eligible deposit were it held in a bank account in Jersey, and

(B) that exceeds the total amount given priority under paragraph (c) and (e);

(g) any other debt which is excluded from being written down or converted under Article 65(7) or (8); and

(h) all other unsecured debts proved in bank winding up which shall rank equally between themselves.

(6) Notwithstanding anything to the contrary in this Law, where a bank referred to in Article 3(1)(a) is a branch of a foreign bank, the provisions of the law of the bank's home jurisdiction with respect to the ranking provided for the claims of ordinary unsecured creditors may, where notice is given by the Authority of its consent, apply to the resolution of that bank in lieu of this Article and any rule referred to in Article 111 from the date specified in the notice given under Article 28(4).

(7) In this Article –

(a) "corporeal hereditament" has the meaning assigned to "corps de bien-fonds" in Article 1 of the Loi (1880) sur la propriété foncière;

(b) "incorporeal hereditament" has the meaning assigned to "bien-fonds incorporeal" in Article 1 of the Loi (1996) sur l'hypothèque des biens-fonds incorporels.

31 Early intervention

(1) Where the Authority or Commission is satisfied that a Jersey bank infringes or is likely, in the near future, to infringe –

(a) any minimum requirement for own funds and eligible liabilities set under Article 26 or a requirement for a minimum amount of authorized share capital or other Common Equity Tier 1 instruments to be maintained under Article 27; or

(b) the requirement that it is a fit and proper person to be registered to undertake deposit-taking business in accordance with Article 10(3)(a) of the 1991 Law,

the Authority or Commission may take any of the early intervention measures set out in paragraph (4).

(2) An infringement referred to in paragraph (1) may occur due, among other things, to a rapidly deteriorating financial condition and may include one or more of the following –

(a) a deteriorating liquidity situation;

(b) an increasing level of leverage;

(c) an increasing level of nonperforming loans; or

(d) a concentration of exposures.

(3) The Authority shall notify the Commission, or the Commission shall notify the Authority, as the case may be, forthwith as soon as it believes that a condition in paragraph (1)(a) or (b) exists.

(4) Early intervention measures include, where applicable, the power of the Authority or Commission to –

(a) require the management of the Jersey bank to –

(i) implement one or more of the arrangements or measures set out in its recovery plan, or

(ii) update its recovery plan (where the circumstances that led to the early intervention are different from the assumptions in the recovery plan) and implement one or more of the arrangements or measures set out in the updated recovery plan,

within a specified timeframe and in order to ensure that the conditions for early intervention no longer apply;

(b) require the management of the Jersey bank to examine the situation, identify measures to overcome any problems identified and draw up an action programme to overcome those problems and a timeframe for its implementation;

(c) require the management of the Jersey bank to convene, or if the management fails to comply with that requirement, convene directly a meeting of

shareholders of the Jersey bank, and in both cases set the agenda and require certain decisions to be considered for adoption by the shareholders;

(d) require one or more members of the management of the Jersey bank to be removed or replaced if those persons are deemed by the Authority or Commission to be unfit to perform their duties;

(e) require the management of the Jersey bank to draw up a plan for negotiation on restructuring of debt with some or all of its creditors according to the recovery plan, where applicable;

(f) require changes to the Jersey bank's strategy;

(g) require changes to the legal or operational structures of the Jersey bank;

(h) require, including through on-site inspections, if necessary, the provision to the Authority or Commission of all information necessary to update the resolution plan and prepare for the possible resolution of the Jersey bank and for a pre-resolution valuation to be conducted in accordance with Article 44; or

(i) require the bank to contact potential purchasers in order to prepare for the resolution of the Jersey bank, subject to the procedural requirements relating to the sale of business tool.

(5) For each of the early intervention measures set out in paragraph (4), the Authority or Commission, as the case may be, shall set out an appropriate deadline for completion to enable it to evaluate the effectiveness of the measure.

32 Temporary administrator

(1) Subject to paragraph (2), where the Authority or Commission deems the replacement of the management of a Jersey bank, as an early intervention measure, to be insufficient to remedy the situation, the Authority may, in consultation with the Commission, or the Commission may, in consultation with the Authority, as the case may be, appoint one or more persons as temporary administrators to the Jersey bank.

(2) Before appointing a person as a temporary administrator, the appointing authority must be satisfied that the person has the qualifications, ability and knowledge required to carry out the functions of a temporary administrator and does not have a conflict of interest in relation to Jersey bank.

(3) The appointing authority may appoint the temporary administrator under paragraph (1) either to –

(a) replace the management of the Jersey bank temporarily; or

(b) work temporarily with the management of the Jersey bank.

(4) If the appointing authority appoints a temporary administrator under paragraph (3), the appointing authority shall, at the time of such an appointment, specify in the instrument of appointment –

(a) the role of the temporary administrator in accordance with paragraph (3)(a) or (b);

(b) subject to paragraph (6), the functions and powers of the temporary administrator which may include –

(i) ascertaining the financial position of the Jersey bank,

(ii) some or all of the powers of the management of the Jersey bank under the Jersey bank's articles of association, including the power to exercise

some or all of the administrative functions of the management of the Jersey bank, and

(iii) managing the business or part of the business of the Jersey bank with a view to preserving or restoring the financial position of the Jersey bank and taking measures to restore the sound and prudent management of the business of the Jersey bank;

(c) any limits on the role, functions and powers of the temporary administrator under paragraph (a) or (b);

(d) any requirements for the management of the Jersey bank to consult or to obtain the consent of the temporary administrator prior to taking decisions or actions specified in the instrument of appointment;

(e) subject to paragraph (7), any requirement that certain acts of the temporary administrator are to be subject to the prior consent of the appointing authority.

(5) The appointing authority shall, in such manner as the appointing authority considers appropriate, publish the appointment of any temporary administrator except where the temporary administrator does not have the power to represent the Jersey bank.

(6) The powers of a temporary administrator specified in an instrument of appointment under paragraph (4) –

(a) shall be based on what is proportionate in the circumstances;

(b) need not comply with the Companies (Jersey) Law 1991.

(7) The temporary administrator may convene a general meeting of the shareholders of the Jersey bank and set the agenda for such a meeting only with the prior consent of the appointing authority.

(8) The appointing authority may require that a temporary administrator draw up reports on the financial position of the Jersey bank and on the acts performed in the course of its appointment, at intervals set by the appointing authority and at the end of the temporary administrator's appointment.

(9) The term of appointment of a temporary administrator shall not exceed one year, subject to renewal of the appointment where the conditions under paragraph (1) for appointing the temporary administrator continue to be met and the appointing authority determines that the conditions are appropriate to maintain a temporary administrator.

(10) Subject to paragraphs (1) to (9), the appointment of a temporary administrator shall not prejudice the rights of the shareholders of the Jersey bank under the Companies (Jersey) Law 1991.

(11) A temporary administrator shall not be liable in damages for anything done or omitted in the discharge or purported discharge of his or her functions as temporary administrator under this Law unless it is shown that the act or omission was in bad faith.

(12) Nothing in this Law shall cause a temporary administrator to be treated as or deemed to be a shadow director or *de facto* director of a Jersey bank.

(13) The appointing authority shall, after consultation with the Authority or Commission, as the case may be, have the exclusive power to appoint, remove, or vary the terms of engagement of, a temporary administrator, and may do so at any time.

(14) In this Article "appointing authority" means –

(a) if the Authority appoints a temporary administrator under paragraph (1), the Authority; or

(b) if the Commission appoints a temporary administrator under paragraph (1), the Commission.

33 Resolution objectives

(1) The Authority shall, in exercising the resolution powers and in applying, or considering the application of, resolution tools in respect of a bank, have regard to the resolution objectives specified in paragraph (2) and shall choose resolution tools and resolution powers that best achieve the resolution objectives that are relevant in the circumstances.

(2) The resolution objectives are as follows –

(a) to ensure the continuity of banking services in Jersey and the provision of critical functions in Jersey;

(b) to protect and enhance the stability of the financial system in Jersey, including by preventing contagion (including contagion to market infrastructures such as investment exchanges, clearing houses and central counterparties) and maintaining market discipline;

(c) to protect and enhance public confidence in the stability of the financial system in Jersey;

(d) to protect public funds, including by minimizing reliance on extraordinary public financial support;

(e) to protect eligible depositors to the extent that they have covered deposits; and

(f) to protect client assets.

(3) The resolution objectives are not listed in any order of significance in paragraph (2) and are to be balanced as appropriate in each case.

(4) A person exercising a function under this Law shall have regard to the resolution objectives if they are relevant to that function.

(5) In pursuing the resolution objectives, the Authority shall seek to minimize the cost of resolution and avoid destruction of value unless reasonable to achieve the resolution objectives.

34 Resolution conditions

(1) Resolution action in respect of a bank may be taken only if the Authority is satisfied that the following conditions are met –

(a) the bank is failing or is likely to fail;

(b) having regard to timing and other relevant circumstances, it is not reasonably likely that any action (except the exercise of the resolution power) will be taken by or in respect of the bank that will prevent the failure or likely failure of the bank within a reasonable timeframe; and

(c) the taking of a resolution action is in the public interest of Jersey.

(2) The taking of a resolution action shall be in the public interest of Jersey for the purposes of paragraph (1)(c) if –

(a) it is necessary for the achievement of, and is proportionate to, one or more of the resolution objectives; and

(b) winding up the bank other than under relevant insolvency proceedings would not meet the resolution objectives referred to in sub-paragraph (a) to the same extent.

(3) The prior adoption of an early intervention measure with regard to a bank shall not be taken as indicative that the resolution conditions are met.

(4) Despite paragraph (1), where a bank is a group entity, the Authority may take a resolution action in respect of the bank if the Authority is satisfied that –

(a) although the bank does not in isolation meet the resolution conditions, the resolution conditions are met in relation to another group entity in the bank's group (whether or not the other group entities in the group also meet the resolution conditions); and

(b) the failure or likely failure of the group entity that meets the resolution conditions would have adverse consequences for the bank which would cause the bank to meet the resolution conditions in the future.

35 General principles of resolution

The Authority shall, in applying a resolution tool to a bank or exercising a resolution power, take appropriate measures to ensure that resolution action is taken in accordance with the following general principles of resolution –

(a) the shareholders of a bank in resolution shall bear first losses;

(b) the creditors of a bank in resolution shall bear losses after the shareholders in accordance with the ordinary priority of their claims in relevant insolvency proceedings, except as otherwise expressly provided for in this Law or the Regulations;

(c) the management of the bank in resolution shall be replaced, except in those cases where the retention of the management of the bank, in whole or in part, is considered appropriate in the circumstances or necessary for the achievement of the resolution objectives;

(d) the management of the bank in resolution shall provide all necessary assistance for the achievement of the resolution objectives;

(e) a person shall be made liable, in accordance with the Law in force in Jersey, for their responsibility for the failure of the bank;

(f) except where otherwise provided under this Law or the Regulations, creditors of the same class shall be treated in an equitable manner;

(g) no creditor shall incur greater losses than would have been incurred had the bank been wound up under relevant insolvency proceedings unless it is in the public interest;

(h) covered deposits shall be fully protected;

(i) resolution action shall be taken in accordance with the resolution safeguards; and

(j) the costs of the resolution of a bank shall be minimized.

36 Conditions for application of a resolution tool

(1) When applying a resolution tool to a bank, the Authority shall take into account the measures provided in the resolution plan prepared in respect of the bank unless the

Authority assesses that, in the circumstances, the resolution objectives may be achieved more effectively by taking actions that are not provided in the resolution plan.

(2) If the Authority decides to apply a resolution tool to a bank and the application of the resolution tool would result in loss being borne by the creditors or their claims being converted, the Authority shall exercise the write down or conversion power to convert capital instruments immediately before, or contemporaneously to, applying the resolution tool.

(3) The Authority may apply the resolution tools individually or in any combination, except that the asset separation tool may only be applied in combination with another resolution tool.

(4) Where only the sale of business tool and the bridge bank tool are used in combination to transfer only part of the assets, rights or liabilities of the bank in resolution, the residual bank from which those assets, rights or liabilities have been transferred shall be wound up under Part 7.

(5) The winding up of a residual bank under paragraph (4) shall be done having regard, if relevant, to the need for that entity to provide services in order to enable the recipient of the transferred assets, rights or liabilities to carry out the activities or services acquired by virtue of that transfer, and any other reason that the continuation of the residual bank is necessary to achieve the resolution objectives or comply with the general principles of resolution.

37 Manner of recovery by the Authority of expenses

The Authority shall recover from a bank in resolution any reasonable expenses properly incurred that have been paid out of the Fund in connection with the application of a resolution tool or exercise of a resolution power, in one or more of the following ways –

(a) as a deduction from any consideration paid by a recipient to the bank in resolution, or as the case may be, to the owners of the shares;

(b) from the bank in resolution as a preferred creditor; or

(c) from any proceeds generated as a result of the termination of the operation of the bridge bank or the asset management vehicle, as a preferred creditor.

38 Alternative financing

(1) In the case of an extraordinary situation of a systemic crisis, the Authority may seek funding from alternative financing sources through the application of a government financial assistance tool, if the contribution to loss absorption and recapitalization equal to an amount not less than 8% of the total liabilities including own funds of the bank in resolution, measured by the pre-resolution valuation, has been made by shareholders, holders of relevant capital instruments and other eligible liabilities through write down, conversion or otherwise.

(2) The amount referred to in paragraph (1) may be amended by an Order made by the Minister.

(3) In this Article "systemic crisis" means a disruption in the financial system with the potential to have serious negative consequences for Jersey's internal market and the real economy of Jersey.

39 Assessment by the Commission

(1) Where there is a requirement to notify the Commission of a change in the level of ownership of a person by another person by virtue of the application of a stabilization tool or the taking of other resolution action that would result in the acquisition of a qualifying holding or holding which crosses an applicable threshold, the Commission shall carry out a relevant assessment related to that notification in a timely manner that does not delay the application of the stabilization tool or prevent the taking of the other resolution action.

(2) Where the Commission has not completed an assessment required under paragraph (1) or given any relevant approval of a transfer or conversion by the date that the stabilization is made effective by the Authority, the following shall apply –

(a) such a transfer or conversion shall have immediate legal effect;

(b) during the assessment period and during any divestment period, an acquirer's voting rights attached to such shares shall be suspended and vested solely in the Authority, which shall have no obligation to exercise any such voting rights and which shall have no liability for exercising or refraining from exercising any such voting rights;

(c) during the assessment period and during any divestment period, the penalties and other measures for failing to comply with the requirements for acquisitions or disposals of qualifying or significant shareholdings under Article 14 or 25 of the 1991 Law or under any other enactment shall not apply to such a transfer or conversion;

(d) promptly upon completion of the assessment by the Commission, the Commission shall notify the Authority and the acquirer in writing of whether the Commission approves or, on the grounds referred to in Article 10 of the 1991 Law or any other enactment, opposes such a transfer of shares to the acquirer or the acquisition of shares by the acquirer as a result of conversion;

(e) if the Commission approves a transfer of shares to the acquirer (or the acquisition of shares by the acquirer as a result of conversion), then the voting rights attached to such shares shall be deemed to be fully vested in the acquirer immediately upon receipt by the Authority and the acquirer of such approval notice from the Commission; and

(f) if the Commission opposes such a transfer of shares to the acquirer (or the acquisition of shares by the acquirer as a result of conversion), then –

(i) the voting rights attached to such shares as provided by sub-paragraph (b) shall remain in full force and effect,

(ii) the Authority may require the acquirer to divest such shares within a divestment period determined by the Authority having taken into account prevailing market conditions, and

(iii) if the acquirer does not complete such divestment within the divestment period determined by the Authority, then the Commission, with the consent of the Authority, may impose on the acquirer such measures for failing to comply with the requirements for acquisitions or disposals of qualifying or significant shareholdings under Article 14 or 25 of the 1991 Law or any other enactment.

40 Authority to have regard to Competition (Jersey) Law 2005

The Authority shall, in exercising its powers and carrying out its functions under this Law, have regard to, and shall comply with, the Competition (Jersey) Law 2005 except where a derogation from the Competition (Jersey) Law 2005 is required to achieve the resolution objectives (including where the resolution objectives would not be met if additional delay were caused by the requirement to have regard to the Competition (Jersey) Law 2005).

41 Authority to consult with employee representatives

The Authority shall, where appropriate in exercising the resolution powers and applying a resolution tool in respect of a bank, inform and consult with employee representatives of the bank's employees.

42 Special management

(1) The Authority may appoint a special manager to replace the management of a bank in resolution.

(2) A special manager appointed under paragraph (1) must have the qualifications, ability and knowledge necessary to carry out his or her functions under this Law.

(3) The term of appointment of a special manager shall be for a period not exceeding one year, except that the Authority may, in exceptional circumstances, renew the appointment for a further period not exceeding one year if the Authority determines that the conditions for appointment of a special manager continue to be met.

(4) The Authority shall, in such manner as it considers appropriate, publish notice of the appointment of a special manager.

(5) A special manager shall have all the powers of the shareholders and management of the bank in resolution, except that –

(a) the exercise of that power shall be under the control of the Authority; and

(b) the Authority may set limits to the action of a special manager or require that certain acts of the special manager be subject to the Authority's prior consent.

(6) A special manager shall have a duty to take all measures necessary to promote the resolution objectives and to implement resolution actions in accordance with decisions of the Authority.

(7) The duty specified in paragraph (6) may, where necessary, override any other duty placed upon a director under the Companies (Jersey) Law 1991 and the bank's constitutional documents in so far as they are inconsistent.

(8) The measures referred to in paragraph (6) may include –

(a) an increase of the bank's capital;

(b) the reorganization of the ownership structure of the bank;

(c) the takeover of the bank by another bank that is financially and organizationally sound by applying a resolution tool.

(9) In appointing a special manager to a bank that is a group entity, the Authority shall consider whether it is appropriate to appoint the same special manager that is appointed to another entity in the bank's group.

43 Authority not to be treated as a director of a bank

Nothing in this Law shall cause the Authority to be treated as or deemed to be a director (shadow or *de facto*) of a bank.

44 Pre-resolution valuation

(1) Prior to taking resolution action or exercising a write down or conversion power in respect of a bank, the Authority shall cause a pre-resolution valuation of the assets and liabilities of the bank to be carried out in accordance with any standards set or adopted under Article 48 or rely on a pre-resolution valuation carried out by the home resolution authority or the relevant resolution authority in relation to the bank.

(2) The Authority shall, in accordance with an Order made under Article 49, appoint an independent valuer to carry out a pre-resolution valuation.

(3) The objective of a pre-resolution valuation shall be to assess the value of the assets and liabilities of a bank that meets the resolution conditions.

(4) The purpose of a pre-resolution valuation shall be –

(a) to inform the decision of whether the resolution conditions or the conditions for the write down or conversion power are met;

(b) if the resolution conditions are met, to inform the decision on which resolution tool should be applied;

(c) if the write down or conversion power is to be applied, to inform the decision on the extent of the cancellation or dilution of shares and the extent of the write down or conversion;

(d) if the bail-in tool is to be applied, to inform the decision on the extent of the write down or conversion of eligible liabilities;

(e) if the bridge bank tool or asset separation tool is to be applied, to inform the decision on the assets, rights, liabilities or shares to be transferred and the decision on the value of any consideration to be paid to the bank in resolution or, as the case may be, to the owners of the shares;

(f) if the sale of business tool is to be applied, to inform the decision on the assets, rights, liabilities or shares to be transferred and to inform the Authority's understanding of what constitutes commercial terms for the purpose of the application of the tool; and

(g) in all cases, to ensure that any losses on the assets of the bank are fully recognized at the moment a resolution tool is applied or the write down or conversion power is exercised.

(5) In carrying out a pre-resolution valuation, the person carrying out the pre-resolution valuation shall –

(a) make prudent assumptions, including as to the rates of defaults and severity of losses;

(b) disregard any potential future provision of extraordinary public financial support;

(c) take into account the fact that, if any resolution tool is applied –

(i) the Authority and the Fund may recover any reasonable expenses properly incurred from the bank in resolution in accordance with the general principles of resolution, and

(ii) the Authority may charge interest or fees in respect of any loans provided to the bank in resolution.

(6) A pre-resolution valuation shall be supplemented by the following information as appearing in the accounting books and records of the bank –

(a) a balance sheet of the bank as at the date of the valuation;

(b) a report on the financial position of the bank;

(c) an analysis and estimate of the accounting value of the assets and liabilities of the bank;

(d) an analysis and estimate of the market value of the assets and liabilities of the bank where required to inform a decision relating to the bridge bank tool, asset separation tool or sale of business tool;

(e) a list of outstanding liabilities of the bank (including any off balance sheet liabilities), with the creditors subdivided into classes according to the priority their claims would have under relevant insolvency proceedings;

(f) an estimate of the amount each class of creditors and shareholders might be expected to receive if the bank were to be wound up under relevant insolvency proceedings; and

(g) an estimate of the amount that would be payable under the 2009 Regulations if the bank were to be wound up under relevant insolvency proceedings.

45 Provisional valuation

(1) Where the Authority considers that the urgency of the case makes it appropriate for resolution action to be taken or for a write down or conversion power to be exercised in respect of a bank before a pre-resolution valuation can be carried out by an independent valuer appointed under Article 44(2), the Authority may cause a provisional valuation of the assets and liabilities of the bank to be carried out in accordance with any standards set or adopted under Article 48.

(2) Where a provisional valuation is carried out –

(a) Article 44(3) (4), (5) and (6) shall apply to the provisional valuation as if it were a pre-resolution valuation and so far as it is practicable in the circumstances;

(b) the provisional valuation must make provision in respect of reasonably foreseeable losses by the bank; and

(c) the provisional valuation shall be a valid basis on which a decision to exercise a resolution power may be taken.

46 Definitive valuation

(1) Where the Authority has caused a provisional valuation to be carried out under Article 45, the Authority shall, in accordance with an Order made under Article 49, appoint an independent valuer to carry out a definitive valuation of the assets and liabilities of the bank in accordance with any standards adopted under Article 48 as soon as practicable.

(2) The purposes of the definitive valuation are –

(a) to ensure the full extent of any losses on the assets of the bank is recognized in the accounting records of the bank; and

(b) to inform a decision by the Authority as to whether –

(i) additional consideration should be paid by a bridge bank or asset management vehicle for any property, rights, liabilities or shares transferred under a sale of business tool, bridge bank tool or asset separation tool, or

(ii) to increase or reinstate any liability which has been reduced or cancelled by a resolution instrument.

(3) Where a definitive valuation is carried out, Article 44(3), (4), (5) and (6) shall apply to the definitive valuation as if it were a pre-resolution valuation and so far as it is practicable in the circumstances.

(4) A definitive valuation may be carried out –

(a) separately from the difference of treatment valuation;

(b) simultaneously with a difference of treatment valuation; or

(c) by the same independent valuer who carries out the difference of treatment valuation,

but the definitive valuation and the difference of treatment valuation shall be distinct from each other.

(5) A person who participates in any manner in a provisional valuation of a bank shall not, regardless of the capacity in which the person participated, by reason only of that participation be deemed to be ineligible for appointment as an independent valuer for the purpose of carrying out a definitive valuation of that bank.

47 Consequences of a higher valuation being produced by definitive valuation

(1) Where a definitive valuation produces a higher valuation of the net asset value of a bank in resolution than the provisional valuation, the Authority may –

(a) instruct a purchaser, bridge bank or asset management vehicle to pay additional consideration for any assets, rights, liabilities or shares transferred under the sale of business tool, bridge bank tool or asset separation tool; or

(b) modify any liability of the bank in resolution which has been reduced, deferred or cancelled pursuant to the write down or conversion power or a resolution instrument so as to increase or reinstate that liability.

(2) A power under paragraph (1) –

(a) shall not be exercised so as to increase the value of the liability of the bank in resolution beyond the value it would have had if the resolution instrument which reduced, cancelled or deferred it had not been made; and

(b) shall be exercised by the issue by the Authority of a mandatory reduction instrument in accordance with Article 74(1) or a supplemental resolution instrument (whether or not that instrument contains any other provisions authorized by this paragraph or paragraph (1)).

48 Standards

(1) The Authority may set or adopt standards for the purpose of a valuation.

(2) A valuation shall be carried out in accordance with the standards set or adopted by the Authority under paragraph (1).

49 Eligibility criteria for independent valuer

The Minister may by Order specify the eligibility criteria for appointment of a person as an independent valuer for the purposes of Article 44, 46 or 77.

50 Ancillary powers of an independent valuer

(1) Subject to the resolution safeguards, an independent valuer may do anything necessary or desirable for the purposes of, or in connection with, the performance of the independent valuer's functions under this Law.

(2) The Authority may confer on an independent valuer such ancillary powers as the Authority thinks necessary for the purposes of, or in connection with, the exercise of the independent valuer's functions, powers or duties under this Law.

PART 6

STABILIZATION TOOLS, WRITE DOWN AND CONVERSION POWER AND RESOLUTION SAFEGUARDS

Chapter 1 – Sale of business tool

51 Application of sale of business tool

(1) The Authority may apply the sale of business tool to a bank that meets the resolution conditions by effecting a sale of all or part of the business of the bank in resolution to one or more purchasers that are not bridge banks by making –

(a) one or more share transfer instruments effecting the transfer of all or some of the shares of the bank;

(b) one or more property transfer instruments effecting the transfer of all or any assets, rights or liabilities of the bank.

(2) Subject to the resolution safeguards, the Authority may apply the sale of business tool to a bank without –

(a) the consent of the shareholders of the bank or any third party other than the purchaser; and

(b) complying with any procedural requirements under the Companies (Jersey) Law 1991, Security Interests (Jersey) Law 2012 or Security Interests (Jersey) Law 1983 or the constitutional documents of the bank other than those procedural requirements specified in this Law, the Regulations or an Order made under this Law.

(3) The Authority shall ensure that a transfer made by applying the sale of business tool under this Article is made on commercial terms having regard to the circumstances.

(4) The Authority shall take reasonable measures to obtain, on the basis of a pre-resolution valuation, commercial terms for the transfer made under the sale of business tool under this Article, including making arrangements for the marketing of the bank in resolution or part of the bank's business in an open, transparent, non-discriminatory process, while aiming as far as possible to maximize the sale price.

(5) Subject to Article 37, the net proceeds of consideration paid by the purchaser on the transfer made under the sale of business tool under this Article shall be applied for the benefit of –

(a) the owners of the shares, where the sale of business tool has been effected by transferring shares issued by the bank in resolution from the holders of those shares or instruments to the purchaser; or

(b) the bank in resolution, where the sale of business tool has been effected by transferring some or all of the assets or liabilities of the bank in resolution to the purchaser, including where the bank in resolution is then subject to the bank winding up under Part 7.

(6) When applying the sale of business tool to a bank, the Authority may exercise the transfer power more than once to make supplemental transfers of shares issued by the bank or, as the case may be, assets, rights or liabilities of the bank.

(7) A transfer made under the sale of business tool shall be subject to the resolution safeguards.

(8) The Authority shall immediately notify the Commission or other competent authority of its non-compliance with any procedural requirements under paragraph (2)(b).

52 Power to transfer assets, rights, liabilities or shares transferred to the purchaser back to bank in resolution or to original owners

Subject to the resolution safeguards, following the application of the sale of business tool, the Authority may, with the consent of the purchaser, transfer –

(a) the assets, rights, or liabilities transferred to the purchaser back to the bank in resolution; or

(b) the shares transferred to the purchaser back to their original owners,

and the bank in resolution or the original owners shall be obliged to take back any such assets, rights or liabilities or shares.

53 Bank in resolution entitled to exercise rights after transfer under sale of business tool

Where a transfer under the sale of business tool is effected, the bank in resolution shall be entitled to exercise any rights following the transfer that it was entitled to exercise prior to the transfer.

54 Rights of purchaser under the sale of business tool

(1) A purchaser shall acquire the deposit-taking business and any other relevant business of a bank in resolution (as a continuation of the deposit-taking business being conducted prior to the transfer to the purchaser) under the sale of business tool and may continue to operate the deposit-taking business of the bank in resolution for a period not exceeding 6 months within which period an application for registration under the 1991 Law, registration under the Financial Services (Jersey) Law 1998 or authorization that is required under any other enactment shall be made.

(2) Where a transfer under the sale of business tool has been effected the purchaser shall, following the transfer, be entitled to continue to exercise any rights that the bank in

resolution was entitled to exercise prior to the transfer, including membership rights, access to payment, clearing and settlement systems, securities exchanges and the bank depositors compensation scheme, if the purchaser meets the criteria for such membership or participation in such systems.

(3) Where a purchaser does not meet the membership or participation criteria for a relevant payment, clearing or settlement system, securities exchange or the bank depositors compensation scheme, the rights transferred under the sale of business tool shall be exercised for such period as may be specified by the Authority, not exceeding 24 months, subject to renewal on application by the purchaser to the Authority.

(4) Without prejudice to the resolution safeguards, shareholders and creditors of a bank in resolution and other third parties whose assets, rights or liabilities are not transferred under the sale of business tool shall not have any rights over or in relation to the assets, rights or liabilities transferred.

(5) In paragraph (1) "authorization" includes a licence, registration and approval.

55 Marketing of assets, rights, liabilities or shares

(1) Subject to the exceptions in paragraph (4) and Article 56, when applying the sale of business tool to a bank –

(a) the Authority shall market or make arrangements for the marketing of the assets, rights, liabilities or shares of the bank that the Authority intends to transfer; and

(b) pools of assets, rights, liabilities or shares of the bank may be marketed separately under sub-paragraph (a).

(2) Marketing under paragraph (1) shall be carried out in accordance with the following principles –

(a) it shall be as transparent as possible and shall not materially misrepresent the assets, rights, liabilities or shares of the bank in resolution, having regard to the circumstances and in particular the need to maintain financial stability;

(b) it shall not unduly favour or discriminate between potential purchasers;

(c) it shall be free from conflicts of interest;

(d) it shall not confer any unfair advantage on a potential purchaser;

(e) it shall take account of the need to effect a rapid resolution action; and

(f) it shall aim at maximising, as far as possible, the sale price for the shares, assets, rights or liabilities involved.

(3) Subject to paragraph (2)(b), the principles in paragraph (2) shall not prevent the Authority from soliciting particular potential purchasers.

(4) The Authority may apply the sale of business tool to a bank without complying with the requirement to market the assets, rights, liabilities or shares of the bank under paragraph (1)(a) if the Authority determines that compliance with the requirement to market the bank would be likely to undermine one or more of the resolution objectives and, in particular, the Authority considers that –

(a) there is a material threat to the financial stability of Jersey arising from or aggravated by the failure or likely failure of the bank in resolution; and

(b) compliance with requirement would be likely to undermine the effectiveness of the sale of business tool in addressing the threat referred to in sub-paragraph (a) or achieving the resolution objectives.

56 Delay of disclosure of information to the public on application of the sale of business tool

On application of the sale of business tool to a bank –

(a) disclosure of information to the public which would as a matter of law be required in relation to the sale of the bank may be delayed for the time necessary to plan and structure the resolution of the bank; and

(b) disclosure to the public of the marketing of a bank which would as a matter of law be required may be delayed where all of the following conditions are met –

(i) immediate disclosure is likely to prejudice the legitimate interests of the bank in resolution,

(ii) delay of disclosure is not likely to mislead the public,

(iii) delay of disclosure is in the public interest, and

(iv) the disclosure of the marketing information entails a risk of undermining the financial stability of the bank in resolution and the financial system in Jersey.

57 Residual bank to be wound up

If the sale of business tool has been used to transfer systemically important services or viable business of a bank to a private sector purchaser, the residual bank may be wound up under relevant insolvency proceedings within an appropriate timeframe, having regard to any need for the residual bank to provide services or support to enable the purchaser to carry on the activities or services acquired by the virtue of that transfer.

Chapter 2 – Bridge bank tool

58 Application of bridge bank tool

(1) For the purposes of this Article, the Authority shall cause to be registered a company (a "bridge bank") that –

(a) is wholly or partially owned by the Authority;

(b) is controlled by the Authority; and

(c) is created for the purpose of receiving a transfer of the shares or business of the bank in resolution by virtue of the utilization of such transfer power under the bridge bank tool with a view to maintaining access to critical functions and in due course selling the bank or its business.

(2) The Authority may apply the bridge bank tool to a bank that meets the resolution conditions by making –

(a) one or more share transfer instruments effecting the transfer of all or some of the shares of the bank to a bridge bank; or

(b) one or more property transfer instruments effecting the transfer of all or any assets, rights or liabilities of the bank to a bridge bank.

(3) Subject to the resolution safeguards, the Authority may apply the bridge bank tool to a bank that meets the resolution conditions without –

(a) the consent of the shareholders of the bank in resolution or any third party other than the bridge bank; and

(b) complying with any procedural requirements under the Companies (Jersey) Law 1991, Security Interests (Jersey) Law 2012 or Security Interests (Jersey) Law 1983 or the constitutional documents of the bank other than those procedural requirements specified in this Law or the Regulations or an Order made under this Law.

(4) The application of the bail-in tool for the purpose of converting to equity or reducing the principal amount of claims or debt instruments that are transferred to a bridge bank with a view to providing capital for that bridge bank shall not interfere with the ability of the Authority to control the bridge bank.

(5) When applying the bridge bank tool, the Authority shall ensure that the total value of liabilities transferred to the bridge bank does not exceed the total value of the rights and assets transferred from the bank in resolution or provided by other sources.

(6) Subject to Article 37, any consideration paid by the bridge bank shall be applied for the benefit of –

(a) the owners of the shares, where the transfer of the bridge bank has been effected by transferring shares issued by the bank in resolution from the holders of those shares to the bridge bank; or

(b) the bank in resolution, where the transfer to the bridge bank has been effected by transferring some or all of the assets or liabilities of the bank in resolution to the bridge bank.

(7) When applying the bridge bank tool to a bank in resolution, the Authority may exercise its power to transfer under Article 59(2) more than once to make supplemental transfers of shares issued by the bank in resolution, or as the case may be, assets, rights or liabilities of the bank in resolution.

59 Power to transfer assets, rights, liabilities or shares transferred to the bridge bank back to bank or to original owners

(1) Subject to paragraph (2), following the application of the bridge bank tool, the Authority may –

(a) transfer assets, rights or liabilities transferred to the bridge bank back to the bank in resolution, or shares transferred to the bridge bank back to their original owners, and the bank in resolution or the original owners shall take back any such assets, rights or liabilities or shares; or

(b) transfer assets, rights, liabilities or shares from the bridge bank to a third party.

(2) Subject to complying with any other conditions in the instrument of transfer, the Authority may transfer assets, rights, liabilities or shares back from the bridge bank under paragraph (1) in any of the following circumstances –

(a) where the possibility that the specific shares, assets, rights or liabilities will be transferred back is stated expressly in the instrument of transfer by which the transfer was made to the bridge bank; or

(b) where the specific shares, assets, rights or liabilities do not in fact fall within the classes of, or meet the conditions for transfer of, shares, assets, rights or liabilities specified in the instrument of transfer by which the transfer to the bridge bank was made.

(3) A transfer following the application of the bridge bank tool between –

(a) the bank in resolution or the original owners of shares; and

(b) the bridge bank,

shall be without prejudice to the resolution safeguards.

60 Bridge bank to acquire the deposit-taking business

A bridge bank shall acquire the deposit-taking business of a bank in resolution as a continuation of the deposit-taking business being conducted prior to the transfer to the bridge bank under the bridge bank tool.

61 Rights of bridge bank

(1) Where a transfer under the bridge bank tool is effected by way of a transfer of shares in the bank in resolution, the bank in resolution shall, following the transfer, be entitled to exercise any rights that it was entitled to exercise prior to the transfer.

(2) Where a transfer under the bridge bank tool has been effected by way of a transfer of assets rights and liabilities, the bridge bank shall, following the transfer, be entitled to exercise any rights that the bank in resolution was entitled to exercise prior to the transfer, including membership rights, access to payment, clearing and settlement systems, securities exchanges and the bank depositors compensation scheme, if the bridge bank meets the criteria for such membership or participation in such systems.

(3) Where a bridge bank does not meet the membership or participation criteria for a relevant payment, clearing or settlement system, securities exchange or the bank depositors compensation scheme, the rights transferred under the bridge bank tool shall be exercised for such period as may be specified by the Authority, not exceeding 24 months, subject to renewal on application by the bridge bank to the Authority.

(4) Without prejudice to the resolution safeguards, shareholders and creditors of the bank in resolution and other third parties whose assets, rights or liabilities are not transferred to the bridge bank under the bridge bank tool shall not have any rights over or in relation to the assets, rights or liabilities transferred to the bridge bank or its management.

(5) A bridge bank or its management shall not be liable in damages to its shareholders or creditors for anything done or omitted in the discharge or purported discharge of any functions under this Law unless it is shown that the act or omission was in bad faith.

62 Operation of bridge bank

(1) The Authority shall ensure that the operation of a bridge bank complies with the following requirements –

(a) the contents of a bridge bank's constitutional documents are approved by the Authority;

(b) subject to the bridge bank's ownership structure, the Authority appoints or approves the bridge bank's management body;

(c) the Authority approves the remuneration of the members of the bridge bank's management body and determines their appropriate responsibilities;

(d) the Authority approves the strategy and risk profile of the bridge bank; and

(e) the bridge bank is –

(i) registered under the 1991 Law to undertake deposit-taking business,

(ii) registered under the Financial Services (Jersey) Law 1998, or

(iii) authorized under any other relevant enactment to undertake such other relevant financial services business as is necessary,

in order to carry out the activities or services that it acquires by virtue of a transfer made under the bridge bank tool in accordance with the resolution powers and the bridge bank complies with the requirements under those enactments.

(2) Despite paragraph (1)(e), where necessary to meet the resolution objectives, the bridge bank may be established, and authorized by the Commission, to carry out the activities or services that it acquires by virtue of a transfer made under the bridge bank tool for a period not exceeding 6 months without complying with the requirements set out in paragraph (1)(e).

(3) The Authority may submit a request to the Commission to permit the bridge bank to carry on the activities referred to in paragraph (1)(e) beyond the period referred to in paragraph (2) without complying with the requirements set out in paragraph (1)(e).

(4) If the Commission decides to grant a permission under paragraph (3), it shall indicate the additional period for which the requirements set out in in paragraph (1)(e) are waived.

(5) Notwithstanding any restrictions imposed under the Competition (Jersey) Law 2005, the management of the bridge bank shall operate the bridge bank with a view to maintaining access to critical functions and selling the bridge bank, or its assets, rights or liabilities, to one or more private sector purchasers when conditions are appropriate and within the time limit set out in paragraph (8) or any extension granted under paragraph (9), as the case may be.

(6) The Authority shall determine that the bridge bank is no longer a bridge bank if any of the following outcomes occur, whichever occurs first –

(a) the bridge bank merges with another entity;

(b) the bridge bank ceases to meet the requirements of a bridge bank set out at paragraph (1);

(c) the sale of all or substantially all of the bridge bank's assets, rights and liabilities to a third party;

(d) the bridge bank's assets are completely wound down and its liabilities are completely discharged;

(e) the expiry of the two-year time limit set out in paragraph (8) or any extension granted under paragraph (9), as the case may be.

(7) Where the Authority seeks to sell the bridge bank or its assets, rights or liabilities, the Authority shall market the bridge bank or assets, rights or liabilities openly and

transparently, and the sale shall not materially misrepresent assets, rights or liabilities or unduly favour or discriminate between potential purchasers and must be made on commercial terms having regard to the circumstances.

(8) Where none of the outcomes referred to in paragraph (6)(a), (b), (c) or (d) apply, the Authority shall terminate the operation of the bridge bank as soon as possible and in any event 2 years after the date on which the last transfer from a bank in resolution was made to the bridge bank under the bridge bank tool.

(9) The Authority may extend the time limit for termination of the bridge bank under paragraph (8) for one or more additional one year periods where such an extension –

(a) supports an outcome referred to in paragraph (6)(a), (b), (c) or (d); or

(b) is necessary to ensure the continuity of essential banking or financial services.

(10) The Authority must give reasons for any decision to extend the period for termination of the bridge bank, and a detailed assessment of the situation including the market conditions and outlook, that justifies the extension.

(11) Where the operations of a bridge bank have been terminated as a result of the sale of all or substantially all of its assets, rights or liabilities, or as a result of the expiry of the time limit set out in paragraph (8) or any extension granted under paragraph (9), the bridge bank shall be wound up in accordance with Part 7.

(12) Subject to Article 37, any proceeds generated as a result of the termination of the operation of the bridge bank shall be applied for the benefit of the shareholders of the bridge bank.

(13) In this Article "authorized" includes, licensed, registered and approved.

Chapter 3 – Asset separation tool

63 Application of asset separation tool

(1) The Authority may apply the asset separation tool to a bank in resolution by making a property transfer instrument effecting the transfer of the assets, rights or liabilities of –

(a) the bank in resolution; or

(b) a bridge bank to which assets, rights or liabilities have been transferred under the bridge bank tool,

to an asset management vehicle.

(2) For the purposes of the transfer referred to in paragraph (1), the Authority may make one or more instruments of transfer.

(3) Where assets, rights or liabilities of a bank in resolution are transferred to an asset management vehicle by application of the asset separation tool, the Authority may make one or more supplementary instruments of transfer transferring any of those assets, rights or liabilities to one or more other asset management vehicles.

(4) Subject to the resolution safeguards, the Authority may apply the asset separation tool to a bank in resolution without –

(a) the consent of the shareholders of the bank in resolution or any third party; and

(b) complying with any procedural requirements under the Companies (Jersey) Law 1991, Security Interests (Jersey) Law 2012 or Security Interests (Jersey)

Law 1983 or the constitutional documents of the bank other than those procedural requirements specified in this Law or the Regulations or an Order made under this Law.

(5) An asset management vehicle shall manage the assets transferred to it under paragraph (1) with a view to maximizing their value through eventual sale or orderly liquidation.

(6) The Authority may only apply the asset separation tool to a bank in resolution if –

(a) the situation of the particular market for the assets of the bank in resolution is of such a nature that the liquidation of those assets under relevant insolvency proceedings could have an adverse effect on one or more financial markets;

(b) such a transfer is necessary to ensure the proper functioning of the bank in resolution or bridge bank; or

(c) such a transfer is necessary to maximize liquidation proceeds.

(7) Subject to Article 37, any consideration paid by the asset management vehicle in the form of debt issued by the asset management vehicle in respect of the assets, rights or liabilities acquired directly from the bank in resolution shall be applied for the benefit of the bank in resolution.

(8) Where a bridge bank tool has been applied to a bank in resolution, an asset management vehicle may, subsequent to the application of the bridge bank tool, acquire assets, rights or liabilities from the bridge bank.

(9) The Authority may transfer assets, rights or liabilities from the bank in resolution to one or more asset management vehicles more than once, and transfer assets, rights or liabilities back from one or more asset management vehicles to the bank in resolution if any of the circumstances in paragraph (11) apply.

(10) Where the Authority transfers assets, rights or liabilities back to the bank in resolution under paragraph (9), the bank in resolution shall take back any such assets, rights or liabilities.

(11) The Authority may, subject to complying with any other conditions in the instrument of transfer, transfer assets, rights or liabilities back from the asset management vehicle to the bank in resolution in any of the following circumstances –

(a) where the possibility that the specific assets, rights or liabilities will be transferred back is stated expressly in the instrument of transfer by which the transfer was made; or

(b) where the specific assets, rights or liabilities do not in fact fall within the classes of, or meet the conditions for transfer of assets, rights or liabilities specified in the instrument of transfer by which the transfer was made.

(12) A transfer between the bank in resolution and the asset management vehicle shall be without prejudice to the resolution safeguard for partial transfers under Article 80.

(13) Without prejudice to the resolution safeguards, shareholders or creditors of the bank in resolution and other third parties whose assets, rights or liabilities are not transferred to the asset management vehicle shall not have any rights over or in relation to the assets, rights or liabilities transferred to the asset management vehicle or its management.

(14) An asset management vehicle or its management shall not be liable in damages to the bank in resolution or its shareholders or creditors for anything done or omitted in the discharge or purported discharge of any functions under this Law unless it is shown that the act or omission was in bad faith.

64 Operation of asset management vehicle

The Authority shall ensure that the operation of an asset management vehicle complies with the following requirements –

(a) the contents of an asset management vehicle's constitutional documents are approved by the Authority;

(b) subject to the asset management vehicle's ownership structure, the Authority appoints or approves the asset management vehicle's management body;

(c) the Authority approves the remuneration of the members of the management body of the asset management vehicle and determines their appropriate responsibilities; and

(d) the Authority approves the strategy and risk profile of the asset management vehicle.

Chapter 4 – Bail-in tool

65 Application of bail-in tool

(1) The Authority may apply the bail-in tool to meet the resolution objectives, in accordance with the general principles of resolution, for any of the following purposes –

(a) to recapitalize a bank that meets the resolution conditions to the extent sufficient to restore the bank's ability to –

(i) satisfy the Commission that it is a fit and proper person to be registered to undertake deposit-taking business in accordance with Article 10(3)(a) of the 1991 Law, and

(ii) continue to carry out the activities for which the bank is registered under the 1991 Law, registered under the Financial Services (Jersey) Law 1998 or authorized under any other enactment to undertake other financial services business, and to sustain sufficient market confidence in the bank; or

(b) in accordance with Article 74, to exercise the Authority's write down or conversion power to convert to equity or reduce the principal amount of claims or debt instruments that are transferred –

(i) to a bridge bank with a view to providing capital for the bridge bank, or

(ii) under the sale of business tool or the asset separation tool.

(2) The Authority may, in order to apply the bail-in tool to a bank under paragraph (1), make one or more resolution instruments.

(3) The Authority may apply the bail-in tool for the purposes referred to in paragraph (1)(a) only if there is a reasonable prospect that the application of the bail-in tool together with any other relevant measures will, in addition to achieving the relevant resolution objectives, restore the bank to financial soundness and long-term viability.

(4) Where there is no such reasonable prospect as referred to in to paragraph (3), the Authority may apply the bail-in tool for the purposes referred to in paragraph (1)(b) together with sale of business tool, bridge bank tool or asset separation tool.

(5) The Authority may apply the bail-in tool to a bank under paragraph (1), while respecting, in each case, the legal form of the bank or while changing the legal form of the bank if the Authority is of the view that changing the legal form is necessary to achieve the resolution objectives.

(6) The bail-in tool may be applied in respect of any liability of a bank that is not excluded from the scope of the bail-in tool under paragraph (7) or (8).

(7) The Authority shall not exercise the write down or conversion power in relation to the following liabilities whether they are governed by the law of Jersey or by the law of another jurisdiction –

(a) covered deposits;

(b) secured liabilities including covered bonds and liabilities in the form of financial instruments used for hedging purposes which form an integral part of the cover pool and which according to Jersey law are secured in a way similar to covered bonds;

(c) any liabilities that arise by virtue of the holding by the bank of client assets including client assets held on behalf of a recognized fund (within the meaning of Article 1 of the Collective Investment Funds (Jersey) Law 1988) or an AIF (within the meaning of the Alternative Investment Funds (Jersey) Regulations 2012), if such client assets are protected under Jersey law relating to insolvency.

(d) any liabilities that arise by virtue of a fiduciary relationship between the bank (as fiduciary) and another person (as beneficiary) if such beneficiary's interests are protected under Jersey law relating to insolvency;

(e) liabilities to a credit institution, excluding entities that are part of the same group, with an original maturity of less than 7 days;

(f) liabilities with a remaining maturity of less than 7 days, owed to payment and securities settlement systems or their participants and arising from the participation in any such system; or

(g) liabilities to any one of the following –

(i) an employee, in relation to accrued salary, or other fixed remuneration, except for the variable component of remuneration that is not regulated by a collective bargaining agreement,

(ii) a commercial or trade creditor arising from the provision to the bank in resolution of goods and services that are critical to the daily functioning of its operations, including information technology services, utilities and rental, servicing and upkeep of premises,

(iii) tax and social security services in Jersey, or

(iv) Jersey Bank Depositors Compensation Board.

(8) In exceptional circumstances, where the bail-in tool is applied, the Authority may exclude or partially exclude certain liabilities from the application of the write down or conversion powers where –

(a) it is not possible to bail-in that liability within a reasonable time despite the good faith efforts of the Authority;

(b) the exclusion is strictly necessary and is proportionate to achieve the continuity of critical functions and core business lines in a manner that maintains the ability of the bank in resolution to continue key operations, services and transactions;

(c) the exclusion is strictly necessary and proportionate to avoid giving rise to widespread contagion, in particular as regards eligible deposits which would severely disrupt the functioning of financial markets, including financial market infrastructures, in a manner that could cause broader financial instability; or

(d) the application of the bail-in tool to those liabilities would cause a destruction of value such that the losses borne by other creditors would be higher than if those liabilities were excluded from bail-in.

(9) Where the Authority decides to exclude or partially exclude an eligible liability or class of eligible liabilities under paragraph (8), the level of write down or conversion applied to other eligible liabilities may be increased to take account of such exclusions, if the level of write down or conversion applied to other eligible liabilities complies with the general principle of resolution specified in Article 35(g).

(10) Where the Authority decides to exclude or partially exclude an eligible liability or class of eligible liabilities under paragraph (8) and the losses that would have been borne by those liabilities have not been passed on fully to other creditors, a contribution may, subject to paragraph (11), be made out of the Fund to the bank in resolution to do any of the following –

(a) cover any losses which have not been absorbed by eligible liabilities and restore the net asset value of the bank in resolution to zero in accordance with Article 66(1)(a); and

(b) purchase shares in the bank in resolution to recapitalize the bank in accordance with Article 66(1)(b).

(11) A contribution may be made from the Fund under paragraph (10) only where –

(a) a contribution to loss absorption and recapitalization equal to an amount not less than 8% of the total liabilities including own funds of the bank in resolution, measured by the pre-resolution valuation, has been made by the shareholders, the holders of relevant capital instruments and other eligible liabilities through write down, conversion or otherwise; and

(b) the contribution from the Fund does not exceed 5% of the total liabilities including own funds of the bank in resolution, measured by the pre-resolution valuation or provisional valuation, as the case may be.

(12) In extraordinary circumstances, where the bail-in tool is applied the Authority may seek further funding from alternative financing sources.

(13) In exercising its discretion under paragraph (8), the Authority shall give due consideration to –

(a) the principle that losses shall be borne first by shareholders and next, in general, by creditors of the bank in resolution in order of preference;

(b) the level of loss absorbing capacity that would remain in the bank in resolution if the liability or class of liabilities were excluded; and

(c) the need to maintain adequate resources for resolution financing.

(14) In this Article –

"authorized" includes, licensed, registered and approved;

"credit institution" means a bank or an entity that is carrying on deposit-taking business (whether or not incorporated, or carrying on business, in Jersey).

66 Assessment of amount of bail-in

(1) In applying the bail-in tool under Article 65, the Authority shall assess for the purposes of paragraph (2), on the basis of the pre-resolution valuation, the aggregate of –

(a) where relevant, the amount by which eligible liabilities must be written down to ensure that the net asset value of the bank in resolution is equal to zero; and

(b) where relevant, the amount by which eligible liabilities must be converted into shares or other types of capital instruments to restore the Common Equity Tier 1 capital ratio of either –

(i) the bank in resolution, or

(ii) the bridge bank.

(2) The assessment referred to in paragraph (1) shall establish the amount by which eligible liabilities need to be written down and converted in order –

(a) to restore the Common Equity Tier 1 capital ratio of the bank in resolution or, where applicable, establish the ratio of the bridge bank, taking into account any contribution of capital by the Fund under Article 22(5)(d)(iv);

(b) to sustain sufficient market confidence in the bank in resolution or the bridge bank; and

(c) to enable the bank in resolution or the bridge bank to continue to satisfy the Commission, for at least one year, that it is a fit and proper person to be registered to carry on deposit-taking business in accordance with Article 10(3)(a) of the 1991 Law.

(3) Where the Authority intends to apply the asset separation tool together with the bail-in tool to a bank in resolution, the amount by which eligible liabilities need to be reduced shall take into account a prudent estimate of the capital needs of the asset management vehicle as appropriate.

(4) Where capital has been written down in accordance with the write down or conversion power, and the bail-in tool has been applied, and the level of write down based on the pre-resolution valuation is found to exceed requirements when assessed against the definitive valuation, a write up mechanism may be applied to reimburse creditors and then shareholders to the extent necessary.

67 Treatment of shareholders in bail-in or write down or conversion

(1) When applying the bail-in tool or the write down or conversion power, the Authority shall take, in respect of shareholders of the bank in resolution, one or both of the following actions –

(a) cancel existing shares or transfer them to creditors that have been bailed-in;

(b) provided that, in accordance with the pre-resolution valuation (or provisional valuation, if applicable), the bank in resolution has a positive net value, dilute existing shareholders as a result of the conversion into shares using the write down or conversion power of –

(i) relevant capital instruments, or

(ii) eligible liabilities,

issued by the bank in resolution.

(2) The Authority shall take the actions referred to in paragraph (1) in respect of shareholders where the shares were issued or conferred in the following circumstances –

(a) pursuant to the conversion of debt instruments to shares in accordance with the contractual terms of the original debt on the occurrence of an event that preceded or occurred at the same time as the assessment by the Authority that the bank met the resolution conditions; or

(b) pursuant to the conversion of relevant capital instruments to Common Equity Tier 1 instruments under the write down or conversion power.

(3) In considering which action to take in accordance with paragraph (1), the Authority shall have regard to –

(a) the pre-resolution valuation (or provisional valuation, if applicable);

(b) the amount by which the Authority has assessed that Common Equity Tier 1 items must be reduced and relevant capital instruments must be written down or converted pursuant to the write down or conversion power; and

(c) the aggregate amount assessed by the Authority under Article 66(1).

68 Sequence of write down or conversion

(1) Subject to any exclusions set out in Article 65(7) and (8), the Authority, in exercising the write down or conversion power when applying the bail-in tool, shall meet the following requirements –

(a) the Authority shall reduce the Common Equity Tier 1 items in accordance with Article 74(6);

(b) if the total reduction under sub-paragraph (a) is less than the sum of the amounts referred to in Article 67(3)(b) and (c), the Authority shall reduce the principal amount of Additional Tier 1 instruments to the extent required and to the extent of their capacity;

(c) if the total reduction pursuant to sub-paragraphs (a) and (b) is less than the sum of the amounts referred to in Article 67(3)(b) and (c), the Authority shall reduce the principal amount of Tier 2 instruments to the extent required and to the extent of their capacity;

(d) if the total reduction of shares and relevant capital instruments pursuant to sub-paragraphs (a), (b) and (c) is less than the sum of the amounts referred to in Article 67(3)(b) and (c), the Authority shall reduce to the extent required the principal amount of subordinated debt that is not Additional Tier 1 or Tier 2 capital in accordance with the priority of claims that would apply if the bank were to be wound up under relevant insolvency proceedings, in conjunction with the write down pursuant to sub-paragraphs (a), (b) and (c) to produce the sum of the amounts referred to in Article 67(3)(b) and (c); or

(e) if the total reduction of shares, relevant capital instruments and eligible liabilities pursuant to sub-paragraphs (a) to (d) is less than the sum of the amounts referred in Article 67(3)(b) and (c), the Authority shall reduce to the extent required the principal amount of, or outstanding amount payable in respect of, the rest of eligible liabilities in accordance with the priority of claims that would apply if the bank were to be wound up under relevant insolvency proceedings, including the ranking of deposits provided for in Article 30, pursuant to the bail-in tool, in conjunction with the write down

pursuant to sub-paragraphs (a) to (d) to produce the sum of the amounts referred to in Article 67(3)(b) and (c).

(2) When applying the write down or conversion power, the Authority shall allocate the losses represented by the sum of the amounts referred to in Article 67(3)(b) and (c) equally between shares and eligible liabilities of the same rank by reducing the principal amount of, or outstanding amount payable in respect of, those shares and eligible liabilities to the same extent pro rata to their value, except where a different allocation of losses amongst liabilities of the same rank is allowed in the circumstances specified in Article 65(8).

(3) Paragraph (2) shall not prevent liabilities which have been excluded from bail-in in accordance with Article 65(7) and (8) from receiving more favourable treatment than eligible liabilities which are of the same rank in a bank winding up.

(4) Before applying the write down or conversion power, the Authority shall convert or reduce the principal amount on instruments referred to in paragraph (1)(b), (c) and (d) when those instruments contain the following terms and have not been fully converted –

(a) terms that provide for the principal amount of the instrument to be reduced on the occurrence of any event that refers to the financial situation, solvency or levels of own funds of the bank; or

(b) terms that provide for the conversion of the instrument to shares on the occurrence of any such event.

(5) Where the principal amount of an instrument has been reduced, but not reduced to zero, in accordance with terms referred to in paragraph (4)(a), before the application of the bail-in tool under paragraph (1), the Authority shall apply the write down or conversion power to the residual amount of that principal amount in accordance with paragraph (1).

(6) In deciding on whether liabilities are to be written down or converted into equity, the Authority shall not convert one class of liabilities while a class of liabilities that is subordinated to that class remains substantially unconverted into equity or not written down, unless otherwise permitted under Article 65(7) and (8).

69 Derivatives

(1) The Authority shall exercise the write down or conversion power in relation to a liability arising from a derivative contract only upon or after closing-out that derivate contract.

(2) The Authority may terminate and close out any derivative contract upon a bank's entry into resolution for the purpose of the entry into resolution.

(3) Where a derivative contract has been excluded from the application of the bail-in tool pursuant to Article 65(8), the Authority shall not be under any obligation to terminate or close out the derivative contract.

(4) Where a derivative contract is subject to a netting arrangement, the value of the liability for the purposes of the pre-resolution valuation (or provisional valuation, if applicable) shall be determined on a net basis in accordance with the terms of the netting arrangement.

(5) The Authority shall determine the value of liabilities arising from derivative contracts in accordance with –

(a) appropriate methodologies for determining the value of classes of derivative contracts, including contracts that are subject to netting arrangements;

(b) principles for establishing the relevant point in time at which the value of a derivative position shall be established; and

(c) appropriate methodologies for comparing the destruction of value that would arise from the close out and bail-in of derivative contracts with the amount of losses that would be borne by derivative contracts in bail-in.

(6) When the write down or conversion power is used, the Authority may apply a different conversion rate to different classes of capital instruments and liabilities in accordance with one or both of the following principles –

(a) the conversion rate shall represent appropriate compensation to the affected creditor for any loss incurred by virtue of the exercise of the write down or conversion power;

(b) when different conversion rates are applied, the conversion rate applicable to liabilities that rank higher under this Law shall be higher than the conversion rate applicable to subordinated liabilities.

70 Business reorganization plan

(1) Where the bail-in tool has been used, the Authority shall ensure that a business reorganization plan is drawn up and implemented in accordance with this Article.

(2) The implementation of a business reorganization plan may include the appointment by the Authority of persons (pursuant to its resolution power to take control over a bank in resolution under Article 29(1)(b)) for the purpose of drawing up and implementing the business reorganization plan.

(3) Within one month after the application of the bail-in tool to a bank, the management of the bank shall draw up and submit to the Authority a business reorganization plan setting out measures to restore the long-term viability of the bank within a reasonable period, on the basis of realistic assumptions as to the economic and financial market conditions under which the bank will operate.

(4) Where a group resolution has been carried out, including where a foreign resolution instrument has been made, a group level business reorganization plan may be accepted by the Authority for the purpose of this Article.

(5) In exceptional circumstances, and if it is necessary for meeting the resolution objectives, the Authority may extend the period in paragraph (3).

(6) A business reorganization plan shall contain at least the following –

(a) a detailed diagnosis of the factors and problems that caused the bank to fail or to be likely to fail and the circumstances that led to its difficulties;

(b) a description of the measures aiming to restore the long-term viability of the bank that are to be adopted; and

(c) a timescale for the implementation of those measures.

(7) Measures aiming to restore the long-term viability of the bank under paragraph (6) may include –

(a) the reorganization of the activities of the bank;

(b) changes to the operational systems and infrastructure within the bank;

(c) the withdrawal from loss-making activities;

(d) the restructuring of existing activities that can be made competitive; and

(e) the sale of assets or business lines.

(8) Within one month of the submission of the business reorganization plan, the Authority together with the Commission, shall assess the likelihood that the business reorganization plan, if implemented, will restore the long-term viability of the bank.

(9) If on assessment under paragraph (8), the Authority and the Commission are satisfied that the business reorganization plan will restore the long-term viability of the bank, the Authority shall approve the plan.

(10) If on assessment the Authority or Commission are not satisfied that the business reorganization plan is likely to restore the long-term viability of the bank, the Authority, in agreement with the Commission shall notify the management of its concerns and require the amendment of the business reorganization plan in a way that will address those concerns.

(11) Within 2 weeks of receiving a notification by the Authority under paragraph (10), the management of the bank shall submit an amended business reorganization plan to the Authority.

(12) The Authority, together with the Commission, shall assess the amended business reorganization plan submitted under paragraph (11) and the Authority, in agreement with the Commission shall notify the management of the bank, within one week of the assessment of the amended business reorganization plan, as to whether the Authority is satisfied that the amended business reorganization plan addresses the concerns notified or whether further amendment is required.

(13) The management of the bank shall implement the business reorganization plan and shall submit a report to the Authority at least every 6 months on the progress of the implementation of the business reorganization plan until such time as the Authority may determine.

(14) A business reorganization plan may be further amended following its initial implementation if the Authority is of the view that changes to the plan are required to achieve the long-term viability of the bank.

71 Ancillary provisions relating to bail-in

(1) Where the Authority exercises the write down or conversion power, such write down or conversion shall take effect and be immediately binding on the bank in resolution and affected creditors and shareholders of the bank in resolution.

(2) The Authority may complete or cause the completion of all administrative and procedural tasks necessary to give effect to the write down or conversion power including –

(a) the amendment of all relevant registers;

(b) the delisting or removal from trading of shares or debt instruments;

(c) the listing or admission to trading of new shares; and

(d) the relisting or readmission of any debt instruments which have been written down, without the requirement for a prospectus if a prospectus would in normal circumstances be required.

(3) Where the Authority reduces to zero the principal amount of, or outstanding amount payable in respect of, a liability by means of the write down or conversion power, that liability and any obligations or claims arising in relation to it that are not accrued at the time when the power is exercised shall be discharged for all purposes, and

shall not be provable in any subsequent proceedings in relation to the bank in resolution or any successor entity in any subsequent winding up.

(4) Where the Authority reduces in part, but not in full, the principal amount of, or outstanding amount payable in respect of, a liability by means of the write down or conversion power –

(a) such liability shall be discharged to the extent of the amount reduced; and

(b) the relevant instrument or agreement that created the original liability shall continue to apply in relation to the residual principal amount or outstanding amount payable in respect of the liability, subject to any modification of the amount of interest payable to reflect the reduction of the principal amount, and any further modification of the terms that the Authority might make by means of the write down or conversion power.

(5) Procedural impediments to the conversion of liabilities to shares by virtue of their instruments of incorporation or the law of Jersey (other than this Law), including pre-emption rights for shareholders or requirements for the consent of shareholders to an increase in capital, shall not prevent the application of a stabilization tool, in particular the write down or conversion power.

72 Contractual recognition of bail-in

(1) Subject to paragraph (3), a bank shall include in its contractual documents a contractual term by which the creditor or party to an agreement creating an eligible liability recognizes that that liability may be subject to the write down or conversion power and agrees to be bound by any reduction of the principal or outstanding amount due, conversion or cancellation that is effected by the exercise of that power by the Authority, if such liability is –

(a) not excluded under Article 65(7);

(b) not a covered deposit;

(c) governed by the law of a jurisdiction other than Jersey; and

(d) issued or entered into –

(i) on or after the date, if any, prescribed by the Minister by Order for the purpose of this Article, or

(ii) before that date, if on or after that date the bank has the ability to amend the contract to include such a contractual term.[5]

(2) Subject to paragraph (3), the Authority may specify contractual terms which the bank shall include in its contractual documents in relation to other liabilities.

(3) Paragraph (1)(a) shall not apply where the Authority determines that the liability referred to in paragraph (1) can be subject to write down or conversion powers by the resolution authority of another jurisdiction or pursuant to a binding agreement concluded with that other jurisdiction.

(4) A failure to include the terms as are referred to under paragraph (1) shall not prevent the Authority from exercising the write down or conversion power in relation to that liability.

(5) A bank that fails to comply with paragraph (1) shall be guilty of an offence and liable to a fine of level 3 on the standard scale.

(6) The Authority may waive the requirements set out in paragraph (1) in respect of a bank.

Chapter 5 – Government financial assistance tool

73 Application of government financial assistance tool

(1) Subject to paragraph (2), the Authority, acting in agreement with and under the direction of the Minister, may apply the government financial assistance tool to a bank by providing extraordinary public financial support to the bank in accordance with paragraph (3) for the purpose of resolving the bank, including by intervening directly to avoid its winding up, with a view to meeting the resolution objectives.

(2) The Authority may only apply the government financial assistance tool in respect of a bank –

(a) as a last resort after having assessed and exploited the other stabilization tools to the maximum extent practicable whilst maintaining financial stability; and

(b) if the resolution conditions are met, and the Minister and the Authority both determine that either or both of the following conditions are met –

(i) the application of the other resolution tools would not suffice to avoid significant adverse effect on the financial system in Jersey, or

(ii) the application of the other resolution tools would not suffice to protect the public interest where extraordinary liquidity assistance has already been given to the bank.

(3) The Authority may apply the government assistance financial tool to a bank by –

(a) while complying with the Companies (Jersey) Law 1991, participating in the recapitalization of a bank in resolution by providing capital in exchange for the Common Equity Tier 1 instruments, Additional Tier 1 instruments or Tier 2 instruments if the Authority ensures –

(i) to the extent that its shareholding of the bank permits, that the bank is managed on a commercial and professional basis, and

(ii) that its holding in the bank is transferred to the private sector as soon as commercial and financial circumstances allow; or

(b) taking the bank in resolution into temporary public ownership, if the bank is managed on a commercial and professional basis and that it is transferred to the private sector as soon as commercial and financial circumstances allow.

(4) For the purposes of taking a bank into temporary public ownership under paragraph (3), the Authority may make one or more share transfer orders in which the transferee is –

(a) nominee of the Authority; or

(b) a company wholly owned by the Authority.

Chapter 6 – Write down and conversion power

74 Write down or conversion power

(1) Subject to paragraph (2), the Authority shall have the power to issue a mandatory reduction instrument to write down or convert relevant capital instruments or other liabilities of a bank in resolution into shares of the bank including the power –

(a) to reduce (including to zero) the principal amount of, or outstanding amount due, in respect of eligible liabilities of a bank in resolution;

(b) to cancel the debt instruments issued by a bank in resolution except secured liabilities;

(c) to reduce, including reducing to zero, the nominal amount of shares of a bank in resolution and to cancel such shares;

(d) to require a bank in resolution to issue new shares or other capital instruments, including preference shares and contingent convertible instruments.

(2) The Authority may only exercise the write down or conversion power after carrying out a pre-resolution valuation (or a provisional valuation, if applicable).

(3) For the purpose of paragraph (2), a pre-resolution valuation or a provisional valuation, as the case may be, shall form the basis of the calculation of the write down to be applied to the relevant capital instruments in order to absorb losses and the level of conversion to be applied to the relevant capital instruments in order to recapitalize the bank.

(4) The Authority may exercise the write down or conversion power –

(a) independently of a resolution action; or

(b) in combination with a resolution action, where the resolution conditions are met.

(5) The Authority may exercise the write down or conversion power in accordance with this Article without delay in relation to relevant capital instruments issued by a bank in resolution, when one or more of the following circumstances apply –

(a) the determination has been made that the resolution conditions have been met, before any resolution action has been taken;

(b) the Authority determines that unless the write down or conversion power is exercised in relation to relevant capital instruments, the bank will no longer be viable;

(c) in the case of relevant capital instruments issued by a bank that is a subsidiary, and where those relevant capital instruments are recognized for the purposes of meeting any minimum requirement for own funds and eligible liabilities set under Article 26, the Authority determines that unless the write down or conversion power is exercised the bank's group would no longer be viable;

(d) in the case of relevant capital instruments issued by a bank that is a parent, and where those relevant capital instruments are recognized for the purposes of meeting any minimum requirement for own funds and eligible liabilities set under Article 26, the Authority determines that unless the write down or conversion power is exercised the bank's group would no longer be viable; or

(e) government financial assistance is required by the bank except in the circumstances set out in Article 2(e).

(6) In complying with the requirements under paragraph (5), the Authority shall exercise the write down or conversion power in accordance with the priority of claims that would apply if the bank in resolution were to be wound up under relevant insolvency proceedings, in a way that produces the following results –

(a) Common Equity Tier 1 items are reduced first in proportion to the losses and to the extent of their capacity and the Authority takes one or both of the actions specified in Article 67(1) in respect of the holders of Common Equity Tier 1 instruments;

(b) the principal amount of Additional Tier 1 instruments is written down or converted into Common Equity Tier 1 instruments or both, to the extent required to achieve the resolution objectives or to the extent of the capacity of the relevant capital instruments, whichever is lower; and

(c) the principal amount of Tier 2 instruments is written down or converted into Common Equity Tier 1 instruments or both, to the extent required to achieve the resolution objectives or to the extent of the capacity of the relevant capital instruments, whichever is lower.

(7) Where the principal amount of a relevant capital instrument is written down –

(a) the reduction of that principal amount shall be permanent, subject to any write up in accordance with Article 66(4);

(b) no liability to the holder of the relevant capital instrument shall remain under or in connection with that amount of the instrument which has been written down, except for any liability already accrued and any liability for damages that may arise as a result of an appeal against the exercise of the write down or conversion power (but this shall not prevent the provision of Common Equity Tier 1 instruments to a holder of relevant capital instruments in accordance with paragraph (8));

(c) no compensation is paid to any holder of the relevant capital instruments other than in accordance with paragraph (8).

(8) In order to effect a conversion of relevant capital instruments under paragraph (6)(b), the Authority or Commission may require banks to issue Common Equity Tier 1 instruments to the holders of the relevant capital instruments and the relevant capital instruments may only be converted where the following conditions are met –

(a) those Common Equity Tier 1 instruments are issued by the bank with the agreement of the Authority or Commission;

(b) those Common Equity Tier 1 instruments are issued prior to any issuance of shares by that bank for the purposes of provision of own funds by a public authority;

(c) those Common Equity Tier 1 instruments are awarded and transferred without delay following the exercise of the write down or conversion power; and

(d) the conversion rate that determines the number of Common Equity Tier 1 instruments that are provided in respect of each relevant capital instrument complies with the principles set out in Article 69(6).

Chapter 7 – Default Event Provisions

75 Default event provisions

(1) The following shall be disregarded in determining whether a default event provision applies –

(a) a crisis prevention measure, crisis management measure or recognized foreign resolution action taken in relation to a bank in resolution (or any member of the bank's group); and

(b) the occurrence of any event directly linked to the application of such measure or action,

if the substantive obligations under the contract or other agreement (which provides the default event provision), including payment and delivery obligations and the provision of collateral, continue to be performed.

(2) Paragraph (1) applies where a contract or other agreement –

(a) is entered into by a bank or foreign bank;

(b) is entered into by a subsidiary undertaking of a bank or foreign bank, whose obligations are guaranteed by another group entity in the bank's group or foreign bank's group; or

(c) is entered into by another group entity in the bank's group or foreign bank's group,

and the substantive obligations provided for in the contract or agreement (including payment and delivery obligations and provision of collateral) continue to be performed.

(3) A resolution instrument or share transfer order may make provision for paragraph (4) or (5) to apply in circumstances where paragraph (1) would not apply.

(4) If this paragraph applies, the resolution instrument or share transfer order shall be disregarded in determining whether a default event provision applies.

(5) If this paragraph applies, the resolution instrument or share transfer order shall be disregarded in determining whether a default event provision applies except so far as the resolution instrument or share transfer order provides otherwise.

(6) A reference in paragraph (3), (4) or (5) to a resolution instrument or share transfer order is a reference to –

(a) the making of the resolution instrument or share transfer order;

(b) anything to be done under the resolution instrument or share transfer order or is to be, or may be, done under the resolution instrument or share transfer order; and

(c) any action or decision taken or made under this Law or another enactment in so far as it resulted in, or was connected to, the making of the resolution instrument or share transfer order.

(7) A provision in a resolution instrument or share transfer order under paragraph (6) may apply paragraph (4) or (5) –

(a) generally or only for specified purposes, cases or circumstances; or

(b) differently for different purposes, cases or circumstances.

(8) A thing is not done under a resolution instrument or a share transfer order for the purposes of paragraph (6)(b) merely by virtue of being done under a contract or other agreement, rights or obligations which have been affected by the resolution instrument or share transfer order.

(9) In this Article –

"default event provision" means a provision of a contract or other agreement –

(a) that has the effect that if a specified event or situation arises –

(i) the agreement is terminated, modified, replaced or suspended,

(ii) rights or duties under the agreement are terminated, modified, replaced or suspended,

(iii) a right accrues to terminate, modify or replace the agreement,

(iv) a right accrues to terminate, modify or replace rights or duties under the agreement,

(v) a set-off or netting right accrues under the contract,

(vi) a sum becomes payable or ceases to be payable,

(vii) delivery of anything becomes due or ceases to be due,

(viii) a right to claim a payment or delivery accrues, changes or lapses,

(ix) any other right accrues, changes or lapses, or

(x) an interest is created, changes or lapses; or

(b) that has the effect that a provision of the contract or agreement –

(i) takes effect only if a specified event occurs or does not occur,

(ii) takes effect only if a specified situation arises or does not arise,

(iii) has effect only for so long as a specified event does not occur,

(iv) has effect only while a specified situation lasts,

(v) applies differently if a specified event occurs,

(vi) applies differently if a specified situation occurs, or

(vii) applies differently while a specified situation lasts;

"specified", in relation to a contract or other agreement, resolution instrument or share transfer order, means specified in the contract or other agreement, resolution instrument or share transfer order.

Chapter 8 – Resolution Safeguards

76 Treatment of shareholders in the case of partial transfers and application of the bail-in tool

Where one or more of the resolution tools have been applied –

(a) except where sub-paragraph (b) applies, where the Authority transfers only part of the assets, rights and liabilities of the bank in resolution, the shareholders and creditors whose claims have not been transferred shall receive in satisfaction of their claims at least as much as they would have received if the bank in resolution had been wound up under relevant insolvency proceedings at the time when the decision was taken to stabilize the bank; and

(b) where the Authority applies the bail-in tool, the shareholders and creditors whose claims have been written down or converted to equity shall not incur greater losses than they would have incurred if the bank in resolution had been wound up under relevant insolvency proceedings immediately at the time when the decision was taken to stabilize it.

77 Difference of treatment valuation

(1) For the purpose of assessing whether shareholders and creditors would have received better treatment if a bank in resolution had been wound up under relevant insolvency proceedings, the Authority shall, in accordance with an Order made under Article 49,

appoint an independent valuer to carry out a valuation as soon as practicable after the application of a resolution action.

(2) A difference of treatment valuation shall be distinct from any pre-resolution valuation carried out under Article 44, provisional valuation carried out under Article 45 or definitive valuation carried out under Article 46.

(3) A difference of treatment valuation shall determine –

(a) the treatment that shareholders, creditors and the Jersey Bank Depositors Compensation Board would have received if relevant insolvency proceedings in respect of the bank in resolution had commenced at the time when the decision was taken to stabilize the bank;

(b) the actual treatment that shareholders, creditors and the Jersey Bank Depositors Compensation Board have received;

(c) whether there is any difference between the treatments referred to in sub-paragraphs (a) and (b).

(4) A difference of treatment valuation shall –

(a) assume that relevant insolvency proceedings in respect of the bank in resolution would have commenced on the date on which the decision was taken to stabilize it;

(b) assume that the bank in resolution would have been liquidated in full on the date referred to in sub-paragraph (a);

(c) assume that the stabilization action has not been effected; and

(d) disregard any provision of extraordinary public financial support to the bank in resolution.

(5) A difference of treatment valuation shall be carried out in accordance with standards set or adopted by the Authority under Article 48.

78 Safeguard for shareholders and creditors

If the difference of treatment valuation determines that any shareholder or creditor would incur greater losses than it would incur in a winding up under relevant insolvency proceedings contrary to the general principle of resolution under Article 35(g), the shareholder or creditor shall be entitled to the payment of the difference as compensation from the Fund.

79 Procedural requirements after creation of a resolution instrument or share transfer order

(1) As soon as is reasonably practicable after the creation of a resolution instrument or a share transfer order by which a resolution action is taken (including a foreign resolution instrument), the Authority shall publish or procure the publication of a copy of the resolution instrument or share transfer order or a notice summarizing the key terms of the resolution instrument or share transfer order by the following means –

(a) by sending it to –

(i) the bank in resolution,

(ii) the Commission,

(iii) the Minister,

(iv) the Jersey Bank Depositors Compensation Board, and

(v) the Viscount;

(b) by publishing it on the website of –

(i) the Commission,

(ii) the States, and

(iii) the bank in resolution;

(c) by publishing it –

(i) in the Jersey Gazette, and

(ii) in any other national or international newspaper or other publication which in the opinion of the Authority would maximise the likelihood of the resolution instrument or share transfer instrument coming to the attention of affected persons;

(d) by requesting that the Minister lay a copy before the States Assembly (and the Minister shall lay such copy before the States Assembly at the earliest opportunity); and

(e) if securities issued by the bank in resolution have been admitted to trading on a regulated market, by means of a relevant regulatory information service.

(2) In paragraph (1) "relevant regulatory information service" means a service approved by the Authority to disseminate information in accordance with this Law.

80 Safeguard for partial transfers

(1) Where the Authority –

(a) transfers some but not all of the assets, rights or liabilities of a bank in resolution to another entity or, in the application of a resolution tool, from a bridge bank or asset management vehicle to another person; or

(b) exercises the power under Article 29(1)(p),

the arrangements specified in paragraph (2) and the counterparties of such arrangements shall, subject to paragraph (4), be protected.

(2) The arrangements protected under paragraph (1) are as follows –

(a) security arrangements, under which a person has by way of security an actual or contingent interest in the assets or rights that are subject to transfer, irrespective of whether that interest is secured by specific assets or rights or by way of a floating charge or similar arrangement;

(b) title transfer financial collateral arrangements under which collateral to secure or cover the performance of specified obligations is provided by a transfer of full ownership of assets from the collateral provider to the collateral taker, on terms providing for the collateral taker to transfer assets if those specified obligations are performed;

(c) set-off arrangements under which 2 or more claims or obligations owed between the bank in resolution and a counterparty can be set off against each other;

(d) netting arrangements;

(e) covered bonds; or

(f) structured finance arrangements, including securitisations and instruments used for hedging purposes which form an integral part of the cover pool and which according to Jersey law are secured in a way similar to the covered bonds which involve the granting and holding of security by a party to the arrangement or a trustee, agent or nominee.

(3) Paragraph (2) shall apply irrespective of the number of parties involved in the arrangements or whether the arrangements –

(a) are created by contract, trusts or other means, or arise automatically by operation of law; or

(b) arise under or are governed in whole or in part by the law of another jurisdiction.

(4) The form and extent of protection that is appropriate for the classes of arrangements specified in paragraph (2) shall be as provided in Article 81, 82, 83, 84, or 85, as the case may be.

81 Protection for security arrangements

To protect liabilities secured under security arrangements referred to in Article 80(2)(a), the following shall not be permitted –

(a) the transfer of assets against which a liability is secured, unless that liability and the benefit of the security are also transferred;

(b) the transfer of a secured liability, unless the benefit of the security is also transferred;

(c) the transfer of the benefit of the security, unless the secured liability is also transferred; or

(d) the modification or termination of a security arrangement through the exercise of ancillary powers, if the effect of that modification or termination is that the liability ceases to be secured.

82 Protection for title transfer financial collateral, set-off and netting arrangements

To protect title transfer financial collateral arrangements referred to in Article 80(2)(b), set-off arrangements referred to in Article 80(2)(c) and netting arrangements referred to in Article 80(2)(d), the transfer of some, but not all, of the rights and liabilities that are protected under any such arrangement between the bank in resolution and another person, and the modification or termination of rights and liabilities that are protected under any such arrangement through the exercise of ancillary powers, shall not be permitted.

83 Protection for structured finance arrangements and covered bonds

To protect structured finance arrangements and covered bonds referred to in Article 80(2)(e) and (f), the following shall not be permitted –

(a) the transfer of some, but not all, of the assets, rights and liabilities which constitute or form part of a structured finance arrangement or covered bond; or

(b) the termination or modification, through the exercise of ancillary powers, of the assets, rights and liabilities which constitute or form part of a structured finance arrangement or covered bond,

to which the bank in resolution is party.

84 Transfer or modification of covered deposits and other assets, rights or liabilities

Despite Articles 81, 82 and 83, where necessary to ensure availability of the covered deposits, the Authority may –

(a) transfer covered deposits which are part of any of the arrangements referred to in those Articles without transferring other assets, rights or liabilities that are part of the same arrangements; or

(b) transfer, modify or terminate the assets, rights or liabilities referred to in paragraph (a) without transferring the covered deposits.

85 Protection of payment, clearing and settlement systems: partial transfers

The application of a resolution tool shall not prejudice the operation of payment, clearing and settlement systems where the Authority –

(a) transfers some but not all of the assets, rights or liabilities of a bank in resolution to another entity; or

(b) exercises its resolution power under Article 29(1)(p).

Chapter 9 – Miscellaneous

86 International obligations

(1) The Authority shall not exercise a resolution power in respect of a bank if the Minister, Commission or Attorney General serves a notice on the Authority stating that the exercise of that resolution power would be likely to contravene an international obligation of the United Kingdom or Jersey.

(2) The Authority may request that the Minister, Commission or Attorney General serves an international obligation notice on the Authority where the Authority believes that it is at risk of exercising a resolution power that may contravene an international obligation of the United Kingdom or Jersey.

(3) An international obligation notice –

(a) shall be in writing;

(b) shall state the reasons that the Minister, Commission or Attorney General (as the case may be) believes that the exercise of a resolution power would cause Jersey to contravene an international obligation of the United Kingdom or Jersey;

(c) shall state any actions that the Authority must take or must not take in order to comply with an international obligation of the United Kingdom or Jersey; and

(d) may be withdrawn (generally, partially or conditionally).[6]

(4) If the Authority receives an international obligation notice, the Authority shall consider the alternative courses of action that achieve the resolution objectives but shall avoid the objections on which the international obligations notice is based.

87 No requirement for advice or opinion on technical area

Nothing in Article 86(1) or (2) shall require the Minister, Commission, Attorney General or Authority or any other person to give advice or an opinion on a technical area that is outside of that person's scope, jurisdiction or technical expertise.

88 Post resolution report

(1) The Authority shall submit a report to the Minister with respect to any resolution action taken in respect of a bank no more than 12 months after the resolution action has been concluded.

(2) A report under paragraph (1) shall include –

(a) a summary of the financial information relating to the resolution of the bank, including the findings of each of the valuations carried out, in particular, outlining the findings of the valuations in relation to the position of creditors, the general principle of resolution under Article 35(g) and the resolution safeguard under Article 78;

(b) an outline of the other information available to the Authority based upon which it made the decision to take a resolution action;

(c) if relevant, a review of the quality of the information under sub-paragraph (a) or (b);

(d) an outline of relevant information which has subsequently come into the possession of the Authority highlighting the extent to which that information has changed from the information which formed the basis of its decision to take a resolution action;

(e) a review of the decision to take a resolution action, including an assessment of the extent to which the information which has subsequently come into the possession of the Authority might have led the Authority to have made a different decision had that information been in its possession at the time that the decision was made;

(f) an assessment of the effect of the resolution action and the extent to which that effect is consistent with the intended effect of the resolution action;

(g) an assessment of lessons learned, including practical hurdles encountered and any fundamental deficiencies identified as a result of the resolution action; and

(h) proposals, if any, for any changes to address the lessons learned.

(3) The Minister shall lay before the States a copy of report submitted to him or her under paragraph (1) as soon as practicable after it is submitted.

89 Recognition of foreign resolution actions

(1) Subject to the approval of the Minister and to paragraph (2), where the Authority is notified of a foreign resolution action in respect of a foreign bank, the Authority shall make an instrument –

(a) recognizing the foreign resolution action;

(b) refusing to recognize the foreign resolution action; or

(c) recognizing part of the foreign action and refusing to recognize the remainder of the foreign resolution action.

(2) The Authority may refuse to recognize a foreign resolution action (or any part of it) if it is satisfied that one or more of the following conditions are met –

(a) such recognition would have an adverse effect on financial stability in Jersey;

(b) the taking of a resolution action by the Authority in relation to a branch located in Jersey of a foreign bank is necessary to achieve one or more of the resolution objectives;

(c) under the foreign resolution action, creditors (including, in particular, depositors) located or payable in Jersey would not, by reason of being located in Jersey, receive the same treatment, and have similar legal rights, as creditors (including depositors) who are located or payable in the foreign jurisdiction concerned;

(d) recognition of, and taking action in support of, the foreign resolution action (or the relevant part of the foreign resolution action) would have material fiscal implications for Jersey; or

(e) such recognition would be unlawful under Article 7(1) of the Human Rights (Jersey) Law 2000.

(3) The recognition of a foreign resolution action (or any part of it) shall not prejudice the winding up of a bank under a bank winding up order unless the winding up of the bank conflicts with the recognized foreign resolution action, in which case the recognized foreign resolution action shall take precedence.

(4) Where a foreign resolution instrument has been made by the Authority under this Article which recognizes a foreign resolution (or part of the foreign resolution action), such foreign resolution action (or part of the foreign resolution action) shall produce the same legal effects in Jersey as it would have produced had it been made under the law of Jersey.

(5) For the purposes of supporting, or giving full effect to, a recognized foreign resolution action, the Authority may exercise one or more stabilization tools, or one or more stabilization powers.

(6) The Authority may make a foreign resolution instrument which has effect in respect of a bank which is a subsidiary of a foreign bank which recognizes a group resolution action whether or not it carries out certain resolution actions under this Law on the entity in Jersey.

(7) A foreign resolution instrument may include incidental, consequential or transitional provisions which may be general or for specified purposes, cases or circumstances and may make different provision for different purposes, cases or circumstances.

(8) As soon as reasonably practicable after the making of a foreign resolution instrument under this Article, the requirements of the foreign resolution instrument shall be complied with by the Authority.

(9) Any decision (including appropriate rationale for such decision) to refuse to recognize a foreign resolution action, to recognize a foreign resolution action only in part or to take independent actions to resolve a bank which is a subsidiary of a foreign bank, shall be communicated by the Authority clearly to the group concerned and to the resolution authority in the group's home jurisdiction (and relevant jurisdiction, if appropriate).

PART 7

BANK WINDING UP

90 Grounds for application for bank winding up order

(1) An application for an order for the winding up of a bank may be made under Article 91 in respect of a bank on any of the following grounds which will be considered by the Court in determining the application in accordance with Articles 95 and 96 –

(a) the bank is unable, or likely to become unable, to pay its debts;

(b) the winding up of the bank would be in the public interest; or

(c) the winding up of the bank would be fair.

(2) In paragraph (1) "fair" means just and equitable.

91 Application for bank winding up order

(1) An application for a bank winding up order may be made to the Court by –

(a) the Authority;

(b) the Commission;

(c) the Minister; or

(d) a bank or any shareholder or creditor of the bank.

(2) An application for a bank winding up order under paragraph (1) –

(a) shall be made in the form prescribed;

(b) shall be accompanied by an affidavit of a representative of the applicant setting out the grounds for the application;

(c) may, where relevant, be accompanied by an affidavit of a representative of the Commission giving the opinion of the Commission in relation to the bank continuing, or failing to continue, to satisfy the Commission that it is a fit and proper person to be registered to undertake deposit-taking business in accordance with Article 10(3)(a) of the 1991 Law; and

(d) shall nominate one or more persons to be appointed as a bank liquidator of the bank being wound up.

92 Notice of application

Where an application for a bank winding up order is made under Article 91, the applicant shall, not less than 48 hours before the making of the application, give notice of the application to –

(a) the Authority (if the Authority is not the applicant);

(b) the bank;

(c) the Commission (if the Commission is not the applicant);

(d) the Minister (if the Minister is not the applicant);

(e) the Jersey Bank Depositors Compensation Board; and

(f) the Viscount.

93 Right to be heard in proceedings for a bank winding up order

The following persons shall have the right to be heard (or to make representations) at the proceedings for the granting of a bank winding up order –

(a) the applicant;

(b) the Authority;

(c) the Commission;

(d) the Minister;

(e) the Viscount;

(f) the Jersey Bank Depositors Compensation Board;

(g) the bank or any shareholder of the bank; and

(h) upon application to the Court and with leave of the Court, other interested parties.

94 Restriction on bankruptcy or winding up proceedings etc.

(1) Despite any other rule of law to the contrary –

(a) the right to take any proceedings in bankruptcy against a bank other than proceedings to wind up a bank under this Part is barred; and

(b) the right to wind up a bank under Article 155 of the Companies (Jersey) Law 1991 is barred.

(2) The Court shall not grant a bank winding up order on the application of a bank or any shareholder or creditor of a bank unless with the consent of the Authority.

95 Decision of the Court

If an application for a bank winding up order is made to the Court in accordance with this Part, the Court may –

(a) in accordance with Articles 96 and 97, grant the application and make the bank winding up order;

(b) adjourn the application (either *sine die* or to a specified date) on such terms as it deems fit; or

(c) dismiss the application.

96 Bank winding up order

(1) The Court may grant an application for a bank winding up order made to the Court in accordance with this Part and make a bank winding order –

(a) if the Court is satisfied that –

(i) the ground specified in Article 90(1)(a) or 90(1)(c) applies, and

(ii) having regard to the timing and other relevant circumstances, it is not reasonably likely (ignoring the stabilization powers), that any action will be taken by or in respect of a bank that will prevent its failure or likely failure; or

(b) if the Court is satisfied that the ground specified in Article 90(1)(b) applies.

(2) If an application is made to the Court by the Authority for a bank winding up order in accordance with this Part, the Court may grant the application and make a bank winding order if the Court is satisfied that –

(a) the ground referred to in Article 90(1)(a) applies;

(b) the Authority has or intends to make a property transfer instrument in respect of a bank under the sale of business tool or bridge bank tool; and

(c) the residual bank is unable to pay its debts as they fall due or would become so as a result of the property transfer instrument that the Authority intends to make.

97 Contents of bank winding up order

A bank winding up order –

(a) shall name the persons appointed as the bank liquidator in accordance with Article 98;

(b) shall specify the powers of the bank liquidator set out in Article 104 and specify which of those powers –

(i) may be exercised by the bank liquidator without further reference to the Court or the bank liquidation committee,

(ii) may only be exercised by the bank liquidator with the prior sanction of the bank liquidation committee, and

(iii) may only be exercised by the bank liquidator with the prior sanction of the Court;

(c) may direct the manner in which the winding up of the bank is to be conducted (to the extent that such direction is required in addition to the provisions of this Law);

(d) shall specify matters which must be reported to the bank liquidation committee by the bank liquidator, including how often such matters must be reported on; and

(e) may make such provisions as the Court sees fit including such provisions to ensure that the winding up of the bank is conducted in an orderly manner.

98 Appointment of bank liquidator

(1) The Court may, in accordance with this Article, upon a nomination being made in an application under Article 91, appoint the Viscount as the bank liquidator or 2 or more persons as bank liquidators and may, upon reason being given, remove a person appointed as a bank liquidator in a bank winding up and may appoint another.

(2) A person shall not be appointed as a bank liquidator unless that person has consented to such appointment.

(3) Subject to paragraph (5), a person is not qualified for appointment as a bank liquidator unless the person is an individual who is –

(a) a member of –

(i) the Institute of Chartered Accountants in England and Wales,

(ii) the Institute of Chartered Accountants of Scotland,

(iii) the Institute of Chartered Accountants in Ireland, or

(iv) the Association of Chartered Certified Accountants;

(b) a licensed insolvency practitioner in England and Wales, Scotland or Northern Ireland; or

(c) appointed by the Court to act as an insolvency practitioner in respect of an application made under Article 91.

(4) The Viscount is by virtue of the Viscount's office qualified for appointment as a bank liquidator.

(5) A person is disqualified from appointment as a bank liquidator if the person is –

(a) an officer, employee or auditor of the bank, or a partner or employee of such a person; or

(b) a person against whom an order under Article 78 of the Companies (Jersey) Law 1991 is in force.

(6) A person is disqualified from appointment as a bank liquidator if the person is disqualified under paragraph (5) for appointment as a liquidator of any subsidiary or holding company of the bank or a subsidiary of the bank's holding company.

(7) A bank liquidator shall vacate office if the bank liquidator ceases to be a person qualified to act as a bank liquidator.

(8) A person who acts as a bank liquidator when not qualified to do so shall be guilty of an offence and shall be liable to imprisonment for a term of 2 years and to a fine.

99 Objectives of a bank liquidator in exercising his or her duties

(1) In exercising his or her duties under this Law, the objectives of a bank liquidator shall be –

(a) to work with the Jersey Bank Depositors Compensation Board to ensure that as soon as reasonably practicable each eligible depositor –

(i) has the relevant account transferred to another bank, or

(ii) receives payment from (or on behalf of) the Depositors Compensation Fund or from the bank liquidator acting as the bank, if applicable, or from the deposit guarantee scheme of another jurisdiction in which the bank has a branch, as applicable;

(b) in circumstances where part of the business of the bank has been sold using the sale of business tool, or transferred to a bridge bank using the bridge bank tool, to support the transferee by ensuring the provision of such services and facilities by the residual bank as are required to enable the transferee, in the opinion of the Authority, to operate the transferred business effectively; and

(c) to wind up the affairs of the bank so as to achieve the best result for the bank's creditors as a whole.

(2) For the purposes of paragraph (1)(c), "so as to achieve the best result for the bank's creditors as a whole" shall not necessarily be construed as meaning that the bank must be wound up quickly for the benefit of its creditors.

(3) The objective –

(a) in paragraph (1)(a) shall take precedence over the objectives in paragraph (1)(b) and (c); and

(b) the objective in paragraph (1)(b) shall take precedence over the objective in paragraph (1)(c),

but the bank liquidator shall be under a duty to begin working towards all of the objectives, so far as practicable, immediately upon appointment.

100 Persons appointed as bank liquidator to act jointly and severally

Where 2 or more bank liquidators are appointed in respect of a bank under Article 98, the powers and obligations granted to or imposed on a bank liquidator under this Part shall be exercisable by them jointly and severally such that they may act together or one may act without the other (and by doing so will bind the other) in the exercise of their powers and obligations.

101 Bank liquidation committee

(1) On the making of a bank winding up order, a bank liquidation committee shall be established, for the purpose of ensuring that the bank liquidator properly exercises the functions of a bank liquidator in accordance with this Part.

(2) The bank liquidation committee shall comprise members who shall be representatives each nominated by and representing one of the following –

(a) the Authority (who shall be the chairman);

(b) the Commission;

(c) the Jersey Bank Depositors Compensation Board; and

(d) the Minister.

(3) A body nominating a member as its representative on the bank liquidation committee under paragraph (2) may replace its member at any time or nominate a person to be an alternate member to attend, in place of the member, meetings of the bank liquidation committee if that member is for any reason unable to attend.

(4) When attending meetings of the bank liquidation committee, an alternate member shall for all purposes be deemed to be a member of the bank liquidation committee.

(5) The bank liquidator shall report to the bank liquidation committee about any matter as the Court directs in the bank winding up order –

(a) on request;

(b) which the bank liquidator thinks is likely to be of interest to the bank liquidation committee; or

(c) generally, at such intervals as may be agreed between the bank liquidator and the bank liquidation committee.

(6) A meeting of the bank liquidation committee may be summoned –

(a) by any member of the bank liquidation committee; or

(b) by the bank liquidator,

and in any event a meeting shall be held at least every 28 days from the date of the winding up order until the final meeting of the bank liquidation committee under Article 141.

(7) At a meeting of the bank liquidation committee –

(a) at least 2 members including a representative each of the Authority and Minister shall form a quorum;

(b) the chairman shall preside;

(c) each member shall have one vote on each matter for deliberation;

(d) in the event of an equality in the votes the chairman shall have a casting vote; and

(e) a member shall be treated as being present in a meeting of the bank liquidation committee if, during the meeting, either by way of telephone, a live television link, or video link or otherwise, the member is able to hear all the other members in the meeting and to be heard by all the other members in the meeting.

(8) The bank liquidation committee may –

(a) seek advice from the Viscount relating to the winding up of a bank;

(b) co-opt the Viscount to attend a meeting of the bank liquidation committee to give advice to the bank liquidation committee on any matter relating to its functions but the Viscount shall not have the right to vote at the meeting; or

(c) co-opt a person to attend a meeting of the bank liquidation committee to give advice to the bank liquidation committee on any matter relating to its functions but such person shall not have the right to vote at the meeting.[7]

(9) As soon as reasonably practicable after its establishment, the bank liquidation committee shall recommend the bank liquidator to pursue –

(a) the objective specified in Article 99(1)(a)(i);

(b) the objective specified in Article 99(1)(a)(ii); or

(c) the objective specified in Article 99(1)(a)(i) for a specified class of case and the objective specified in Article 99(1)(a)(ii) for another.

(10) In making a recommendation under paragraph (9), the bank liquidation committee shall consider –

(a) the desirability of achieving the objective specified in Article 99(1)(a)(i) or (ii) as quickly as possible;

(b) the need for the provision of services and facilities in circumstances where the objective specified in Article 99(1)(b) is relevant; and

(c) the objective specified in Article 99(1)(c).

(11) If the bank liquidation committee thinks that the bank liquidator is failing to comply with the bank liquidation committee's recommendation made under paragraph (9), the bank liquidation committee may apply to the Court for directions seeking confirmation, reversal or modification of the acts or decisions of the bank liquidator and the Court may make such consequential order as it thinks fit.

(12) If the bank liquidation committee has not made a recommendation under paragraph (9), the bank liquidator may apply to the Court under paragraph (19) and the Court may, in particular, give a direction, in lieu of a recommendation, if the bank liquidation committee fails to make a recommendation within a period set by the Court.

(13) The bank liquidator shall –

(a) keep the bank liquidation committee informed of progress towards the objective specified in Article 99(1)(a)(i) or (ii);

(b) notify the bank liquidation committee when, in the bank liquidator's opinion, the objective specified in Article 99(1)(a)(i) or (ii) has been achieved entirely so far as reasonably practicable, as the case may be;

(c) keep the bank liquidation committee appraised of the ongoing provision of services and facilities in accordance with the objective specified in

Article 99(1)(b) and seek to agree an appropriate timeline for the continuation, winding down or transfer to a third party of the maintenance and provision of such services and facilities;

(d) notify the bank liquidation committee when, in the bank liquidator's opinion, the objective specified in Article 99(1)(b) is no longer relevant because –

(i) the services and facilities which were previously being provided to the transferee in accordance with the objective specified in Article 99(1)(b) are no longer required by the transferee, or

(ii) the provision of the services and facilities referred to in clause (i) has been transferred to a third party; and

(e) report to the bank liquidation committee in respect of any other matters which were specified by the Court in the bank winding up order under Article 97(d).

(14) The bank liquidation committee shall oversee –

(a) each of the matters specified in paragraph (13); and

(b) the bank liquidator generally.

(15) As soon as reasonably practicable after receiving a notification under paragraph (13)(b), the bank liquidation committee shall –

(a) pass a resolution that the objective specified in Article 99(1)(a)(i) or (ii) has been achieved entirely or so far as reasonably practicable, as the case may be; or

(b) apply to the Court for confirmation, reversal or modification of the acts or decisions of the bank liquidator with respect to the objectives specified in Article 99(1)(a) and the Court may make such consequential order as it thinks fit.

(16) As soon as reasonably practicable after receiving a notification under paragraph (13)(d), the bank liquidation committee shall –

(a) pass a resolution that the objective specified in Article 99(1)(b) is no longer relevant because of the reasons set out at paragraph (13)(d); or

(b) apply to the Court for confirmation, reversal or modification of the acts or decisions of the bank liquidator with respect to the objective specified in Article 99(1)(b),

and the Court may make such consequential order as it thinks fit.

(17) Where a bank liquidation committee passes a resolution under paragraph (15)(a) –

(a) the bank liquidator shall summon a meeting of creditors;

(b) subject to sub-paragraph (c), the meeting of creditors shall elect an individual as a new member of the bank liquidation committee to represent the interests of creditors; and

(c) the person representing the Jersey Bank Depositors Compensation Board may, if that person considers it fit, resign from the bank liquidation committee (in which case, a new member may be elected under sub-paragraph (b)).

(18) Where a bank liquidation committee passes a resolution under paragraph (16)(a), the bank liquidator shall summon a meeting of creditors and –

(a) the meeting may elect such number of additional individuals as the meeting sees fit as new members of the bank liquidation committee to represent the interests of creditors; and

(b) the representatives of the Authority, Commission, Minister and Viscount may, if they each individually consider fit, resign from the bank liquidation committee.

(19) A person aggrieved by any action of the bank liquidation committee before it has passed a resolution under paragraph (15)(a) may apply to the Court, and the Court may make any order as it thinks fit (including an order for the repayment of money).

(20) The Court may (whether on an application under paragraph (19), on the application of the bank liquidator or otherwise) make an order that the bank liquidation committee is to be treated as having passed a resolution under paragraph (15)(a).

(21) If a bank liquidation committee fails to comply with paragraph (15) or (16), the bank liquidator shall apply to the Court –

(a) for an order under paragraph (19); or

(b) for directions seeking confirmation, reversal or modification of the acts or decisions of the bank liquidation committee, and the Court may make such order as it thinks fit.

102 Commencement and taking effect of bank winding up order

A bank winding up order shall commence and take effect from the date that the bank winding up order is made.

103 Effects of bank winding up order

(1) A bank winding up order shall have the following general effects –

(a) in the circumstances where the objective in Article 99(1)(b) is relevant, the bank liquidator shall, at the request of the Authority, enter into an agreement for the residual bank to provide services or facilities to the transferee, and –

(i) in pursuing the objective in Article 99(1)(b), the bank liquidator shall have regard to the terms of that or any other agreement entered into between the residual bank and the transferee,

(ii) the bank liquidator shall avoid action that is likely to prejudice performance by the residual bank of its obligations in accordance with the terms referred to in clause (i),

(iii) the bank liquidator shall seek to ensure that an agreement referred to in clause (i) provides for consideration to be paid at market rate, although this shall not prevent the bank liquidator from entering into an agreement on any terms that the bank liquidator thinks necessary in pursuit of the objective in Article 99(1)(b),

(iv) if in doubt about the effect of the terms referred to in this paragraph or their interplay with the bank winding up in general, the bank liquidator may apply to the Court for directions, and

(v) the transferee may apply to the Court for directions about any dispute or disagreement with the residual bank;

(b) a lien or other right to retain possession of a record of the bank shall be unenforceable to the extent that its enforcement would deny possession of the record to the bank liquidator;

(c) all the powers of the directors of the bank shall cease, except so far as the liquidation committee sanction their continuance;

(d) no action shall be taken or proceeded with against the bank or its property except by leave of the Court and subject to such terms as the Court may impose;

(e) despite anything to the contrary in the Judgments (Reciprocal Enforcement) (Jersey) Law 1960, no application shall be made for a judgment, against the bank, to be registered in the Court under that Law and if made, shall not be registered or enforceable under that Law;

(f) no execution in Jersey of any existing judgment in Jersey or outside Jersey against the bank shall be made;

(g) the corporate state and capacity of the bank shall continue until the bank is dissolved;

(h) subject to paragraph (3), any transfer of shares, not being a transfer made to or with the sanction of the bank liquidator, and any alteration in the status of the bank's shareholders made after the commencement of the bank winding up order shall, unless the Court otherwise orders, be void;

(i) any disposition of the bank's property made after the commencement of the bank winding up order shall, unless the Court otherwise orders, be void, excluding any disposition made with the consent of the bank liquidator; and

(j) any attachment, sequestration, distress or execution put in force against the estate or effects of the bank after the commencement of the bank winding up order, shall be void.

(2) Paragraph (1)(b) shall not apply to a lien on a document that gives a title to property and is held as such.

(3) Paragraph (1)(h) shall not prohibit any transfer of shares made pursuant to a power under the Security Interests (Jersey) Law 1983 or Part 7 of the Security Interests (Jersey) Law 2012, even if such transfer is not made to, or with the sanction of, the bank liquidator.

104 Powers of bank liquidator

Subject to Article 97(b), the bank liquidator, with the approval of the Court or the bank liquidation committee as specified in the bank winding up order, shall have the power –

(a) to do anything reasonably necessary or expedient for the pursuit of the objectives specified in Article 99;

(b) to call a meeting of creditors;

(c) to publish such notices as the bank liquidator deems necessary or expedient with a view to inviting claims;

(d) to require the bank or any of its officers, employees or auditors to provide the bank liquidator with such information, including by inspection of books, papers and records, and to give such other assistance to the bank liquidator, as the bank liquidator may reasonably require for the purposes of carrying out his or her functions in relation to the bank winding up;

(e) to require directors, senior managers and officers, and former directors, former senior managers and former officers of the bank to make a statement as to the affairs of the bank and, if requested, to verify the same by affidavit;

(f) to apply the rules referred to in Article 111;

(g) to pay a class of creditors in full (even if any other class is not repaid in full) and compromise any claim by or against the bank;

(h) to comply with a request of the Jersey Bank Depositors Compensation Board for the provision of information and to provide any information to the Jersey Bank Depositors Compensation Board which the bank liquidator thinks might be useful for the purpose of cooperating in pursuit of the objectives specified in Article 99(1)(a);

(i) to exercise any of the powers of the bank as may be required for its orderly winding up, including but not limited to carrying on its business (including continuing to provide services and advice to clients), transferring its business to another legal person, the making of payments, assigning rights and interests, borrowing, charging assets, incurring liabilities in the ordinary course of its business, settling litigation issues faced by the bank, and progressing litigation in which the bank is the pursuer;

(j) in circumstances where Article 99(1)(b) is relevant, to support the transferee by continuing to supply such services and facilities as are required to enable the transferee, in the opinion of the Authority, to operate the transferred business effectively;

(k) to continue any other regulated activities undertaken by the bank and its subsidiary entities in conjunction with any existing professional advisers and employees of the bank as the bank liquidator considers appropriate for the bank's orderly winding up, having regard to the views and actions of the participants or clients of such activities and to the views of the Commission and any other interested party;

(l) to exercise all such powers as would ordinarily be exercisable by the directors of any regulated subsidiary entities or asset management entities of the bank being wound up, for the purposes of enabling such entity to continue managing or advising, acting as general partner, trustee, custodian or investment adviser of, or carrying on any other financial services business in respect of, any investments or regulated activities as the bank liquidator considers appropriate for the bank's orderly winding up;

(m) in consultation with the Commission and the Joint Financial Crimes Unit of the States Police Force, to investigate such matters that might be to the benefit of the creditors or shareholders, or in the public interest, subject to applying to the Court for directions if a conflict of interest arises, as set out at Article 108(1);

(n) to settle a list of contributories (and the list of contributories is prima facie evidence of the persons named in it to be contributories);

(o) on application to, and with the approval of the Court, to order that a contributory identified in the list under paragraph (n) shall pay any money due from the contributory (or from the estate of the person who the contributory represents) to the bank, excluding any money payable by him or her or the estate by virtue of any call (without prejudice to any right of set-off available to the contributory, excluding any money due to him or her as a member of the bank in respect of any dividend or profit);

(p) to make calls;

(q) to summon a general meeting of the bank for the purpose of obtaining its sanction by special resolution or for any other purpose the bank liquidator may think fit;

(r) to disclaim onerous property under Articles 105 and 106 as the bank liquidator may think fit;

(s) to charge the bank liquidator's remuneration, and any costs, charges and expenses properly incurred in a bank winding up, out of the bank's assets in accordance with Article 108(7);

(t) to engage such professional advisers as the bank liquidator may deem appropriate or necessary and for the cost and expenses for using such advisers to be payable in accordance with Article 108(7);

(u) to employ, retain, pay and manage employees of the bank;

(v) to effect and maintain insurances in respect of the business and property of the bank;

(w) to do all such things (including the carrying out of works) as may be necessary for the realisation of the property of the bank;

(x) to make any payment which is necessary or incidental to the performance of the bank liquidator's functions;

(y) to apply to the Court for the determination of a question arising in the bank winding up, or for the Court to exercise any of its powers in relation to the bank winding up;

(z) to apply to the Court for additional powers or amendment of the bank liquidator's powers and for the sanctioning or ratification of any of his or her acts or omissions;

(aa) to transfer trust property of a trust held by the bank in its capacity as trustee of the trust to another trustee appointed and substituted as trustee of that trust in accordance with the applicable law and the trust instrument;

(ab) to exercise all such powers as would ordinarily be exercisable by the directors and employees of the bank to continue the regulated activities of the bank as the bank liquidator considers appropriate including the making of applications to the Commission in respect of those regulated activities; and

(ac) to exercise any other powers conferred on a bank liquidator under this Law.

105 Power to disclaim onerous property

(1) For the purpose of this Article "onerous property" means –

(a) movable property;

(b) a contract lease;

(c) immovable property if it is situated outside Jersey,

that is unsaleable or not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act, and includes an unprofitable contract.

(2) The bank liquidator may, within 6 months after the commencement of a bank winding up order, by the giving of notice signed by him or her and referring to this Article and Article 107 to each person who is interested in or under any liability in respect of the property disclaimed, disclaim on behalf of the bank any onerous property of the bank.

(3) A disclaimer under this Article shall –

(a) operate so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the bank in or in respect of the property disclaimed; and

(b) discharge the bank from all liability in respect of the property as from the date of the commencement of the bank winding up order,

but shall not, except so far as necessary for the purpose of releasing the bank from liability, affect the rights or liabilities of any other person.

(4) A person sustaining loss or damage in consequence of the operation of a disclaimer under this Article shall be deemed to be a creditor of the bank to the extent of the loss or damage and accordingly may prove for the loss or damage in the winding up.

106 Disclaimer of contract leases

(1) The disclaimer of a contract lease under Article 105 does not take effect unless a copy of the disclaimer has been served (so far as the bank liquidator is aware of their addresses) on every person claiming under the bank as a hypothecary creditor or under lessee and either –

(a) no application under Article 107 has been made with respect to the contract lease before the end of the period of 14 days beginning with the day on which the last notice under this paragraph was served; or

(b) where an application referred to in sub-paragraph (1) has been made, the Court directs that the disclaimer is to have effect.

(2) Where the Court gives a direction under paragraph (1)(b) it may also, instead of or in addition to any order it makes under Article 107, make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it thinks fit.

107 Powers of Court in respect of disclaimed property

(1) This Article applies where the bank liquidator of a bank has disclaimed property under Article 105.

(2) An application may be made to the Court under this Article by –

(a) any person who claims an interest in the disclaimed property (which term shall be taken to include, in the case of the disclaimer of a contract lease, a person claiming under the bank as a hypothecary creditor or an under lessee); or

(b) any person who is under any liability in respect of the disclaimed property (which term shall be taken to include a guarantor), not being a liability discharged by the disclaimer.

(3) Subject to paragraph (4), the Court may, on an application under this Article, make an order on such terms as it thinks fit for the vesting of the disclaimed property in, or for its delivery to –

(a) a person entitled to it or a trustee for such a person; or

(b) a person subject to a liability mentioned in paragraph (2)(b) or a trustee for such a person.

(4) The Court shall not make an order by virtue of paragraph (3)(b) except where it appears to the Court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.

(5) The effect of an order under this Article shall be taken into account in assessing for the purpose of Article 105(4) the extent of loss or damage sustained by a person in consequence of the disclaimer.

108 General provisions relating to bank winding up

(1) A bank liquidator may at any time apply to the Court for further directions upon giving notice to all interested parties and, in particular, a bank liquidator may apply to the Court for directions if the bank liquidator finds himself or herself in a position of conflict in the course of a bank winding up as between the interests of (in no particular order of priority) –

(a) the creditors;

(b) the shareholders;

(c) the depositors;

(d) the investors in any investment business activities, or the settlors or beneficiaries of any trust company business activities, conducted by the bank or its subsidiaries;

(e) the States;

(f) the Depositors Compensation Fund;

(g) the Commission;

(h) the Joint Financial Crimes Unit of the States Police Force; or

(i) any other interested parties.

(2) A bank winding up order shall be delivered by the bank liquidator to the Registrar within 14 days after it is made, and the Registrar shall record the bank winding up order in the file of the bank so that it may be publicly accessible when he or she receives it.

(3) Where a bank liquidator fails to comply with the requirement to deliver a bank winding up order to the Registrar within 14 days, the bank liquidator shall be guilty of an offence.

(4) In circumstances where the objective specified in Article 99(1)(b) is applicable, the bank winding up order shall provide guidance in relation to the extent of the support that the liquidator must give to the transferee.

(5) The objective specified in Article 99(1)(b) shall cease to apply where the Authority notifies the bank liquidator that the residual bank is no longer required in connection with the sale of business tool or the bridge bank tool.

(6) If the bank liquidator is of the view that the objective specified in Article 99(1)(b) has ceased, the bank liquidator may apply to Court for directions, and the Court may direct the Authority to notify the bank liquidator that the residual bank is no longer required.

(7) A bank liquidator shall receive such remuneration, and costs, charges and expenses properly incurred in a bank winding up, as is agreed between the bank liquidator and the liquidation committee or, failing agreement between the bank liquidator and the bank liquidation committee, as is fixed by the Court.

(8) All monies (including social security, pensions and redundancy payments) due and payable to employees of the bank being wound up, in respect of services so rendered after the commencement of the bank winding up order in accordance with their respective contracts of employment as varied, with effect from the date of the bank

winding up order, shall be deemed to be expenses of the bank winding up and shall be paid by the bank liquidator as it thinks fit.

109 Termination of office of bank liquidator

(1) A bank liquidator appointed by a bank winding up order shall remain in office until vacating office –

(a) by resigning under paragraph (2);

(b) by being removed by the Court under paragraph (3)(a) or by the creditors of the bank under paragraph (4);

(c) on disqualification under paragraph (5);

(d) on being replaced;

(e) on completing the final dissolution of the bank under Article 141;

(f) if the bank liquidator is unable by reason of illness or other reason to fulfil his or her duties under this Law for more than 3 months; or

(g) on his or her death.

(2) A bank liquidator may resign by giving one months' notice to the Court.

(3) The applicant for the bank winding up order, or the liquidation committee, may at any time apply to the Court for, and the Court may at any time make an order –

(a) for the removal of a bank liquidator (and, if appropriate, the appointment of another bank liquidator); or

(b) if a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator, to fill the vacancy.

(4) A bank liquidator may be removed by resolution of the creditors if the following conditions are met –

(a) the bank liquidation committee has passed a resolution under Article 101(15)(a);

(b) the notice given to the creditors of the meeting includes notice of intention to move a resolution for the removal of one or more bank liquidators; and

(c) the applicant for the bank winding up order and the bank liquidation committee –

(i) receive notice of the meeting, and

(ii) are given an opportunity to make representations to it,

and a bank liquidator who is so removed under this paragraph shall be released from his duties under this Law with effect from the time at which the Court is informed of his or her removal.

(5) A bank liquidator shall be deemed to have vacated his or her office immediately if he or she ceases to be qualified to hold the office.

(6) A person who gives or agrees to give to any person any valuable benefit with a view to securing his or her own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself or herself, as the bank's liquidator, shall be guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.

110 Notification by bank liquidator of resignation etc.

(1) A bank liquidator who resigns, is removed or for any other reason vacates office shall, within 14 days after the resignation, removal or vacation of office give notice thereof, signed by the bank liquidator, to the Registrar and the applicant for the bank winding up order.

(2) A bank liquidator who fails to comply with paragraph (1) shall be guilty of an offence and liable to a fine.

111 Application of the law relating to désastre

Subject to this Law, in a bank winding up the same rules prevail with regard to the time and manner of proving debts, to the admission and rejection of proofs of debts and to setting off debts as are in force for the time being with respect to persons against whom a declaration has been made under the Bankruptcy (Désastre) (Jersey) Law 1990, with the substitution of references to the bank winding up for references to the *désastre* and references to the bank liquidator for references to the Viscount.

112 Bank liquidator to pay debts and adjust rights of contributories

The bank liquidator shall pay the bank's debts and adjust the rights of the contributories among the contributories.

113 Rescission of contracts by the Court

(1) On the application of a person who is, as against the bank liquidator, entitled to the benefit or subject to the burden of a contract made with the bank, the Court may make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the Court thinks just.

(2) Any damages payable to a person under the order made under paragraph (1) may be proved by the person as a debt in the bank winding up.

114 Transactions at an undervalue

(1) If a bank has at a relevant time in accordance with paragraph (8) entered into a transaction with a person at an undervalue, the Court may, on the application of the bank liquidator in a bank winding up, make such an order as the Court thinks fit for restoring the position to what it would have been if the bank had not entered into the transaction.

(2) The Court shall not make an order under paragraph (1) if it is satisfied –

(a) that the bank entered into the transaction in good faith for the purpose of carrying on its business; and

(b) that, at the time it entered into the transaction, there were reasonable grounds for believing that the transaction would be of benefit to the bank.

(3) Without prejudice to the generality of paragraph (1) but subject to paragraph (5), an order made under paragraph (1) may do all or any of the following things, namely –

(a) require property transferred as part of the transaction to be vested in the bank;

(b) require property to be so vested if it represents in a person's hands the application either of the proceeds of sale of property so transferred or of money so transferred;

(c) release or discharge (in whole or in part) security given by the bank;

(d) require a person to pay, in respect of a benefit received by him or her from the bank, such sum to the bank as the Court directs;

(e) provide for a surety or guarantor, whose obligation to a person was released or discharged (in whole or in part) under the transaction, to be under such new or revived obligation to that person as the Court thinks appropriate;

(f) provide –

(i) for security to be provided for the discharge of an obligation imposed by or arising under the order,

(ii) for the obligation to be secured on any property, and

(iii) for the security to have the same priority as the security released or discharged (in whole or in part) under the transaction;

(g) provide for the extent to which a person –

(i) whose property is vested in the bank by the order, or

(ii) on whom an obligation is imposed by the order,

is to be able to prove in the bank winding up for debts or other liabilities that arose from, or were released or discharged (in whole or in part) under or by, the transaction.

(4) Except to the extent provided by paragraph (5), an order made under paragraph (1) may affect the property of, or impose an obligation on, any person, whether or not he or she is the person with whom the bank entered into the transaction.

(5) An order made under paragraph (1) –

(a) shall not prejudice an interest in property that was acquired from a person other than the bank and was acquired in good faith and for value, or prejudice any interest deriving from such an interest; and

(b) shall not require a person who in good faith and for value received a benefit from the transaction to pay a sum to the bank, except where the person was a party to the transaction.

(6) In considering for the purposes of this Article whether a person has acted in good faith, the Court may take into consideration –

(a) whether the person was aware –

(i) that the bank had entered into a transaction at an undervalue, and

(ii) that the bank was insolvent or would, as a likely result of entering into the transaction, become insolvent; and

(b) whether the person was an associate of or was connected with either the bank or the person with whom the bank had entered into the transaction.

(7) For the purposes of this Article, a bank enters into a transaction with a person at an undervalue if –

(a) it makes a gift to that person;

(b) it enters into a transaction with that person –

(i) on terms for which there is no *cause*, or

(ii) for a *cause* the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the *cause* provided by the bank.

(8) Subject to paragraphs (9) and (10), the time at which a bank entered into a transaction at an undervalue is a relevant time for the purpose of paragraph (1) if the transaction was entered into during the period of 5 years immediately preceding the date of commencement of the bank winding up order.

(9) The time to which paragraph (8) refers is not a relevant time unless –

(a) the bank was insolvent when it entered into the transaction; or

(b) the bank became insolvent as a result of the transaction.

(10) If the transaction at an undervalue was entered into with a person connected with the bank or with an associate of the bank, paragraph (9) does not apply and the time to which paragraph (8) refers is a relevant time unless it is proved that –

(a) the bank was not insolvent when it entered into the transaction; and

(b) the bank did not become insolvent as a result of the transaction.

115 Giving of preferences

(1) If a bank has at a relevant time given a preference to a person, the Court may, on the application of the bank liquidator in a bank winding up, make such an order as the Court thinks fit for restoring the position to what it would have been if the preference had not been given.

(2) Without prejudice to the generality of paragraph (1), but subject to paragraph (4), an order made under paragraph (1) may do all or any of the following things, namely –

(a) require property to be transferred in connection with the giving of the preference to be vested in the bank;

(b) require property to be vested in the bank if it represents in any person's hands the application either of the proceeds of sale of property so transferred or of money so transferred;

(c) release or discharge (in whole or in part) security given by the bank;

(d) require a person to pay in respect of a benefit received by him or her from the bank such sum to the bank as the Court directs;

(e) provide for a surety or guarantor, whose obligation to a person was released or discharged (in whole or in part) by the giving of the preference, to be under such new or revived obligation to that person as the Court thinks appropriate;

(f) provide –

(i) for security to be provided for the discharge of any obligation imposed by or arising under the order,

(ii) for such an obligation to be secured on any property, and

(iii) for the security to have the same priority as the security released or discharged (in whole or in part) by the giving of the preference;

(g) provide for the extent to which a person –

(i) whose property is vested by the order in the bank, or

(ii) on whom obligations are imposed by the order,

is to be able to prove in the winding up of the bank for debts or other liabilities that arose from, or were released or discharged (in whole or in part) under or by the giving of the preference.

(3) Except as provided by paragraph (4), an order made under paragraph (1) may affect the property of, or impose an obligation on, any person whether or not he or she is the person to whom the preference was given.

(4) An order made under paragraph (1) shall not –

(a) prejudice an interest in property that was acquired from a person other than the bank and was acquired in good faith and for value, or prejudice any interest deriving from such an interest; or

(b) require a person who in good faith and for value received a benefit from the preference to pay a sum to the bank, except where the payment is in respect of a preference given to that person at a time when he or she was a creditor of the bank.

(5) In considering for the purpose of this Article whether a person has acted in good faith, the Court may take into consideration –

(a) whether the person had notice –

(i) of the circumstances that amounted to the giving of the preference by the bank, and

(ii) of the fact that the bank was insolvent or would, as a likely result of giving the preference, become insolvent; and

(b) whether the person was an associate of or was connected with either the bank or the person to whom the bank gave the preference.

(6) For the purposes of this Article, a bank gives a preference to a person if –

(a) the person is a creditor of the bank or a surety or guarantor for a debt or other liability of the bank; and

(b) the bank –

(i) does anything, or

(ii) suffers anything to be done,

that has the effect of putting the person into a position which, in the event of the winding up of the bank, would be better than the position he or she would have been in if that thing had not been done.

(7) The Court shall not make an order under this Article in respect of a preference given to a person unless the bank, when giving the preference, was influenced in deciding to give the preference by a desire to put the person into a position which, in the event of the winding up of the bank, would be better than the position in which the person would be if the preference had not been given.

(8) A bank that gave a preference to a person who was, at the time the preference was given, an associate of or connected with the bank (otherwise than by reason only of being the bank's employee) shall be presumed, unless the contrary is shown, to have been influenced in deciding to give the preference by the desire mentioned in paragraph (7).

(9) Subject to paragraphs (10) and (11), the time at which a bank gives a preference is a relevant time for the purpose of paragraph (1) if the preference was given during the period of 12 months immediately preceding the commencement of the bank winding up order.

(10) The time to which paragraph (9) refers is not a relevant time unless –

(a) the bank was insolvent at the time the preference was given; or

(b) the bank became insolvent as a result of giving the preference.

(11) If the preference was given to a person connected with the bank or to an associate of the bank, paragraph (10) does not apply and the time to which paragraph (9) refers is a relevant time unless it is proved that –

(a) the bank was not insolvent at the time the preference was given; and

(b) the bank did not become insolvent as a result of the preference being given.

116 Definitions relating to transactions at an undervalue and preferences

(1) For the purposes of Articles 114 and 115, a person is connected with a bank if –

(a) he or she is a director of the bank;

(b) he or she is an associate of a director of the bank; or

(c) he or she is an associate of the bank.

(2) For the purposes of Articles 114 and 115 and of this Article –

(a) a person is an associate of an individual if that person is the individual's husband or wife or civil partner, or is a relative, or the husband or wife or civil partner of a relative, of the individual or of the individual's husband or wife or civil partner;

(b) a person is an associate of any person with whom he or she is in partnership, and of the husband or wife or civil partner or a relative of any individual with whom he or she is in partnership;

(c) a person is an associate of any person whom he or she employs or by whom he or she is employed;

(d) a person in his or her capacity as a trustee of a trust is an associate of another person if –

(i) the beneficiaries of the trust include that other person or an associate of that other person, or

(ii) the terms of the trust confer a power that may be exercised for the benefit of that other person or an associate of that other person;

(e) a bank is an associate of another bank –

(i) if the same person has control of both banks, or a person has control of one bank and either persons who are his or her associates, or he or she and persons who are his or her associates, have control of the other bank, or

(ii) if each bank is controlled by a group of 2 or more persons and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person of whom he or she is an associate;

(f) a bank is an associate of another person if that person has control of the bank or if that person and persons who are his or her associates together have control of the bank; and

(g) a provision that a person is an associate of another person shall be taken to mean that they are associates of each other.

(3) For the purposes of this Article, a person is a relative of an individual if he or she is that individual's brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant, for which purpose –

(a) a relationship of the half-blood is treated as a relationship of the whole blood;

(aa) the following are treated as the child of an individual –

(i) the person's stepchild,

(ii) the person's adopted child,

(iii) a child of a person who is the child's father under Schedule A1 (fertility treatment and artificial insemination) to the Children (Jersey) Law 2002,

(iv) a child of a person who is the child's second parent under that Schedule,

(v) a child who is the subject of a parental order or a recognition order (having the meanings given to those terms in that Law), in which the person is named as the child's parent; and

(b) [8]

(4) References in this Article to a husband or wife or civil partner include a former husband or wife or civil partner and a reputed husband or wife or civil partner.

(5) For the purposes of this Article, a director or other officer of a bank shall be treated as employed by the bank.

(6) For the purposes of this Article, a person shall be taken as having control of a bank if –

(a) the directors of the bank or of another person that has control of it (or any of them) are accustomed to act in accordance with his or her directions or instructions; or

(b) he or she is entitled –

(i) to exercise, or

(ii) to control the exercise of,

more than one third of the voting power at any general meeting of the bank or of another person which has control of it,

and where 2 or more persons together satisfy either of the above conditions, they shall be taken as having control of the bank.

117 Responsibility of persons for wrongful trading

(1) Subject to paragraph (3), if in the course of a bank winding up it appears that paragraph (2) applies in relation to a person who is or has been a director of the bank, the Court on the application of the bank liquidator may, if the Court thinks it proper to do so, order that that person shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the bank arising after the time referred to in paragraph (2).

(2) This paragraph applies in relation to a person if at a time before the date of commencement of the bank winding up order that person as a director of the bank –

(a) knew that there was no reasonable prospect that the bank would avoid insolvency proceedings; or

(b) on the facts known to him or her was reckless as to whether the bank would avoid such insolvency proceedings.

(3) The Court shall not make an order under paragraph (1) with respect to a person if it is satisfied that after either condition specified in paragraph (2) was first satisfied in relation to him or her the person took reasonable steps with a view to minimising the potential loss to the bank's creditors.

(4) On the hearing of an application under this Article, the bank liquidator may himself or herself give evidence or call witnesses.

118 Responsibility for fraudulent trading

(1) If, in the course of a bank winding up, it appears that any business of the bank has been carried on with intent to defraud creditors of the bank or creditors of another person, or for a fraudulent purpose, the Court may, on the application of the bank liquidator, order that persons who were knowingly parties to the carrying on of the business in that manner are to be liable to make such contributions to the bank's assets as the Court thinks proper.

(2) On the hearing of the application, the bank liquidator may himself or herself give evidence or call witnesses.

(3) Where the Court makes an order under this Article or Article 117, it may give such further directions as it thinks proper for giving effect to the order.

(4) Where the Court makes an order under this Article or Article 117 in relation to a person who is a creditor of the bank, it may direct that the whole or part of a debt owed by the bank to that person and any interest thereon shall rank in priority after all other debts owed by the bank and after any interest on those debts.

(5) This Article and Article 117 have effect whether or not that the person concerned may be criminally liable in respect of matters on the ground of which the order under paragraph (1) is to be made.

119 Extortionate credit transactions

(1) This Article applies in a bank winding up where the bank is, or has been, a party to a transaction for, or involving, the provision of credit to the bank.

(2) The Court may, on the application of the bank liquidator, make an order with respect to the transaction referred to in paragraph (1) if the transaction –

(a) is or was extortionate; and

(b) was entered into in the period of 3 years ending with the commencement of the bank winding up order.

(3) For the purposes of this Article, a transaction is extortionate if, having regard to the risk accepted by the person providing the credit –

(a) the terms of it are such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit; or

(b) it otherwise grossly contravened ordinary principles of fair dealing.

(4) It shall be presumed, unless the contrary is proved, that a transaction with respect to which an application is made under this Article is or, as the case may be, was extortionate.

(5) An order under this Article with respect to a transaction may contain one or more of the following as the Court thinks fit –

(a) a provision setting aside the whole or part of an obligation created by the transaction;

(b) a provision otherwise varying the terms of the transaction or varying the terms on which a security for the purposes of the transaction is held;

(c) a provision requiring a person who is or was a party to the transaction to pay to the bank liquidator sums paid to that person, by virtue of the transaction, by the bank;

(d) a provision requiring a person to surrender to the bank liquidator property held by that person as security for the purposes of the transaction;

(e) a provision directing accounts to be taken between any persons.

120 Delivery and seizure of property

(1) Where a person has in his or her possession or control property or records to which a bank appears in a bank winding up to be entitled, the bank liquidator may require that person forthwith (or within a period which bank liquidator may direct) to pay, deliver, convey, surrender or transfer the property or records to the bank liquidator.

(2) Where –

(a) the bank liquidator seizes or disposes of property that is not property of the bank; and

(b) at the time of seizure or disposal the bank liquidator has reasonable grounds to believe, that he or she is entitled (whether in pursuance of an order of the Court or otherwise) to seize or dispose of that property,

the bank liquidator –

(i) is not liable to any person in respect of loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by the negligence of the bank liquidator, and

(ii) has a lien on the property, or the proceeds of its sale, for expenses incurred in connection with the seizure or disposal.

121 Liability in respect of purchase or redemption of shares

(1) This Article applies where a bank is being wound up in a bank winding up and –

(a) it has within 12 months before the commencement of the winding up made a payment under Article 55 or Article 57 of the Companies (Jersey) Law 1991 in respect of the redemption or purchase of its own shares;

(b) the payment was not made lawfully; and

(c) the aggregate realisable value of the bank's assets and the amount paid by way of contribution to its assets (apart from this Article) is not sufficient for the payment of its liabilities and the expenses of the bank winding up.

(2) In this Article, the amount of a payment that has not been made lawfully for the purpose of the redemption or purchase is referred to as the "relevant payment".

(3) Subject to paragraphs (5) and (6), the Court on the application of the bank liquidator may order –

(a) a person from whom the shares were redeemed or purchased; or

(b) a director,

to contribute in accordance with this Article to the bank's assets so as to enable the insufficiency to be met.

(4) A person from whom any shares were redeemed or purchased may be ordered to contribute an amount not exceeding so much of the relevant payment as was made in respect of his or her shares.

(5) A person from whom shares were redeemed or purchased shall not be ordered to contribute under this Article unless the Court is satisfied that, when he or she received payment for his or her shares –

(a) he or she knew; or

(b) he or she ought to have concluded from the facts known to him or her,

that immediately after the relevant payment was made the bank would be unable to discharge its liabilities as they fell due, and that the realisable value of the bank's assets would be less than the aggregate of its liabilities.

(6) A director who has expressed an opinion under Article 55(9) of the Companies (Jersey) Law 1991 may be ordered, jointly and severally with any other person who is liable to contribute under this Article, to contribute an amount not exceeding the relevant payment, unless the Court is satisfied that the director had grounds for the opinion expressed.

(7) Where a person has contributed an amount under this Article, the Court may direct any other person who is jointly and severally liable to contribute under this Article to pay to him or her such amount as the Court thinks just and reasonable.

(8) Article 131 does not apply in relation to liability accruing by virtue of this Article.

122 Resolutions passed at adjourned meetings

Any resolution passed at an adjourned meeting of a bank's creditors shall be treated for all purposes as having been passed on the date on which it was in fact passed, and not as having been passed on any earlier date.

123 Duty to co-operate with bank liquidator

(1) In a bank winding up each of the persons mentioned in paragraph (2) shall –

(a) give the bank liquidator information concerning the bank and its promotion, formation, business, dealings, affairs or property which the bank liquidator may, at any time after the commencement of the bank winding up order, reasonably require;

(b) attend on the bank liquidator at reasonable times and on reasonable notice when requested to do so; and

(c) notify the bank liquidator in writing of any change of his or her address, employment, or name.

(2) The persons referred to in paragraph (1) are –

(a) those who are, or have at any time been, officers of the bank or the secretary to the bank;

(b) those who have taken part in the formation of the bank at any time within 12 months before the commencement of the bank winding up order;

(c) those who are in the employment of the bank, or have been in its employment within those 12 months, and are in the bank liquidator's opinion capable of giving information which the bank liquidator requires; and

(d) those who are, or within those 12 months have been, officers of, or in the employment of, a body corporate that is, or within those 12 months was, secretary to the bank and who are in the bank liquidator's opinion capable of giving information which the bank liquidator requires.

(3) For the purposes of paragraph (2) "employment" shall be construed in accordance with the Employment (Jersey) Law 2003.

(4) A person who, without reasonable excuse, fails to comply with an obligation imposed by paragraph (1), is guilty of an offence and shall be liable to imprisonment for a term of 6 months and to a fine.

124 Bank liquidator to report possible misconduct

(1) The bank liquidator shall take the action specified in paragraph (2) if it appears to the bank liquidator in the course of a bank winding up –

(a) that the bank has committed a criminal offence;

(b) that a person has committed a criminal offence in relation to the bank being wound up; or

(c) in the case of a director, that for any reason (whether in relation to the bank being wound up, or to a holding bank of the bank being wound up or to any subsidiary of such a holding bank) his or her conduct has been such that an order should be sought against him or her under Article 78 of the Companies (Jersey) Law 1991.

(2) The bank liquidator shall –

(a) forthwith report the matter to the Attorney General; and

(b) furnish the Attorney General with information and give the Attorney General access to, and facilities for inspecting and taking copies of, documents (being information or documents in the possession or under the control of the bank liquidator and relating to the matter) as the Attorney General requires.

(3) Where a report is made to the Attorney General under paragraph (2), the Attorney General may refer the matter to the Minister or the Commission for further enquiry.

(4) Upon a matter being referred to the Minister or the Commission under paragraph (3), the Minister or the Commission, as the case may be –

(a) shall investigate the matter; and

(b) for the purpose of the investigation may exercise any of the powers that are exercisable by inspectors appointed under Article 128 of the Companies (Jersey) Law 1991 to investigate a bank's affairs.

(5) If it appears to the Court in the course of a bank winding up –

(a) that the bank has committed a criminal offence;

(b) that a person has committed a criminal offence in relation to the bank being wound up; or

(c) in the case of a director of the bank being wound up, that for any reason (whether in relation to the bank being wound up, or to a holding bank of the bank being wound up or of any subsidiary of such a holding bank) his or her

conduct has been such as to raise a question whether an order should be sought against him or her under Article 78 of the Companies (Jersey) Law 1991,

and that no report with respect to the matter has been made by the bank liquidator to the Attorney General under paragraph (2), the Court may (on the application of a person interested in the winding up or of its own motion) direct the bank liquidator to make such a report.

125 Obligations arising under Article 124

(1) For the purpose of an investigation by the Minister or the Commission under Article 124, an obligation imposed on a person by a provision of the Companies (Jersey) Law 1991 to produce documents or give information to, or otherwise to assist, inspectors appointed as mentioned in that Law is to be regarded as an obligation similarly to assist the Minister in his or her, or the Commission in its, investigation under Article 124.

(2) For the purposes of the investigation under Article 124, the Minister or the Commission may examine on oath any such person as is mentioned in paragraph (1), and may administer an oath accordingly.

(3) An answer given by a person to a question put to him or her in exercise of the powers conferred by this Article may not be used in evidence against him or her in any criminal proceedings except –

(a) proceedings in which the person is charged with knowingly or recklessly making a false statement in the course of being examined on oath under paragraph (2);

(b) proceedings under Article 166; or

(c) proceedings for contempt of court under Article 149(2).

(4) Where criminal proceedings are instituted by the Attorney General following a report or reference under Article 124, the bank liquidator and every officer, employee and agent of the bank past and present (other than the defendant) shall give the Attorney General any assistance in connection with the prosecution which he or she is reasonably able to give.

(5) In paragraph (4) "agent" includes a banker, advocate or solicitor of the bank and a person employed by, or providing a service to, the bank as auditor, whether or not that person is an officer of the bank.

(6) If a person fails to give assistance as required by paragraph (4), the Court may, on the application of the Attorney General –

(a) direct the person to comply with that paragraph; and

(b) if the application is made with respect to a bank liquidator, direct that the costs shall be borne by the bank liquidator personally unless it appears that the failure to comply was due to the fact that the bank liquidator did not have sufficient assets of the bank in his or her hands to enable him or her to do so.

126 Distribution of bank's property

(1) In a bank winding up the order of priority for satisfaction of the liabilities of a bank shall be as provided in Article 30.

(2) Unless the constitutional documents of the bank otherwise provide, any remaining property of the bank shall be distributed among the shareholders according to their rights and interests in the bank.

(3) Despite the paragraphs (1) and (2), if, in the course of a bank winding up the bank liquidator is satisfied that the bank's assets will be sufficient to ensure that –

(a) the costs, charges and expenses properly incurred in the bank winding up and any other resolution actions may be paid; and

(b) the claims of all creditors (including any interest owing on debt) may be satisfied,

the bank liquidator may, before or after meeting some or all of those costs, charges and expenses and satisfying some or all of the claims of the creditors, distribute to the members of the bank, proportional to their rights or interests, or otherwise as provided by the bank's constitutional documents, so much of the bank's assets as shall not be required to meet those costs, charges, expenses and claims.

(4) The Court may fix a time or times within which creditors of the bank are to prove their debts or claims or to be excluded from the benefit of any distribution made before those debts are proved.

127 Interest on debts

(1) In a bank winding up interest shall be payable in accordance with this Article on any debt proved in the bank winding up, including so much of any such debt as represents interest on the remainder.

(2) Any surplus remaining after the payment of the debts proved in the bank winding up shall, before being applied for any other purpose, be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the commencement of the bank winding up order in respect of the bank.

(3) All interest payable under this Article shall rank equally, whether or not the debts on which it is payable rank equally.

(4) The interest payable under this Article in respect of any debt shall be whichever is the greater of –

(a) the interest calculated in accordance with the Interest on Debts and Damages (Jersey) Law 1996; and

(b) the interest calculated in accordance with the rate applicable to that debt apart from the bank winding up.

128 Enforcement of liquidator's duty to make returns, etc.

(1) If, in a bank winding up, the bank liquidator defaults in delivering a document or in giving any notice which the bank liquidator is by law required to deliver or give, and the defaulting bank liquidator fails to make good the default within 14 days after the service on the bank liquidator of a notice requiring the bank liquidator to do so, paragraphs (2), (3) and (4) shall apply.

(2) On an application made by a creditor or contributory of the bank, or by the Registrar, the Court may make an order directing the bank liquidator to make good the default within the time specified in the order.

(3) The Court's order may provide that costs of an application made under paragraph (2) and costs incidental to the application shall be borne, in whole or in part, by the bank liquidator personally.

(4) Nothing in this Article shall prejudice the operation of any enactment imposing penalties on a bank liquidator in respect of a default mentioned in such an enactment.

129 References to the Court

(1) A bank liquidator may apply to the Court for a determination of any question arising in a bank winding up, or for the Court to exercise any of its powers in relation to a bank winding up.

(2) The Court, if satisfied that it will be just and beneficial to do so, may accede wholly or partially to an application under paragraph (1) on such terms and conditions as it thinks fit, or make such other order on the application as it thinks just.

(3) The Court may exercise all or any of the powers that would have been exercisable by it or by the Viscount if a declaration had been made in relation to a company under the Bankruptcy (Désastre) (Jersey) Law 1990.

130 Notification that the bank is in liquidation

(1) Every invoice, order for goods or services or communication issued by or on behalf of a bank that is being wound up, or by the bank liquidator, being a document on or in which the name of the bank appears, shall contain a statement that the bank is in liquidation.

(2) In the event of failure to comply with paragraph (1), the bank, a person acting by or on behalf of the bank or the bank liquidator shall be guilty of an offence and liable to a fine.

131 Liability as contributories of present and past members

(1) Except as otherwise provided by this Article, where a bank is wound up, each present and past member of the bank is liable to contribute to its assets to an amount sufficient for payment of its liabilities, the expenses of the winding up, and for the adjustment of the rights of the contributories among themselves.

(2) A past member of a bank of a particular class is not, as a member of that class, liable to contribute –

(a) unless it appears to the Court that the present members of that class are unable to satisfy the contributions required to be made by them as such members;

(b) if he or she ceased to be a member of that class for 12 months or more before the commencement of the winding up; or

(c) in respect of a liability of the bank contracted after he or she ceased to be a member of that class.

(3) A past or present guarantor member of a bank is not liable in that capacity to contribute unless it appears to the Court that the past and present members in their capacity as the holders of limited shares are unable to satisfy the contributions required to be made by them as such members.

(4) A past or present member of a bank in his or her capacity as the holder of an unlimited share is not liable to contribute unless it appears to the Court that the past

and present members in their capacities as the holders of limited shares or as guarantor members are unable to satisfy the contributions required to be made by them as such members.

(5) A contribution shall not be required from a past or present member of a bank, as such a member, exceeding –

(a) any amount unpaid on any limited shares in respect of which he or he is liable; or

(b) the amount undertaken to be contributed by him or her to the assets of the bank if it were to be wound up.

(6) A sum due to a member of the bank, in his or her capacity as a member, by way of dividends, profits or otherwise is not in a case of competition between himself or herself and any other creditor who is not a member of the bank, a liability of the bank payable to that member, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributors among themselves.

(7) In this Article "member" shall be construed in accordance with Article 25 of the Companies (Jersey) Law 1991.

132 Retention and disposal of records

(1) When a bank has been wound up and dissolved, its records and those of a bank liquidator and bank liquidation committee shall be retained by the bank, bank liquidator or bank liquidation committee or a person to whom the records have been committed for a period of at least 10 years after the bank's dissolution.

(2) After 10 years from the bank's dissolution no responsibility rests on the bank, a bank liquidator, the bank liquidation committee or a person to whom the custody of the records has been committed, by reason of any record not being forthcoming to a person claiming to be interested in it.

(3) A person who contravenes paragraph (1) shall be guilty of an offence and liable to a fine of level 3 on the standard scale.

133 Disclosure of information by bank liquidator

(1) A bank liquidator may only use information relating to the bank being wound up, its customers and its creditors for the purpose of achieving the objectives specified in Article 99(1) and, in the pursuit of those objectives, the bank liquidator may disclose such information to a person or entity as appropriate, including a purchaser or potential purchaser of all or part of the business of the bank, the Minister, the Commission, the Jersey Bank Depositors Compensation Board, professional advisers, and as otherwise may be permitted by the Data Protection (Jersey) Law 2018.[9]

(2) A bank liquidator shall seek the approval of the bank liquidation committee to disclose information referred to in paragraph (1) for any purpose other than a purpose referred to in paragraph (1), unless the disclosure of such information is routinely required to facilitate the ongoing conduct of business and the provision of services to depositors.

134 Inspection of bank's books etc. by court order

(1) The Court may at any time after making a bank winding up order, make such order for inspection of the bank's books and papers by creditors and contributories as the Court thinks just and any books and papers in the bank's possession shall thereby be made available for inspection by creditors and contributories accordingly, but not further or otherwise.

(2) Nothing in this Article shall exclude or restrict any statutory rights of a Minister or a public authority in Jersey or any person acting under such authority.

135 Bank's books to be evidence

Where a bank is being wound up, all books and papers of the bank and of the bank liquidator are treated, as between the contributories of the bank, as prima facie evidence of the truth of all matters purporting to be recorded in them.

136 Information as to pending liquidations

(1) If a bank winding up is not concluded within one year after its commencement, the bank liquidator shall, at such intervals as may be specified by the Court, until the bank winding up is concluded, send to the Registrar a progress report with respect to the position of the bank winding up, and the Registrar shall record such progress reports in the register.

(2) A bank liquidator who fails to comply with paragraph (1) shall be guilty of an offence and liable to a fine of level 3 on the standard scale.[10]

137 Meetings to ascertain wishes of creditors or contributories

Subject to the objectives specified in Article 99(1)(a), as to all matters relating to a bank winding up, the Court shall have regard to the wishes of the creditors or contributories (as proved to it by any sufficient evidence), and –

(a) if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Court directs, and appoint a person to act as chairman of any such meeting and report the result of it to the Court;

(b) in the case of creditors, have regard to the value of each creditor's debt; and

(c) in the case of contributories, have regard the number of votes conferred on each contributory.

138 Power of bank liquidator to act in respect of subsidiary

Where the bank liquidator exercises his or her power to act in respect of a subsidiary of a bank being wound up which is, by virtue of the insolvency of the bank being wound up, also insolvent, all of the provisions of this Part shall also apply to that subsidiary.

139 Order for Jersey insolvency law to apply

The Minister may by Order provide for any rule of law relating to insolvency to be applied to a bank winding up.

140 Termination of bank winding up

(1) The bank liquidator may, with the authorization of the shareholders of the bank by special resolution, apply to the Court for an order terminating the bank winding up order if the bank liquidator is satisfied that the grounds for the application under Article 90 are no longer met.

(2) The Authority, the Commission, the Minister and the Viscount and upon notice to the court, other interested parties, shall have a right to be heard (or to make representations) at the proceedings for the termination of the bank winding up order.

(3) The Court shall in determining an application for the termination of bank winding up order have regard to such matters as it thinks fit including –

(a) whether or not –

(i) the bank has received any contribution from any present or past member pursuant to Article 131, or

(ii) the bank has, for the purposes of the bank winding up, distributed any of its assets among its shareholders; and

(b) the views of the Authority, the Commission and the Minister.

(4) The Court shall refuse the application unless it is satisfied that –

(a) the bank is able to discharge its liabilities in full as they fall due;

(b) the termination of the bank winding up order is in the public interest;

(c) the termination of the bank winding up order has been approved by the bank liquidation committee; and

(d) the applicant for the bank winding up order approves of the termination of the bank winding up order.

(5) Subject to paragraph (4), the Court may make an order granting or refusing the termination of the bank winding up order and may make such other order as the Court thinks fit.

(6) Upon the termination of a bank winding up order any bank liquidator appointed for the purpose of the bank winding up shall cease to hold that office.

(7) The termination of a bank winding up order shall not affect the validity of anything done by any bank liquidator, director or other person, or by operation of law, before its termination.

141 Final dissolution

(1) As soon as the affairs of a bank are fully wound up, the bank liquidator shall make up an account and final report of the bank winding up, showing how it has been conducted and how the bank's property has been disposed of.

(2) The bank liquidator shall send a copy of the report under paragraph (1) to –

(a) the bank liquidation committee;

(b) the Authority;

(c) the Commission;

(d) the Minister;

(e) the Viscount; and

(f) the Jersey Bank Depositors Compensation Board,

and a copy of the report shall be made available to members, creditors and contributories on request.

(3) The bank liquidator shall upon sending a copy of the report to the bank liquidation committee under paragraph (2), summon a final meeting of the bank liquidation committee.

(4) At the final meeting under paragraph (3), the bank liquidation committee shall –

(a) consider the report; and

(b) decide whether to approve its contents.

(5) If the bank liquidation committee approves the report under paragraph (4), the bank liquidator shall forthwith apply to the Court for an order for the dissolution of the bank.

(6) If the bank liquidation committee does not approve the report under paragraph (4), the bank liquidator shall address the concerns of the bank liquidation committee and submit the report to the bank liquidation committee again but, if the report is again not approved, the bank liquidator may, despite such disapproval, apply to the Court for an order for approval of the report, and for dissolution of the bank.

(7) The bank liquidator shall give the creditors of the bank not less than 21 days' notice of the Court hearing of the application for dissolution under paragraph (5), or approval and dissolution under paragraph (6), accompanied by a copy of the bank liquidator's report.

(8) Within 7 days after the making of an order by the Court in respect of an application made under paragraph (5) or (6), the bank liquidator shall deliver to the Registrar the relevant Act of Court for registration.

(9) If the bank liquidator fails to comply with paragraph (7) the bank liquidator shall be guilty of an offence and liable to a fine.

(10) The Registrar, on receiving the order under paragraph (8), shall register the order in the file of the bank so that it may be publicly accessible.

(11) At the end of the period of 3 months beginning with the day of registration of the order, the bank shall be dissolved and shall cease to exist.

(12) Upon the dissolution of a bank under this Article, any bank liquidator appointed for the purpose of the bank winding up shall cease to hold that office.

(13) The dissolution of a bank under this Article shall not affect the validity of anything duly done by any bank liquidator, director or other person, or by operation of law, before its dissolution.

142 Assistance for foreign authorities in insolvency matters

(1) The Court may, to the extent that it thinks fit, assist a court, resolution authority, bank regulator or bank liquidator of a relevant foreign jurisdiction, in matters relating to insolvency.

(2) For the purposes of paragraph (1), a request from a court of a relevant foreign jurisdiction for assistance shall be sufficient authority for the court to exercise, in relation to the matters to which the request relates, any jurisdiction which it or the requesting court could exercise in relation to these matters if they otherwise fell within its jurisdiction.

(3) In exercising its discretion for the purposes of this Article the Court shall have regard in particular to the rules of private international law.

(4) In granting assistance under this Article, the Court shall have regard to the general principles of resolution, the resolution objectives, the objectives specified in Article 99 and any other principles under this Law.

(5) In this this Article "relevant foreign jurisdiction" means –

(a) the home jurisdiction and relevant jurisdiction of a foreign bank; and

(b) such other country or territory as may be prescribed.

PART 8

INVESTIGATIONS

143 Appointment of inspectors

(1) The Authority may appoint one or more competent persons to investigate the affairs of a bank and to report on the bank as the Authority may direct.

(2) This Article applies whether or not the bank is in resolution or being wound up.

144 Powers of inspector

(1) If an inspector thinks it is necessary for the purposes of his or her investigation to investigate also the affairs of another entity which is or at any relevant time has been the bank's subsidiary or holding company, or a subsidiary of its holding company or a holding company of its subsidiary, the inspector shall have the power to do so, and the inspector shall also report on the affairs of the other entity so far as the inspector thinks that the results of investigation of its affairs are relevant to the investigation of the affairs of the bank.

(2) An inspector may, at any time in the course of his or her investigation, without the necessity of making an interim report, inform the Authority and the Attorney General of matters coming to the inspector's knowledge as a result of the investigation tending to show that an offence has been committed.

145 Production of records and evidence to inspector

(1) If an inspector considers that any person is or may be in possession of information relating to a matter which the inspector believes to be relevant to the investigation, the inspector may require the person –

(a) to produce and make available to the inspector all records in the person's custody or power relating to that matter;

(b) at reasonable times and on reasonable notice, to attend before the inspector; and

(c) otherwise to give the inspector all assistance in connection with the investigation which the person is reasonably able to give,

and it is that person's duty to comply with the requirement.

(2) An inspector may for the purposes of the investigation examine on oath any such person as is mentioned in paragraph (1), and may administer an oath accordingly.

(3) Despite any other provision in this or any other enactment to the contrary, an answer given by a person to a question put to him or her in exercise of the powers conferred

by this Article may not be used in evidence against him or her in any criminal proceedings except –

(a) proceedings for contempt of court under Article 149(2); or

(b) proceedings under Article 166.

146 Power of inspector to call for directors' bank accounts

If an inspector has reasonable grounds for believing that a director, or past director, of the bank or other person whose affairs the inspector is investigating maintains or has maintained a bank account –

(a) of any description, whether alone or jointly with another person and whether in Jersey or elsewhere; and

(b) into or out of which there has been paid money which has been in any way connected with an act or omission, or series of acts or omissions, which constitutes misconduct (whether fraudulent or not) on the part of that director towards the bank or other person or its members,

the inspector may require the director to produce and make available to the inspector all records in the director's possession or under the director's control relating to that bank account.

147 Authority for search

(1) An inspector may, for the purpose of an investigation into the affairs of a bank, apply to the Bailiff for a warrant under this Article in relation to premises specified in the application.

(2) If the Bailiff is satisfied that the conditions in paragraph (3) are fulfilled the Bailiff may issue a warrant authorizing a police officer and any other person named in the warrant to enter the premises specified in the warrant (using such force as is reasonably necessary for the purpose) and to search those premises.

(3) The conditions referred to in paragraph (2) are –

(a) that there are reasonable grounds for suspecting that there is on the premises material (whether or not it can be particularized) which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made; and

(b) that the investigation for the purpose of which the application is made might be seriously prejudiced unless immediate entry can be secured to the premises.

(4) Where a person has entered premises in the execution of a warrant issued under paragraph (2), the person may seize and retain any material, other than items subject to legal professional privilege, which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the warrant was issued.

(5) In this Article, "premises" includes any place, and in particular includes –

(a) any vehicle, vessel, aircraft or hovercraft;

(b) any offshore installation; and

(c) any tent or movable structure.

148 Obstruction

Any person who wilfully obstructs any person acting in the execution of a warrant issued under Article 147 shall be guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.

149 Failure to co-operate with inspectors

(1) If any person –

(a) fails to comply with a requirement under Article 145 or 146; or

(b) refuses to answer any question put to the person by an inspector for the purpose of the investigation,

the inspector may certify the refusal in writing to the Court.

(2) The Court may, upon a refusal being certified under paragraph (1), inquire into the case and, after hearing any witness who may be produced against or on behalf of the alleged offender and any statement in defence, punish the offender as if the offender had been guilty of contempt of the Court and order him or her to comply.

150 Inspector's reports

(1) An inspector may, and if so directed by the Authority shall –

(a) make interim reports; and

(b) on conclusion of his or her investigation make a final report,

to the Authority as the case may be.

(2) The Authority may –

(a) forward a copy of any report made by an inspector in relation to a bank to the bank's registered office;

(b) furnish a copy of the report on request and on payment of the prescribed or published fee to –

(i) any member of the bank which is the subject of the report,

(ii) any person whose conduct is referred to in the report,

(iii) the auditors of the bank which is the subject of the report,

(iv) the applicant for the investigation,

(v) a relevant resolution authority, or

(vi) any person whose financial interests appear to the Minister or the Commission to be affected by the matters dealt with in the report, whether as a creditor of the company or as a body corporate, or otherwise; and

(c) cause the report to be printed and published in such form and in such manner as it considers appropriate.

(3) In this Article, "relevant resolution authority" means an authority discharging in a country or territory outside Jersey any function that is the same as, or similar to, a function of the Authority.

151 Expenses of investigating a bank's affairs

The expenses of and incidental to an investigation by an inspector shall be defrayed in the first instance by the Authority, but the bank shall be liable to make repayment to the Authority.

152 Inspectors' report to be evidence

(1) A copy of a report of an inspector certified by the Authority to be a true copy, is admissible in legal proceedings as evidence of the opinion of the inspector in relation to a matter contained in the report.

(2) A document purporting to be a certificate mentioned in paragraph (1) shall be received in evidence and be deemed to be such a certificate unless the contrary is proved.

153 Privileged information

Nothing in this Part requires the disclosure or production, to the Authority or to an inspector, by a person of information or records which the person would in an action in the Court be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in the Court except, if the person is a lawyer, the name and address of his or her client.

PART 9

RESTRICTION ON DISCLOSURE OF INFORMATION

154 Restricted information

(1) Except as provided by Article 133, Part 8 and the subsequent provisions of this Part, a person who –

(a) under this Law receives information relating to the business or other affairs of any person; or

(b) obtains any such information directly or indirectly from a person who has received it under sub-paragraph (a),

shall not disclose the information without the consent of the person to whom it relates and (if different) the person from whom it was received.

(2) This Article shall not apply to information which at the time of the disclosure is or has already been made available to the public from other sources or to information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.

(3) A person who discloses information in contravention of this Article shall be guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.

155 Disclosure for facilitating discharge of functions of the Authority and specified persons

(1) Article 154 does not preclude the disclosure of information by or to any person in any case in which such disclosure is for the purpose of enabling or assisting any of the following –

(a) the Authority, or any person acting on their behalf;

(b) a person appointed under an enactment by any of the following –

(i) the Authority,

(ii) the Court, on the application of the Authority,

(iii) a Minister, where that Minister and the Authority are each specified in that enactment as having power to appoint that person,

to discharge the Authority's functions or that person's functions under this Law or under any other enactment.

(2) Article 154 does not preclude the disclosure of information by the Authority to the auditor of –

(a) a bank;

(b) a former bank; or

(c) a person who appears to the Authority to be acting or to have acted in contravention of Article 8 of the 1991 Law,

if it appears to the Authority that disclosing the information would be in the interests of depositors or potential depositors.

(3) Subject to paragraphs (4) to (6), Article 154 does not preclude the disclosure of information by the Authority to any of the following organizations or bodies –

(a) the ESAs;

(b) ERSB; or

(c) a supervisor of a securities market.

(4) The Authority shall not disclose information under paragraph (3) unless satisfied that –

(a) the purpose of the disclosure is to assist the relevant organization or person to whom it is disclosed, in the exercise of any of its functions; and

(b) that organization or person will treat the disclosed information with appropriate confidentiality.

(5) In deciding whether to disclose information under paragraph (3), the Authority may take the following factors (among others) into account –

(a) whether corresponding disclosure of information would be given by the relevant organization or person, if such information were requested by the Authority;

(b) whether the case concerns the possible breach of a law, or other requirement, which has no close parallel in Jersey;

(c) the seriousness of the case and its importance in Jersey;

(d) whether the information could be obtained by other means; and

(e) whether it is otherwise appropriate in the public interest to disclose the information.

(6) The Authority may refuse to disclose information under paragraph (3) unless the relevant organization or person undertakes to make such contribution towards the costs of the disclosure as the Authority considers appropriate.

(7) In paragraph (3) "ESAs" and "ESRB" have the meaning given by Article 1 of the 1991 Law.

156 Disclosure for facilitating discharge of functions by other authorities

(1) Article 154 does not preclude the disclosure of information by the Authority to –

(a) the Commission;

(b) the Viscount;

(c) the Minister;

(d) the Comptroller and Auditor General for the purpose of enabling or assisting the carrying out of any of the Comptroller and Auditor General's functions in relation to the Authority; or

(e) any person for the purpose of enabling or assisting that person to exercise that person's statutory functions in relation to any person or class of person in respect of whom the Authority has or had statutory functions.

(2) In paragraph (1)(e), "statutory functions" means functions conferred by or under an enactment on any person including any ancillary functions related thereto, for such purposes as may be prescribed or specified (as the case may be) under that enactment.

(3) Article 154 does not preclude the disclosure of information for the purpose of enabling or assisting a resolution authority to exercise any of its functions.

(4) Without prejudice to the generality of paragraph (1)(e), Article 154 does not preclude the disclosure of information by the Authority to the Office of the Financial Services Ombudsman or to an Ombudsman, within the meaning of the Financial Services Ombudsman (Jersey) Law 2014 for the purpose of enabling or assisting that Office or Ombudsman to exercise any function under that Law.

157 Other permitted disclosures

(1) Article 154 does not preclude the disclosure of information –

(a) with a view to the investigation of a suspected offence or the institution of, or otherwise for the purposes of, any criminal proceedings, whether under this Law or not; or

(b) in connection with any other proceedings arising out of this Law.

(2) Article 154 does not preclude the disclosure by the Authority to the Attorney General or to a police officer of –

(a) information obtained by virtue of Article 155 or 156; or

(b) information in the possession of the Authority as to any matter in relation to which the powers conferred by Article 155 or 156 are exercisable.

(3) Information disclosed under paragraph (2) may only be disclosed by the Attorney General or a police officer for the purposes of an investigation into a suspected offence in Jersey or a prosecution in Jersey or, at the discretion of the Attorney General, a suspected offence or prosecution in a country or territory outside Jersey.

(4) Article 154 does not preclude the disclosure of information by the Authority to any person responsible for a compensation scheme in relation to one or more deposit-taking businesses (whether in Jersey or in a country or territory outside Jersey) if –

(a) it appears to the Authority that disclosing the information would enable or assist the recipient of the information or the Authority to discharge its functions; and

(b) the recipient of the information gives to the Authority prior to disclosure a written undertaking that the information will not be further disclosed without the prior consent of the Authority.

(5) Article 154 does not preclude the disclosure of information by the Authority to any person acting on behalf of an international body or organization where that body's or organization's functions include the assessment of Jersey's compliance with international standards relating to regulation of the financial sector and the disclosure is for the purpose of enabling or assisting that body or organization to discharge those functions.

(6) Article 154 does not preclude the disclosure of information by –

(a) the Authority;

(b) a person appointed under an enactment by any of the following –

(i) the Authority,

(ii) the Court, on the application of the Authority,

(iii) a Minister, where that Minister and the Authority are each specified in that enactment as having power to appoint that person,

to any person or body responsible for setting standards of conduct for any profession where that person or body has powers to discipline persons who fail to meet those standards if it appears to the Authority or the appointed person that disclosing the information would enable or assist the person or body responsible for setting standards to discharge its functions in relation to a person who fails, or is alleged to have failed, to meet those standards.

(7) No information shall be disclosed under or by virtue of paragraph (5) or (6) or Article 155(1)(a) or (3), Article 156(1)(b), (c) or (d) or (2) or Article 160 unless the Authority or person, as the case requires, making the disclosure ('the disclosing party') is satisfied that the person or body to whom or which the disclosure is made complies with or will comply with any conditions to which the disclosing party may, in its discretion, subject such disclosure.

158 Regulation making power to amend disclosure provisions

The States may by Regulations amend Articles 155, 156 or 157 by –

(a) adding further persons or bodies to or by whom disclosure may be made and specifying in each case the purpose for which disclosure of information may be made; and

(b) amending the circumstances in which disclosure may be made to or by any person or body specified in those Articles, including the purposes for which and conditions in which such disclosure may be made.

159 Information supplied to the Authority by resolution authority

Articles 154 to 157 apply also to information supplied to the Authority for the purposes of its functions under this Law by a resolution authority in the jurisdiction in which a bank operates branches or subsidiaries.

160 Co-operation with resolution authority

The Authority shall, if it considers it appropriate to do so, negotiate over and enter into binding and non-binding framework co-operation agreements with a resolution authority in another jurisdiction in which a bank's group conducts business, whether through separate entities, subsidiaries or branches in such other jurisdiction or through subsidiaries or branches in Jersey of an entity incorporated in such other jurisdiction.

161 Public statement

(1) The Authority may issue a public statement concerning a bank if it appears to the Authority to be desirable to issue the statement in the best interests of persons who have transacted or may transact deposit-taking business with the bank or in the best interests of the public.

(2) If the Authority proposes to issue a public statement under paragraph (1), the Authority shall, subject to paragraphs (3) and Article 162, serve notice on the bank.

(3) A notice under paragraph (2) shall –

(a) give the reasons for issuing the statement;

(b) give the proposed date of issue of the statement;

(c) contain a copy of the statement;

(d) give particulars of the right of appeal under Article 163 in respect of the statement; and

(e) if the statement is issued, in accordance with a decision under Article 162(3), before the day specified in Article 162(1) in relation to the statement, give the reasons for issuing it before that day.

(4) Paragraph (3) shall not require the Authority –

(a) to specify any reason that would in the Authority's opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party; or

(b) to specify the same reasons, or reasons in the same manner, in the case of notices to different persons about the same matter.

162 Notice period

(1) The Authority shall not issue a public statement under Article 161 before the expiration of 14 days following the date of the service of the notice under Article 161(2).

(2) Paragraph (1) shall not apply if the bank in the public statement agrees with the Authority that the statement may be issued on a date earlier than the date that would apply under that paragraph and the statement is in fact issued on or after the earlier date.

(3) Paragraph (1) shall not apply if –

(a) the Authority decides on reasonable grounds that the interests of –

(i) persons who have transacted or may transact deposit-taking business with the bank, or

(ii) the public,

in the issue of the public statement on a date earlier than the date that would apply under that paragraph outweighs the detriment to the persons identified in the public statement, being the detriment attributable to the issue of the public statement on the earlier date; and

(b) the public statement is in fact issued on or after the earlier date.

(4) In making a decision under paragraph (3), the Authority is not prevented from choosing as the date of issue of a public statement the date of service (if any) of notice of the public statement.

(5) If an appeal is made to the Court under Article 163(1), and the Court orders that the public statement shall not be issued before any specified date or event, the Authority shall not issue the public statement before the date or event so specified.

(6) In a case to which paragraph (1) applies, if an appeal is made under Article 163 to the Court against a decision to issue a public statement, the Authority shall not issue the public statement before the day on which that appeal is determined by the Court or withdrawn.

163 Appeals and orders about public statements

(1) A person aggrieved by a decision of the Authority –

(a) to issue a public statement under Article 161; or

(b) under Article 162(3),

may appeal to the Court, in accordance with this Article, against the decision.

(2) An appeal under paragraph (1)(a) may be made only on the ground that the decision of the Authority was unreasonable having regard to all the circumstances of the case.

(3) An appeal under this Article shall be lodged with the Court no later than –

(a) if notice is served on the bank under Article 161(2) in relation to the public statement, the day that is one month after the date of the last such service on the bank in relation to the public statement; or

(b) if no such notice is served on the bank, the day that is one month after the issue of the public statement.

(4) Nothing in paragraph (3) prevents the lodging of an appeal before a notice is served or a public statement is issued.

(5) On an appeal under this Article, the Court may make such interim or final order as it thinks fit, including an order that the Authority shall not issue the public statement or, if the public statement has been issued, that the Authority shall issue a further public statement to the effect set out in the order or shall stop making the statement available to the public.

PART 10

MISCELLANEOUS

164 References to the Court

(1) The Authority may apply to the Court for the determination of a question arising in relation to the taking of a resolution action.

(2) The Court, if satisfied that it will be just and beneficial to do so, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or make such other order on the application as it thinks just.

(3) An order made under paragraph (2) may specify that the Authority may apply a resolution tool, exercise a resolution power or take a resolution action specified in the Order.

165 Service of notices

(1) No notice or other document required or authorized by this Law to be given to the Authority shall be regarded as so given until it is received.

(2) Subject to paragraph (1), any notice or other document required or authorized by or under these Regulations to be given to the Authority may be given by facsimile, electronic transmission or by any similar means that produces a document containing the text of the communication in legible form or is capable of doing so.

(3) Any notice, direction or other document required or authorized by or under this Law to be given to or served on any person other than the Authority may be given or served on the person –

(a) by delivering it to the person;

(b) by leaving it at the person's proper address;

(c) by sending it by post to the person at that address; or

(d) by sending it to the person at that address by facsimile, electronic transmission or other similar means that produce a document containing the text of the communication in legible form or is capable of doing so.

(4) Any such notice, direction or other document may –

(a) in the case of a company incorporated in Jersey, be served by being delivered to its registered office or principal office; or

(b) in the case of a partnership, company incorporated outside Jersey or unincorporated association, be given to or served on a person who is a principal person in relation to it, or on the secretary or other similar officer of the partnership, company or association or any person who purports to act in any such capacity, by whatever name called, or on the person having the control or management of the partnership business, as the case may be, or by being served on the latter person or delivered to the latter person's registered office or principal office.

(5) For the purposes of this Article and of Article 7 of the Interpretation (Jersey) Law 1954 in its application to this Article, the proper address of any person to or on whom a notice, direction or other document is to be given or served by post shall be the person's last known address, except that –

(a) in the case of a company incorporated in Jersey, or its secretary, clerk or other similar officer or person, it shall be the address of the registered office or principal office of the company in Jersey; or

(b) in the case of a partnership, or a person who is a principal person in relation to a partnership, it shall be that of its principal office in Jersey.

(6) If the person to or on whom any notice, direction or other document referred to in paragraph (3) is to be given or served has notified the Authority of an address within Jersey, other than the person's proper address within the meaning of paragraph (5), as the one at which the person or someone on the person's behalf will accept service of documents of the same description as that notice, direction or other document, that address is for the purposes of this Article and Article 7 of the Interpretation (Jersey) Law 1954 the person's proper address.

166 False or misleading information

(1) A person who makes a statement in any document, material, evidence or information which is required to be provided to the Authority or to any person entitled to the information under this Law that, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or that omits to state any material fact the omission of which makes the statement false or misleading, shall be guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.

(2) A person shall not be guilty of the offence if the person did not know that the statement was false or misleading and with the exercise of all due diligence could not have known that the statement was false or misleading.

167 Criminal liability of partners, directors and other officers

(1) Where an offence under this Law committed by a limited liability partnership, a separate limited partnership, any other partnership having separate legal personality or a body corporate is proved to have been committed with the consent or connivance of –

(a) a person who is a partner 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 he or she were a director of the body corporate.

168 Appeal

(1) A person aggrieved by –

(a) a decision of the Authority to take a crisis prevention measure; or

(b) a decision under this Law of –

(i) the Authority, other than a decision referred to in sub-paragraph (a) or Article 163,

(ii) the Commission, or

(iii) any other person exercising a function or power under this Law,

may, within 28 days of the decision being made, appeal to the Court in accordance with this Article against the decision.

(2) An appeal under paragraph (1) may be made only on the ground that the decision of the Authority, the Commission or other person was unreasonable having regard to all the circumstances of the case.

(3) The right of appeal under paragraph (1)(a) shall be subject to the following –

(a) the lodging of an appeal under paragraph (1)(a) shall not automatically suspend the effects of the decision against which the appeal is made; and

(b) the decision of the Authority to take a crisis prevention measure shall be immediately enforceable and shall give rise to a rebuttable presumption that a suspension of its enforcement would be against the public interest.

(4) Where the decision against which an appeal is made is a crisis management measure, the right of appeal under paragraph (1)(b) shall be subject to the following –

(a) the lodging of an appeal shall not suspend the effects of the decision; and

(b) the only remedy available shall be limited to compensation for the loss suffered by the applicant as a result of the decision to act.

(5) On an appeal under this Article, the Court may make such interim or final order as it thinks fit.

(6) Where it is necessary to protect the interests of third parties acting in good faith who have acquired shares, assets, rights or liabilities of a bank in resolution by virtue the application of a resolution tool or the exercise of a resolution power by the Authority, the revocation of a decision of the Authority shall not affect any subsequent administrative acts or transactions concluded by the Authority which were based on the revoked decision and in that case the remedies for wrongful decision or action by the Authority shall be limited to compensation for the loss suffered by the applicant as a result of the decision to act.

169 Limitation of liability of the Commission

(1) The Commission, any member of the Commission or any person who is, or is acting as, an officer, employee or agent of the Commission or who is performing any duty or exercising any power on behalf of the Commission or under the control of the Commission shall not be 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.

(2) The limitation of liability under paragraph (1) does not apply so as to prevent an award of damages made in respect of an act on the ground that the act was unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000.

170 Rules of Court

The power to make Rules of Court under the Royal Court (Jersey) Law 1948 shall include a power to make Rules for the purposes of this Law.

171 Customary law

The rules of customary law applicable to a bank shall apply to a bank except in so far as they are inconsistent with the express provisions of this Law.

172 Regulations

The States may by Regulations –

(a) make such other provision as the States think fit for the purposes of carrying this Law into effect;

(b) amend Part 5 or 6;

(c) create offences, and specify penalties for such offences not exceeding imprisonment for 2 years and a fine; or

(d) make such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient, including provision making amendments to any other enactment as appear to the States to be expedient –

(i) for the general purposes, or any particular purpose, of this Law,

(ii) in consequence of any provision made by or under this Law, or

(iii) for giving full effect to this Law or any provision of it.

173 Orders

(1) The Minister may by Order –

(a) prescribe any matter which is to be prescribed under this Law;

(b) amend Part 1 or Article 5, 22(6), 30, 65(7) or (11) or 111;

(c) amend the Schedule 1 or Schedule 2; or

(d) prescribe resolution safeguards in addition to those provided under Articles 76 to 85.

(2) An Order made under this Law may make different provision for different cases and contain such incidental, supplemental and transitional provisions as appear to the Minister to be necessary or expedient.

(3) The Minister shall consult the Authority and the Commission before making any Orders under this Law.

174 [11]

175 [12]

176 [13]

177 [14]

178 Citation and commencement

This Law may be cited as the Bank (Recovery and Resolution) (Jersey) Law 2017 and shall come into force on such day or days as the States may by Act appoint.

SCHEDULE 1[15]

(Article 6(1))

APPOINTMENT OF MEMBERS AND PROCEDURES AT MEETINGS OF THE AUTHORITY

1 Terms of appointment of members

(1) Subject to sub-paragraphs (2) to (6), a member shall hold and vacate office in accordance with the terms of his or her appointment.

(2) A member shall be appointed by instrument in writing for a period not exceeding 5 years and upon expiry of such period shall be eligible for re-appointment for a further period not exceeding 5 years.

(3) Where a member has been appointed, or re-appointed, for a period of less than 5 years, the States may extend his or her period of appointment, if the period, as extended, does not exceed 5 years.

(4) A debate on whether to extend a period of appointment shall be held *in camera*.

(5) A member may at any time resign his or her office by giving not less than one month's notice.

(6) If the Minister is satisfied that a member –

(a) has been absent from meetings of the Authority for a period longer than 6 consecutive months without the permission of the Authority;

(b) has become bankrupt;

(c) is incapacitated by physical or mental illness; or

(d) is otherwise unable or unfit to discharge the functions of a member,

the Minister may terminate his or her appointment.

(7) If the Minister terminates the appointment of a member the Minister shall –

(a) give the person whose appointment is terminated notice, in writing, of the termination and of the reasons for it; and

(b) present a report to the States informing the States of the termination and specifying upon which of the grounds in sub-paragraph (6) the appointment has been terminated.

(8) Nothing in sub-paragraph (7) shall affect the continuance of any other appointment with the Authority held by a member.

(9) The chairman shall continue to hold appointment until –

(a) he or she resigns from that appointment by notice, in writing, delivered to the Minister; or

(b) that appointment is revoked by the Minister by an instrument in writing.

(10) The Authority may co-opt a person to attend a meeting of the Authority to give advice to the Authority on any matter relating to its functions but such person shall not have the right to vote at the meeting.

2 Disclosure of interest

(1) Where a member has any direct or indirect personal interest in the outcome of the deliberations of the Authority in relation to any matter –

(a) he or she shall disclose the nature of his or her interest at a meeting of the Authority in person or by means of a written notice brought to the attention of the Authority;

(b) the disclosure shall be recorded in the minutes of the Authority; and

(c) he or she shall withdraw from any deliberations of the Authority in relation to that matter and not vote upon it.

(2) For the purposes of this paragraph a general notice given by a member that he or she is a member or director of a particular organization and is to be regarded as interested in any matter concerning that organization is sufficient disclosure in relation to any such matter.

3 Procedure at meetings

At a meeting of the Authority –

(a) at least 2 members shall form a quorum;

(b) the Chairman or, in his or her absence, the Deputy Chairman, shall preside, but if neither is present the Authority present shall elect one of their number to preside;

(c) each member shall have one vote on each matter for deliberation;

(d) in the event of an equality in the votes the chairman of the meeting shall have a casting vote; and

(e) a member shall be treated as being present in a meeting of the Authority if, during the meeting, either by way of a telephone, live television link, or video link or otherwise, the member is able to hear all the other members in the meeting and to be heard by all the other members in the meeting.

4 Transaction of business without meeting

A resolution is a valid resolution of the Authority, even though it was not passed at a meeting of the Authority, if –

(a) notice of the proposed resolution was given to all members; and

(b) it is signed or assented to by a majority of members.

5 Minutes of meetings

The Authority shall keep accurate minutes of its proceedings including minutes of any business transacted in accordance with paragraph 4.

6 Expenses of members

The Authority shall pay to the members –

(a) such remuneration as the Authority may determine; and

(b) reasonable out of pocket or other expenses occasioned in the course of carrying out their duties.

SCHEDULE 2

PART 1

(Article 24(6))

INFORMATION TO BE SUPPLIED BY A JERSEY BANK FOR RESOLUTION PLANNING

The following information must be supplied by a Jersey bank to the Authority for resolution planning –

(a) a detailed description of the bank's organizational structure, including a list of all entities incorporated in Jersey or which are subsidiaries of entities incorporated in Jersey;

(b) identification of the direct holders of each entity referred to in paragraph (a) and the percentage of voting and non-voting rights of each entity referred to in paragraph (a);

(c) the location, jurisdiction of incorporation, licensing and key management associated with each entity referred to in paragraph (a);

(d) a mapping of the bank's critical operations and core business lines, including material asset holdings and liabilities relating to such operations and business lines, by reference to group entities in the bank's group;

(e) a detailed description of the components of the bank's and all its legal entities' liabilities, separated, at a minimum, by types and amounts of short-term and long-term debt, secured, unsecured and subordinated liabilities;

(f) details of those liabilities of the bank that are eligible liabilities;

(g) identification of the processes needed to determine to whom the bank has pledged collateral, the person that holds the collateral and the jurisdiction in which the collateral is located;

(h) a description of the off balance sheet exposures of the bank and its legal entities, including a mapping to its critical operations and core business lines;

(i) the material hedges of the bank, including a mapping to entities;

(j) identification of the major or most critical counterparties of the bank, as well as an analysis of the impact of the failure of major counterparties in the bank's financial situation;

(k) each system on which the bank conducts a material number or value amount of trades, including a mapping to the bank's entities, critical operations and core business lines;

(l) each payment, clearing or settlement system of which the bank is directly or indirectly a member, including a mapping to the bank's entities, critical operations and core business lines;

(m) a detailed inventory and description of the key management information systems, including those for risk management, accounting and financial and regulatory reporting used by the bank including a mapping to the bank's entities, critical operations and core business lines;

(n) identification of the owners of the systems identified in sub-paragraph (m), service level agreements related to the systems, and any software and systems

or licences, including a mapping to their entities, critical operations and core business lines;

(o) identification and mapping of the entities and the interconnections and interdependencies among the different entities such as –

(i) common or shared personnel, facilities and systems,

(ii) capital, funding or liquidity arrangements,

(iii) existing or contingent credit exposures,

(iv) cross guarantee agreements, cross-collateral arrangements, cross-default provisions and cross-affiliate netting arrangements,

(v) risks transfers and back-to-back trading arrangements; and

(vi) service level agreements;

(p) identification of the regulator and resolution authority applicable to each entity;

(q) the member of the management responsible for providing the information necessary to prepare the resolution plan of the bank as well as those responsible, if different, for the different entities, critical operations and core business lines;

(r) a description of the arrangements that the bank has in place to ensure that, in the event of resolution, the Authority will be provided with all the necessary information, as determined by the Authority, for applying a resolution tool and exercising a resolution power;

(s) all the agreements entered into by the banks and their legal entities with third parties the termination of which may be triggered by a decision of the Authority to apply a resolution tool and whether the consequences of termination may affect the application of the resolution tool;

(t) a description of possible liquidity sources for supporting resolution; and

(u) information on asset encumbrance, liquid assets, off-balance sheet activities, hedging strategies and booking practices.

PART 2

(Article 24(9))

CONTENTS OF A RESOLUTION PLAN

1. The Resolution plan shall contain the following –

(a) a summary of the key elements of the plan;

(b) a summary of the material changes to the bank that have occurred after the latest information under Part 1 was filed;

(c) a demonstration of how critical functions and core business lines could be legally and economically separated, to the extent necessary, from other functions so as to ensure continuity upon the failure of the bank;

(d) an estimate of the timeframe for executing each material aspect of the plan;

(e) a detailed description of the assessment of resolvability carried out in accordance with Article 25;

(f) a description of any measures required to address or remove impediments to resolvability identified as a result of the assessment of resolvability;

(g) a description of the processes for determining the value and marketability of the critical functions, core business lines and assets of the bank;

(h) a detailed description of the arrangements for ensuring that the information required from the bank for the purpose of the resolution plan and future resolution plans is up to date and at the disposal of the resolution authorities at all times;

(i) an explanation by the resolution authority as to how the resolution options could be financed without the assumption of any of the following –

(i) any extraordinary public financial support besides the use of the Fund,

(ii) emergency liquidity assistance, or

(iii) liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms;

(j) a detailed description of the different resolution strategies that could be applied according to the different possible scenarios and the applicable timescales;

(k) a description of critical interdependencies;

(l) a description of options for preserving access to payments and clearing services and other infrastructures and an assessment of the portability of client positions;

(m) an analysis of the impact of the plan on the employees of the bank, including an assessment of any associated costs, and a description of envisaged procedures to consult staff during the resolution process, taking into account national systems for dialogue with social partners where applicable;

(n) a plan for communicating with the media and the public;

(o) any minimum requirement for own funds and eligible liabilities set under Article 26 and a deadline to reach that level, where applicable;

(p) where applicable, any minimum requirement for own funds and eligible liabilities set under Article 26 and contractual bail-in instruments required by the Commission, and a deadline to reach that level, where applicable;

(q) a description of essential operations and systems for maintaining the continuous functioning of the bank's operational processes; and

(r) where applicable, any opinion expressed by the bank in relation to the resolution plan.

2. In paragraph 1 "emergency liquidity assistance" means the provision by the States of money, or any other assistance that may lead to an increase in the provision by the States of money, to a solvent bank or group of a solvent bank, that is facing temporary liquidity problems.

PART 3

(Article 25(1))

MATTERS FOR CONSIDERATION IN ASSESSING THE RESOLVABILITY OF BANK

Matters to be considered by the Authority in assessing the resolvability of a bank are as follows –

(a) the extent to which the bank is able to map core business lines and critical operations to legal persons;

(b) the extent to which legal and corporate structures are aligned with core business lines and critical operations;

(c) the extent to which there are arrangements in place to provide for essential staff, infrastructure, funding, liquidity and capital to support and maintain the core business lines and the critical operations;

(d) the extent to which the service agreements that the bank maintains are fully enforceable in the event of resolution of the bank;

(e) the extent to which the governance structure of the bank is adequate for managing and ensuring compliance with the bank's internal policies with respect to its service level agreements;

(f) the extent to which the bank has a process for transitioning the services provided under service level agreements to third parties in the event of the separation of critical functions or of core business lines;

(g) the extent to which there are contingency plans and measures in place to ensure continuity in access to payment and settlement systems;

(h) the adequacy of the management information systems in ensuring that the Authority is able to gather accurate and complete information regarding the core business lines and critical operations so as to facilitate rapid decision making;

(i) the capacity of the management information systems to provide the information essential for the effective resolution of the bank at all times even under rapidly changing conditions;

(j) the extent to which the bank has tested its management information systems under stress scenarios as defined by the Authority;

(k) the extent to which the bank can ensure the continuity of its management information systems both for the affected bank and the new bank in the case that the critical operations and core business lines are separated from the rest of the operations and business lines;

(l) the extent to which the bank has established adequate processes to ensure that it provides the Authority with the information necessary to identify depositors and the amounts covered by the bank depositors compensation scheme;

(m) where the bank's group uses intra-group guarantees, the extent to which those guarantees are provided at market conditions and to which the risk management systems concerning those guarantees are robust;

(n) where the bank's group engages in back-to-back transactions, the extent to which those transactions are performed at market conditions and to which the risk management systems concerning those transactions practices are robust;

(o) the extent to which the use of intra-group guarantees or back-to-back booking transactions increases contagion across the bank's group;

(p) the extent to which the legal structure of the group inhibits the application of a resolution tool as a result of the number of legal persons, the complexity of the group structure or the difficulty in aligning business lines to the group entities;

(q) the amount and type of eligible liabilities of the bank;

(r) where the assessment involves a mixed activity holding bank, the extent to which the resolution of its group entities that are banks could have a negative impact on the part of the bank's group that is not deposit taking business;

(s) the existence and robustness of service level agreements;

(t) whether resolution authorities in the other jurisdictions in which the bank's group operates have the power to apply a resolution tool necessary to support resolution actions by the Authority and the extent to which there is scope for cooperation between such resolution authorities and the Authority;

(u) the feasibility of applying a resolution tool in such a way which meets the resolution objectives, given the tools available and the bank's structure;

(v) the extent to which the structure of the bank's group allows the home jurisdiction's resolution authority to resolve the whole group or one or more of its group entities without causing a significant direct or indirect adverse effect on the financial system, market confidence or the economy in Jersey and with a view to maximising the value of the group as a whole including the branches and subsidiaries operating in Jersey;

(w) the arrangements and means through which resolution could be facilitated in the cases of groups that have subsidiaries established in different jurisdictions;

(x) the credibility of applying a resolution tool in such a way which meets the resolution objectives, given possible impacts on creditors, counterparties, customers and employees and possible actions that third country authorities may take;

(y) the extent to which the impact of the bank's resolution on the financial system in Jersey and on financial market's confidence can be adequately evaluated;

(z) the extent to which the resolution of the bank could have a significant direct or indirect adverse effect on the financial system, market confidence or the economy in Jersey;

(aa) the extent to which contagion to other banks or to the financial markets could be contained through the application of a resolution tool and exercise of a resolution power; and

(ab) the extent to which the resolution of the bank could have a significant effect on the operation of payment and settlement systems.

ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement	◦Projet No (where applicable)
Bank (Recovery and Resolution) (Jersey) Law 2017	L.10/2017	31 January 2022 (R&O.2/2022)	P.134/2016
Data Protection (Jersey) Law 2018	L.3/2018	with effect from 31 January 2022 (Law commenced on 25 May 2018)	P.116/2017
States of Jersey (Transfer of Responsibilities and Functions) (Chief Minister to External Relations) Order 2019	R&O.40/2019	with effect from 31 January 2022 (Order commenced on 31 May 2019)	
Bank (Recovery and Resolution – Amendment of Law) (Jersey) Regulations 2022	R&O.1/2022	31 January 2022 (R&O.2/2022)	P.105/2021
Bank (Recovery and Resolution) (Amendment – Composition of Authority) (Jersey) Order 2022	R&O.6/2022	31 January 2022 (R&O.2/2022)	
Bank (Recovery and Resolution) (Amendment – References to Ministers) (Jersey) Order 2022	R&O.64/2022	13 May 2022	
States of Jersey (Transfer of Financial Services Functions – External Relations to Chief Minister) Order 2023	R&O.28/2023	12 April 2023	
Changes to Ministerial Offices (Jersey) Amendment Order 2024	R&O.10/2024	9.30 a.m. on 27 February 2024	
Children and Civil Status (Consequential Amendments) (Jersey) Amendment Regulations 2025	R&O.5/2025	24 November 2025	P.89/2024
Civil Status (Abolition of Legitimacy Etc.) (Jersey) Law 2025	L.16/2025	24 November 2025	P.44/2025

◦Projets available at statesassembly.gov.je

Table of Endnote References

[1] *Article 1* — *editorial change, definition "resolution power", "the power" deleted, "power" inserted instead, amended by R&O.40/2019, R&O.64/2022, R&O.28/2023, R&O.10/2024*

[2] *Article 2* — *revised on 11 December 2024 by Law Revision Board item 2024/6*

[3] *Article 5(1)*	*substituted by R&O.6/2022*
[4] *Article 22(3)*	*revised on 11 December 2024 by Law Revision Board item 2024/6*
[5] *Article 72(1)*	*amended by R&O.1/2022*
[6] *Article 86(3)*	*editorial change, sub-paragraph (b) where secondly occurring renumbered as sub-paragraph (d)*
[7] *Article 101(8)*	*editorial change, "mater" deleted, "matter" inserted instead*
[8] *Article 116(3)*	*amended by R&O.5/2025, L.16/2025*
[9] *Article 133(1)*	*amended by L.3/2018*
[10] *Article 136(2)*	*editorial change, "be" inserted before "guilty"*
[11] *Article 174*	*spent, omitted*
[12] *Article 175*	*spent, omitted*
[13] *Article 176*	*spent, omitted*
[14] *Article 177*	*spent, omitted*
[15] *Schedule 1*	*editorial change in paragraph 1(10), "mater" deleted, "matter" inserted instead, amended by R&O.64/2022*