



Jersey

# **BANKING BUSINESS (DEPOSITORS COMPENSATION) (JERSEY) REGULATIONS 2009**

## **Official Consolidated Version**

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Jersey

# **BANKING BUSINESS (DEPOSITORS COMPENSATION) (JERSEY) REGULATIONS 2009**

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Jersey

## **BANKING BUSINESS (DEPOSITORS COMPENSATION) (JERSEY) REGULATIONS 2009**

**THE STATES**, in pursuance of Article 37 of the [Banking Business \(Jersey\) Law 1991](#), have made the following Regulations –

Commencement [[see endnotes](#)]

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### **PART 1**

#### **INTERPRETATION**

##### **1 Interpretation**

In these Regulations, unless the context otherwise requires –

“administrator”, in respect of a bank in default, means the person for the time being charged with the administration of the bank’s property;

“annual administration levy” has the meaning given by Regulation 25 and includes any additional levy a bank is required to pay under Regulation 25B(5) in relation to such a levy;

“Appointments Commission” means the Commission established under Article 17 of the [Employment of States of Jersey Employees \(Jersey\) Law 2005](#);

“bank” means a person registered under the [Banking Business \(Jersey\) Law 1991](#);

“bank depositors compensation scheme” or “scheme” means the scheme established by Part 3;

“bank in default” means a bank that has become bankrupt;

“bankrupt”, in respect of a bank, includes the winding up of an insolvent bank pursuant to Article 155 of the [Companies \(Jersey\) Law 1991](#);

“become bankrupt”, in respect of a bank, includes becoming bankrupt, or a state equivalent or similar to becoming bankrupt, under the law of a jurisdiction outside Jersey;

“Board” means the Jersey Bank Depositors Compensation Board established by Regulation 8;

“charity” means a corporation, association or trust, the income from the property of which is exempt from income tax by virtue of Article 115(a), (aa) or (ab) of the [Income Tax \(Jersey\) Law 1961](#);

“child”, in respect of an eligible depositor, means a person who has not attained the age of 18;

“Commission” means the Jersey Financial Services Commission established by the [Financial Services Commission \(Jersey\) Law 1998](#);

“compensation” means compensation payable under the bank depositors compensation scheme;

“compensation fund” means a fund established under Regulation 17;

“compensation levy” means a levy that a bank is liable to pay under Regulation 25A and includes any additional levy the bank is required to pay under Regulation 25B(5) in relation to such a levy;

“default-related administrative costs” has the meaning given by Regulation 17(4);

“eligible deposit”, in respect of a bank, means a deposit held by the bank in an account in Jersey in respect of an eligible depositor;

“eligible depositor” has the meaning given to that expression by Regulation 5;

“financial year” has the meaning given to that expression by Article 1 of the [Public Finances \(Jersey\) Law 2019](#);

“function” includes a power and a duty;

“recurring administrative costs” means any costs of the Board that are neither compensation nor default-related administrative costs, but does not include any repayment under Regulation 32(2) or payment under Regulation 33(3);

“relevant date”, in respect of a bank in default, means the date specified in a notice published by the Board in respect of the bank under Regulation 15(1) and any reference to a situation as at a relevant date is a reference to the situation at the start of the day that falls on that date;

“valid application” has the meaning given to that expression by Regulation 2;

“working day” means any day other than a Saturday, a Sunday, Christmas Day or Good Friday or a day that is a bank holiday or a public holiday under the [Public Holidays and Bank Holidays \(Jersey\) Law 1951](#).<sup>1</sup>

## 2 “Valid application” defined

For the purposes of these Regulations, an application for compensation made to the Board is a valid application if it –

- (a) specifies the name and address of the applicant;
- (b) provides sufficient evidence to show that the applicant is an eligible depositor;
- (c) provides sufficient evidence to identify the eligible depositor’s eligible deposit and the amount of that deposit;
- (d) contains sufficient proof that the applicant has made a claim in respect of the applicant’s eligible deposit to the administrator of the bank in default;

- (e) contains details of any payments mentioned in Regulation 24(1) that the applicant has received;
- (f) specifies the manner in which any compensation payable by the Board to the applicant is to be paid; and
- (g) contains or provides any other information or matter necessary to allow the Board to verify the applicant's claim for compensation and to pay the compensation to the applicant.

### **3 Determination of money standing to the credit of an eligible deposit**

- (1) For the purposes of these Regulations, if a bank becomes bankrupt any calculation of the amount of money standing to the credit of an eligible deposit shall be made as at the relevant date in respect of the bank in default.
- (2) Accordingly, any money standing to the credit of an eligible deposit that is not in the currency of Jersey shall be calculated on the basis of the opening middle market exchange rate as determined by the Board on the relevant date in respect of the bank in default.
- (3) Compensation paid by the Board shall be paid in the currency of Jersey.

### **4 Provisions in respect of joint accounts**

- (1) In this Regulation "joint account" means an account –
  - (a) that is in the names of 2 or more persons; or
  - (b) over which 2 or more persons have rights,that may be operated against the signature of one or more of those persons.
- (2) A deposit held in a joint account with a bank is an eligible deposit to the same extent as an eligible depositor has an interest in the account.
- (3) If an eligible deposit is held in a joint account with a bank, the amount in the account is to be divided –
  - (a) according to the holders' shares in the account; but
  - (b) if there is no indication of the share of each holder, equally between them.

### **5 "Eligible depositor" defined and "eligible deposit" clarified**

- (1) For the purposes of these Regulations, a depositor with a deposit in a bank account in Jersey is an "eligible depositor" if the depositor –
  - (a) is a natural person and the deposit is for the person's own benefit other than as a partner in a partnership;
  - (b) is a natural person and the deposit is for the benefit of a child of the person or for the benefit of a child for whom the person has parental responsibility;
  - (c) is the administrator or executor of the estate of a deceased person and the deposit represents the whole or part of the proceeds of the estate of the person;
  - (d) is a charity; or

- (e) is the Jersey registered company called Community Savings & Credit Ltd.
- (2) If, by virtue of paragraph (1), a person is an eligible depositor in more than one capacity, the depositor shall be taken to be a separate eligible depositor in each such capacity for the purpose of Regulation 22.
- (3) Accordingly, if a person is an eligible depositor in respect of more than one child or estate, the depositor shall be taken to be a separate eligible depositor in respect of each such child or estate for the purpose of Regulation 22.
- (4) Despite the date of maturity of a deposit with a bank in default, an eligible deposit with the bank shall not include any interest on the deposit in respect of any period after the relevant date in respect of the bank.
- (5) In this Regulation “a deposit in a bank account in Jersey” does not include a deposit that is being held by a bank that is registered to carry on banking business in Jersey for business recovery reasons.

## **6 Banking groups**

- (1) The Minister may, for the purpose of calculating the annual administration levy, the compensation levy and the compensation to be paid in respect of associated banks, group banks.<sup>2</sup>
- (2) The Minister may do so by notice published in a manner that, in the opinion of the Minister, is likely to bring the notice to the attention of those affected by it.
- (3) The banks included in each group of banks are to be taken to be one bank for the purposes of calculating the annual administration levy, the compensation levy and the compensation to be paid in respect of those banks under these Regulations.<sup>3</sup>
- (4) However, if a bank in a group becomes bankrupt, the compensation levy shall still be imposed on the group but the eligible deposits of the group shall be calculated without reference to the eligible deposits of the bank in default.<sup>4</sup>

## **7 Calculation of periods**

- (1) A period of 5 years mentioned in these Regulations starts on a relevant date in respect of a bank in default.
- (2) The liability of a bank to pay a compensation levy in respect of a bank in default arises on the relevant date in respect of the bank in default.<sup>5</sup>

# **PART 2**

## **THE JERSEY BANK DEPOSITORS COMPENSATION BOARD**

## **8 Jersey Bank Depositors Compensation Board**

- (1) There is established a Board, called the Jersey Bank Depositors Compensation Board.<sup>6</sup>
- (2) The Board is an incorporated body that may, in its own name –
  - (a) sue and be sued;

- (b) enter into contracts; and
  - (c) acquire, hold and dispose of property of any type.
- (3) The Board may, in so far as it is possible for an incorporated body to do so –
  - (a) exercise the rights, powers and privileges; and
  - (b) incur the liabilities and obligations,  
of a natural person of full age and capacity.

## **8A Functions of the Board<sup>7</sup>**

- (1) The functions of the Board are –
  - (a) generally to administer the bank depositors compensation scheme, including in particular –
    - (i) establishing and maintaining arrangements in readiness for the possibility of a default, and
    - (ii) administering compensation for any default; and
  - (b) to arrange for the publication of information for the public on the operation of the scheme.
- (2) In the exercise of its functions the Board must ensure that –
  - (a) the Board and the scheme are administered in a prudent and economical manner; and
  - (b) the resources of the Board are used efficiently and effectively.
- (3) The Board may do anything reasonably necessary or expedient for or incidental to any of its functions, and may in particular, in the exercise of those functions –
  - (a) borrow money, whether for a compensation fund or for any of its other functions;
  - (b) invest money, whether standing to the credit of a compensation fund or otherwise;
  - (c) insure against its liabilities, whether in connection with the administration of a compensation fund or with any of its other functions;
  - (d) insure against such liabilities of its members, or indemnify its members in respect of those liabilities;
  - (e) appoint an employee, agent or contractor to assist it in exercising any of its functions.
- (4) The functions of the Board must be carried out by the Minister, and not by the Board, until such time as the Minister may determine by notice in writing to the Board that it should assume its functions.
- (5) The Minister may determine different times in relation to the assumption of different functions, and in particular may determine a time for the Board to assume the power to raise an annual administration levy even if that time is before any time determined in respect of any or all other functions.
- (6) Despite paragraphs (4) and (5), no annual administration levy may be raised –

- (a) by the Minister; or
  - (b) by the Board in respect of any recurring administrative costs incurred by the Minister in carrying out under paragraph (4) any function of the Board.
- (7) The references in paragraphs (5) and (6) to raising an annual administration levy are to sending a notice under Regulation 25B(2)(b) in respect of such a levy.

## 9 Independence of Board

- (1) The Board is independent of the Minister and of the States.
- (2) Accordingly, neither a Minister nor the States are liable for –
- (a) an act or an omission of the Board; or
  - (b) a debt or other obligation of the Board.

## 10 Constitution of the Board

- (1) The Board must have at least 3 members.
- (2) The members of the Board shall be appointed by the Minister after consulting with the Appointments Commission.<sup>8</sup>
- (2A) Article 2 of the [States of Jersey \(Appointment Procedures\) \(Jersey\) Law 2018](#) shall apply to the appointment of members of the Board.<sup>9</sup>
- (3) A person shall not be eligible for appointment as a member of the Board if the person is –
- (a) a member of the States;
  - (b) subject to a disqualification order under Article 78 of the [Companies \(Jersey\) Law 1991](#) or Article 24(7) of the [Bankruptcy \(Désastre\) \(Jersey\) Law 1990](#); or
  - (c) bankrupt.
- (4) The appointment of a person as a member of the Board ceases if the person becomes a person who may not be appointed to be a member of the Board.
- (5) The rights and obligations of the Board, and the performance of its functions, shall not be affected by –
- (a) any vacancy in its membership; or
  - (b) any defect in the appointment of a member.
- (6) <sup>10</sup>
- (7) <sup>11</sup>

## 11 Terms and conditions of appointment of members of the Board

- (1) A person appointed to be a member of the Board –
- (a) holds the appointment on terms and conditions agreed between the person and the Minister; and
  - (b) may be reappointed.

- (2) The terms and conditions must include terms and conditions in respect of –
  - (a) the term of the appointment of the member, being a term not exceeding 5 years;
  - (b) the manner in which the member may resign during that term;
  - (c) the grounds upon which the appointment of the member may be terminated during that term;
  - (d) the remuneration (if any) of the member,and may contain such other terms and conditions as the Minister may consider appropriate or necessary.
- (3) The grounds mentioned in paragraph (2)(c) must include –
  - (a) the member being mentally or physically incapable of carrying out his or her functions as a member; and
  - (b) the member being convicted of an offence that carries a penalty of imprisonment for a term of 2 years or longer.

## **12 Procedures of the Board**

- (1) The quorum for a meeting of the Board is half the number of members appointed to be members of the Board at the time of the meeting.
- (2) The Board must keep a record of its decisions.
- (3) The Minister may determine the procedures of the Board.
- (4) The Minister must present to the States a copy of any determination made under paragraph (3).
- (5) Except as otherwise provided by this Regulation or the Minister, the Board may determine its own procedures.
- (6) <sup>12</sup>

## **13 Limitation of liability**

- (1) This Regulation applies to –
  - (a) the States;
  - (b) a Minister;
  - (c) the Board;
  - (d) a member of the Board;
  - (e) a person appointed under Regulation 8A(3)(e); and
  - (f) a person who is carrying out a function of the Board.<sup>13</sup>
- (2) A body or person to whom this Regulation applies shall not be liable in damages for anything done or omitted to be done in the discharge or purported discharge of a function under these Regulations.
- (3) Paragraph (2) does not apply if it is shown that the act or omission was in bad faith.

- (4) Nor does it apply in the case of a body acting as a public authority for the purposes of the Article 7 of the [Human Rights \(Jersey\) Law 2000](#), so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of Article 7(1) of the [Human Rights \(Jersey\) Law 2000](#).

## **14 Accounts and report**

- (1) This Regulation applies if during a financial year the Board receives, holds or expends money.
- (2) The Board must keep accounts prepared in accordance with generally accepted accounting principles that show a true and fair view –
- (a) of the profit or loss of the Board for the financial year; and
  - (b) of the state of the Board's affairs at the end of the financial year.
- (2A) The Board's accounts must deal with each compensation fund separately –
- (a) from any other compensation fund in respect of another bank in default; and
  - (b) from any other money received, held or expended by the Board.<sup>14</sup>
- (3) The Board must, within 3 months after the end of the financial year, have its accounts audited by an auditor qualified for appointment as an auditor of a company by virtue of Article 113 of the [Companies \(Jersey\) Law 1991](#).
- (4) The Board must, within 3 months after its accounts have been audited, provide the Minister with –
- (a) its audited accounts; and
  - (b) a report.
- (5) The report must contain –
- (a) details of the Board's activities during the financial year; and
  - (b) such other information as the Minister may direct the Board to provide.
- (6) The Minister must lay the accounts and report before the States as soon as practicable after receiving them.
- (7) The Board must keep records that permit its financial position to be ascertained with reasonable accuracy at any time.
- (8) The Comptroller and Auditor General may audit the accounts of the Board.
- (9) When requested to do so by the Comptroller and Auditor General the Board must make its records and accounts available to the Comptroller and Auditor General.
- (10) <sup>15</sup>

## PART 3

### THE BANK DEPOSITORS COMPENSATION SCHEME

#### *Obligations of the Board*

#### **15 Board to publish “relevant date” in respect of bank in default**

- (1) The Board must, as soon as practicable after a bank becomes bankrupt –
  - (a) publish a notice, in a manner that is likely to bring it to the attention of those affected by it, specifying the date on which, in the Board’s opinion, the bank became a bank in default in Jersey; and
  - (b) inform the Minister of the date specified in the notice and the name of the bank in default.
- (2) The date specified in the notice is the relevant date in respect of the bank in default.
- (3) The Minister must inform the States as soon as practicable of the name of the bank in default and the relevant date in respect of the bank.

#### **16 Board must take preliminary steps in respect of default<sup>16</sup>**

- (1) This Regulation applies when the Board has published a notice under Regulation 15 in respect of a bank in default.
- (2) The Board must, within 15 working days after the publication of the relevant date in respect of the bank in default send to each bank, other than the bank in default, a notice requiring the bank, within 15 working days of the receipt of the notice, to provide to the Board –
  - (a) a statement of the total amount (if any) the bank calculates that it held on the relevant date by way of eligible deposits; and
  - (b) any evidence required by the Board in support of the statement.
- (3) Within the same time, the Board must send to the administrator of the bank in default a notice requiring the administrator, as soon as practicable but in any event within 15 working days of the receipt of the notice, to provide to the Board sufficient information in respect of the bank in default to enable the Board to calculate the likely compensation levy to be imposed on banks, the information to be provided in such form and verified in such manner as the Board may specify.<sup>17</sup>
- (4) The Board may at any time send to the administrator of the bank in default further notices requiring the administrator, as soon as practicable but in any event within 15 working days of the receipt of each notice, to provide to the Board such further information or documents in respect of the bank in default as are required by the Board to enable it to carry out its functions under these Regulations, the information to be provided in such form and verified in such manner as the Board may specify.
- (5) The Board may, on the application of the bank or the administrator to whom it was sent, extend the period specified in a notice sent under this Regulation as the period for compliance with the notice.

- (6) The Board must, as soon as reasonably possible, also make or activate such further arrangements as it considers expedient to administer the bank depositors compensation scheme in respect of the bank in default.<sup>18</sup>
- (7) Those arrangements must, in particular, be designed to ensure –
  - (a) that applications for compensation are submitted to the Board as soon as practicable;
  - (b) that applicants for compensation are given clear instructions on how they may make valid applications for compensation; and
  - (c) that each claim for compensation is properly verified.

## **17 Board must establish a compensation fund<sup>19</sup>**

- (1) The Board must establish and maintain a separate compensation fund in respect of each bank in default.<sup>20</sup>
- (2) The Board must pay into the fund money received by the Board in respect of the default, whether by way of loan, compensation levy, shortfall payment under Regulation 30(6), subrogation under Regulation 33 or otherwise.<sup>21</sup>
- (3) The Board may, in accordance with these Regulations, pay out of the fund –
  - (a) compensation payable in respect of the default;
  - (b) the Board's default-related administrative costs in respect of that default;
  - (c) any repayment under Regulation 32(2), or payment under Regulation 33(3), in respect of that default.<sup>22</sup>
- (4) In these Regulations "default-related administrative cost" means any money paid out by the Board, other than as compensation, if the payment is, in the opinion of the Board, attributable to the operation of the scheme in relation to a particular bank in default, including –
  - (a) repayments of borrowings paid into the compensation fund, and associated interest and costs;
  - (b) repayment of any excess under Regulation 32 in respect of the bank in default;
  - (c) costs of and related to insurance against the Board's liabilities in respect of the compensation fund or the bank in default;
  - (d) any expenses of the members of the Board that would not have been incurred but for the default; and
  - (e) any increase, attributable to a default, in the amount of a payment that would have been made at a lower rate but for the default.<sup>23</sup>
- (5) For the purpose of paragraph (4) but without prejudice to its generality, the following are not to be treated as attributable to the operation of the scheme in relation to a particular bank in default (and accordingly are recurring administrative costs) –
  - (a) the remuneration of members of the Board, and any of their expenses not falling within paragraph (4)(d); and
  - (b) the costs of insuring those members against risks that do not vary according to whether a bank is or has been in default.<sup>24</sup>

**18 Board must make interim payment of compensation**

- (1) This Regulation applies where –
  - (a) the Board receives a valid application for compensation; and
  - (b) the application includes a request for an interim payment of compensation.
- (2) The Board must, within 7 working days of receiving the application, pay to the applicant, by way of compensation the lesser of –
  - (a) £5000; or
  - (b) an amount equal to the eligible deposit of the applicant on the relevant date.
- (3) Paragraph (2) is subject to Regulations 20, 31 and 33.

**19 Board must pay compensation**

- (1) This Regulation applies where the Board receives a valid application for compensation.
- (2) The Board must, within 3 months of receiving the application pay to the applicant the compensation due to the applicant under the bank depositors compensation scheme.
- (3) The Minister may –
  - (a) extend the period mentioned in Regulation 18(2) or paragraph (2) of this Regulation; or
  - (b) permit compensation to be paid by instalments over a specified period, if the Minister is satisfied that it is necessary to do so for the better administration of the scheme.
- (4) The Minister may do so by notice published in a manner that, in the opinion of the Minister, is likely to bring the notice to the attention of those affected by it.
- (5) Paragraph (2) is subject to Regulations 20, 31 and 33.

**20 Eligible deposit liable to confiscation**

- (1) The Board may delay payment of compensation under Regulation 18 or 19 in respect of an eligible deposit if it is satisfied that the whole or any part of the deposit is or may become liable to confiscation by virtue of any enactment, whether of Jersey or elsewhere, that relates –
  - (a) to money laundering;
  - (b) to the proceeds of crime; or
  - (c) to terrorism.
- (2) Compensation is not payable in respect of an eligible deposit that is confiscated or that is liable to confiscation by virtue of an enactment mentioned in paragraph (1).

**21 Board to comply with time limit on applications for compensation**

- (1) The Board must not accept an application for compensation in respect of a bank in default unless the application is made during the period of 6 months after the relevant date in respect of the bank in default.
- (2) Despite paragraph (1), the Board may, in a particular case, accept an application made after the end of the period mentioned in paragraph (1) if it is satisfied that the applicant was prevented by events outside the applicant's control from applying during that period.

*Amount of compensation***22 Amount of compensation**

- (1) The maximum amount of compensation that the Board may pay to an eligible depositor in respect of a bank in default is the lesser of –
  - (a) £50,000; or
  - (b) an amount equal to the total amount of all eligible deposits that the eligible depositor had with the bank in default on the relevant date in respect of that bank.
- (2) Paragraph (1) shall not apply in respect of the Jersey registered company called Community Savings & Credit Ltd.
- (3) The Board shall, instead, pay the company a maximum amount equal to the total of the amount each natural person has in an account with the company except that if any natural person has more than £50,000 in an account with the company the Board shall pay the company a maximum amount of £50,000 in respect of each such person.

**23 Entitlement under another depositors compensation scheme**

- (1) This Regulation applies if an eligible depositor in respect of a bank in default is entitled to receive compensation under a bank depositors compensation scheme (howsoever called) operating in some other jurisdiction.
- (2) The eligible depositor is not entitled to receive compensation under these Regulations except to any extent that the Board agrees with the person or body administering the bank depositors compensation scheme in the other jurisdiction.
- (3) Despite paragraph (2), in the absence of agreement under that paragraph, the Board may pay compensation to the eligible depositor.
- (4) However –
  - (a) the amount of compensation that the Board may pay under paragraph (3); and
  - (b) any compensation the eligible depositor receives under the bank depositors compensation scheme operating in the other jurisdiction,must not exceed the maximum amount specified in Regulation 22.

**24 Reduction in amount of compensation**

- (1) The maximum amount of compensation that the Board may pay to an eligible depositor in respect of a bank in default is reduced by an amount equal to any payments that the depositor has received in respect of the eligible deposit.
- (2) Those payments include any amount that the eligible depositor has received –
  - (a) from a bank depositors compensation scheme (howsoever called) operating in some other jurisdiction;
  - (b) from an insurance policy taken out by the depositor or taken out on his or her behalf; or
  - (c) from the administrator of the bank in default.
- (3) A person –
  - (a) who is paid compensation by the Board; and
  - (b) who subsequently receives a payment mentioned in paragraph (1),must, within 30 working days of receiving the payment, pay to the Board an amount equal to the payment received.

*Levies on banks<sup>25</sup>***25 Annual administration levy<sup>26</sup>**

- (1) An annual administration levy is a levy raised by the Board to enable it to meet its recurring administrative costs in a particular registration year.
- (2) The provisions of these Regulations on annual administration levies accordingly apply to any registration year irrespective of whether any bank becomes bankrupt in that year.
- (3) Before the end of each registration year the Board may, after reviewing whether it might need to raise an annual administration levy to meet its likely recurring administrative costs for that year, decide an amount to be raised as an annual administration levy for that year.
- (4) A bank is liable to pay to the Board an annual administration levy in respect of a year if –
  - (a) that year is a registration year for which the Board decides to raise a levy under paragraph (3); and
  - (b) the bank is registered during any part of that year, irrespective of whether it is not registered during any other part of that year.
- (5) The Minister may, by notice to the Board, direct the Board not to raise more than a specified amount of annual administration levy for a specified registration year.
- (6) An amount specified under paragraph (5) applies to registration years subsequent to the specified year, unless the Minister withdraws or amends the notice.
- (7) For the purpose of this Regulation –

“registered” means registered as described in the definition “bank” in Regulation 1;

“registration year” means –

- (a) the period (whether of one year or shorter) starting at the first time determined by the Minister under Regulation 8A(4) and ending on the next day on which registrations under the [Banking Business \(Jersey\) Law 1991](#) expire by virtue of Article 9(2) of that Law; and
- (b) each subsequent period of 12 months ending on each day on which such registrations so expire.

## **25A Compensation levy<sup>27</sup>**

- (1) This Regulation applies if a bank becomes bankrupt.
- (2) A bank that is not in default is liable to pay a compensation levy, in respect of the bank that is in default, if –
  - (a) the Board publishes under Regulation 15 a notice specifying the relevant date in respect of the bank in default; and
  - (b) the bank that is not in default held eligible deposits on that relevant date.
- (3) This Regulation is without prejudice to Regulation 7(2).

## **25B Notice of levies<sup>28</sup>**

- (1) This Regulation applies to both annual administration levies and compensation levies, except as expressly otherwise provided.
- (2) The Board –
  - (a) must calculate the levy to be paid by each bank liable to pay a levy; and
  - (b) must, as soon as practicable and no later than the date specified in paragraph (3), send a written notice to each such bank, requiring it to pay the levy.
- (3) The date referred to in paragraph (2)(b) is –
  - (a) in the case of an annual administration levy, one month after the Board decides to raise the levy, or the end of the registration year (as defined in Regulation 25) for that levy, whichever is sooner; or
  - (b) in the case of a compensation levy, 6 months after the relevant date in respect of the bank in default.
- (4) The notice must specify –
  - (a) the levy the bank is required to pay;
  - (b) how the levy has been calculated; and
  - (c) the date or dates on which the levy or any instalment of the levy becomes payable.
- (5) If, at any time, the Board is satisfied that it has become necessary to do so, it may, by written notice sent to each bank required to pay the levy, require each such bank to pay an additional levy.
- (6) The notice must specify –
  - (a) the additional levy the bank is required to pay;

- (b) how the additional levy has been calculated; and
  - (c) the date or dates on which the additional levy or any instalment of the levy becomes payable.
- (7) A bank to which a notice has been sent under this Regulation must pay the levy or any instalment of the levy within 15 working days of the date specified in the notice as the date when the amount of the levy or any instalment of the amount becomes payable.
- (8) A levy that has become payable is a debt due to the Board and therefore can be sued for accordingly.

## **25C Amount of annual administration levy<sup>29</sup>**

- (1) To calculate the amount of annual administration levy to be paid by each bank liable to pay such a levy in a registration year, the Board must divide the amount decided under Regulation 25(3) by the number of banks so liable.
- (2) If the Board has accepted a payment from a bank towards the Board's recurring administrative costs, other than as an annual administration levy, the Board must –
- (a) disregard the contribution in deciding the amount under Regulation 25(3), and give credit for the contribution against the amount calculated under paragraph (1) in respect of that bank; or
  - (b) adjust the amounts calculated under paragraph (1) in respect of different banks in such other manner as the Board considers to be equitable in all the circumstances.

## **26 Total amount of compensation levies<sup>30</sup>**

Subject to the limitations set out in Regulations 28 and 29, the total amount of the compensation levies to be paid by the banks liable to pay such a levy in respect of a bank in default must be sufficient to raise such amount as the Board estimates will be necessary to meet –

- (a) the payment by it of compensation in respect of the bank in default; and
- (b) the Board's default-related administrative costs in that respect.<sup>31</sup>

## **27 Amount of compensation levy to be paid by each bank<sup>32</sup>**

Subject to the limitations set out in Regulations 28 and 29, the Board must require each bank liable to pay a compensation levy in respect of a bank in default to pay by way of compensation levy  $\frac{A}{B}$  of the amount required for the purposes mentioned in Regulation 26 where –

- $A$  = the total amount held by the bank by way of eligible deposits on the relevant date in respect of the bank in default; and
- $B$  = the total amount held on that relevant date by way of such deposits by all the banks liable to pay a compensation levy.<sup>33</sup>

**28 Limitation on amount the Board may expend in relation to a default<sup>34</sup>**

- (1) The maximum amount that the Board may expend –
  - (a) by way of compensation; and
  - (b) to meet its default-related administrative costs,in respect of one or more banks in default during a period of 5 years is £100 million.<sup>35</sup>
- (2) The Board may not pay compensation in respect of a bank in default more than 5 years after the relevant date in respect of the bank in default.

**29 Limitation on liability of banks to pay compensation levy<sup>36</sup>**

- (1) Subject to the limit set out in paragraph (2), the maximum amount the Board may require a bank to pay by way of compensation levy in respect of a bank in default is an amount equal to 0.3% of the eligible deposits held by the bank on the relevant date in respect of the bank in default.<sup>37</sup>
- (2) The maximum amount for which a bank may be liable by way of compensation levy in respect of one or more banks in default in respect of a period of 5 years is –
  - (a) if the amount calculated under paragraph (1) is or would exceed £10 million, £10 million; and
  - (b) in any other case, £5 million.<sup>38</sup>
- (3) The maximum amount for which a bank may be liable by way of compensation levy in respect of one or more banks in default is –
  - (a) in the case of a bank to which paragraph (2)(a) applies, £2 million in respect of any period of 12 months; and
  - (b) in any other case, £1 million in respect of any period of 12 months.<sup>39</sup>
- (4) The Board may not require a bank to pay a compensation levy in respect of a bank in default more than 5 years after the relevant date in respect of the bank in default.<sup>40</sup>
- (5) Nothing in paragraph (4) shall be taken as prohibiting the enforcement after the 5 year period of a requirement to pay a compensation levy falling due before the end of that period.<sup>41</sup>

**30 Payment of shortfall**

- (1) This Regulation applies if, on a relevant date in respect of a bank in default, the total amount that the banks liable to pay a compensation levy are liable to pay by way of compensation levy is less than the maximum amount the Board may expend under Regulation 28 in respect of the bank in default.<sup>42</sup>
- (2) There shall be due to the Board –
  - (a) by way of payment from the consolidated fund; or
  - (b) by way of set off against any loan to the Board by the States,the amount calculated under paragraph (3).
- (3) That amount is the difference between –

- (a) the total amount the banks liable to pay a compensation levy are liable to pay by way of compensation levy in respect of the bank in default; and
  - (b) the maximum amount of compensation and default-related administrative costs the Board may expend in respect of the bank in default.<sup>43</sup>
- (4) The Board –
  - (a) must, at the same time as it sends to banks notices under Regulation 25B(2)(b) in respect of a bank in default, send a notice to the Minister for Treasury and Resources stating how much is due to the Board by way of shortfall under this Regulation as calculated by the Board; and
  - (b) may subsequently send a further notice to the Minister for Treasury and Resources stating further amounts that are due to the Board by way of any such shortfall.<sup>44</sup>
- (5) A notice under paragraph (4) must specify –
  - (a) the amount due; and
  - (b) how the amount has been calculated.
- (6) The amount mentioned in paragraph (2)(a) must be withdrawn from the consolidated fund and paid to the Board within 30 working days of the receipt of the notice by the Minister.

### **31 Insufficient funds to pay compensation**

- (1) This Regulation applies if a bank is in default and –
  - (a) by virtue of Regulation 28, the amount the Board may expend; or
  - (b) by virtue of Regulation 29, the amount available to the Board,in respect of the bank is insufficient to pay the full amount of the compensation payable in respect of the bank in default and the Board's default-related administrative costs in that respect.<sup>45</sup>
- (2) The Regulation also applies if any bank liable to pay a compensation levy defaults in the payment of the levy for any reason.<sup>46</sup>
- (3) The amount of compensation to be paid by the Board in respect of each eligible depositor of the bank in default shall be reduced –
  - (a) by a rateable amount; or
  - (b) in such other manner as the Board considers to be equitable in all the circumstances.
- (4) For the purpose of paragraph (3)(a), any deduction under Regulation 24 shall be disregarded when calculating the reduction to be made under that paragraph.

### **32 Repayment of overpaid compensation levy<sup>47</sup>**

- (1) This Regulation applies if, during or after a period of 5 years in relation to a default, the Board has in the compensation fund for that default more money than it requires to pay compensation and to meet its default-related administrative costs in relation to that default.

- (2) The Board must apply the excess firstly to repay any shortfall paid to the Board out of the consolidated fund under Regulation 30 in respect of the default and secondly to pay any remaining amount to the banks that paid a compensation levy to the Board in that respect in proportion to the amount of levy paid by each bank.

### *Subrogation*

## **33 Subrogation**

- (1) This Regulation applies if the Board is satisfied that a person has made a valid application for compensation.
- (2) Despite Regulations 18 and 19, the Board must not pay the compensation claimed, under either of those Regulations, until the eligible depositor has agreed in writing that –
  - (a) the depositor's rights in respect of the depositor's eligible deposit with the bank in default are vested in the Board;
  - (b) the depositor will provide any assistance the Board may require to enable it to exercise those rights; and
  - (c) the depositor will pay to the Board any amount the depositor receives in respect of those rights, after deducting from that amount any amount the Board would have been required to pay to the depositor under paragraph (3).
- (3) The Board must, as soon as practicable, pay to the depositor any amount that the Board receives in respect of the depositor's eligible deposit that exceeds an amount equal to the amount of compensation paid or payable by the Board to the depositor in respect of the depositor's eligible deposit.
- (4) The Board must pay any amount paid to it under paragraph (2)(a) or (c) into the compensation fund in respect of the bank in default to which the compensation relates.<sup>48</sup>

## **34 Board to be treated as creditor**

- (1) This Regulation applies if any depositor's rights in respect of a depositor's eligible deposit with a bank in default have been vested in the Board.
- (2) The Board –
  - (a) may participate in the nomination of a person to sit upon any creditors' committee or committee of inspection of the bank in default;
  - (b) may require that it be sent any notice addressed to creditors of the bank; and
  - (c) may nominate a person to attend and vote at a creditors' meeting.
- (3) For the purpose of paragraph (2), the Board is to be taken to be a creditor of the bank in default –
  - (a) with the priority of a depositor with the bank; and
  - (b) to the total value of any depositors' rights that have been vested in the Board.

*Appeals***35 Appeals**

- (1) A person who is dissatisfied with a decision of the Board –
  - (a) that the person is not entitled to compensation;
  - (b) in respect of the amount of the compensation to which the person is entitled; or
  - (c) not to extend, under Regulation 21(2), the period during which the person may make an application for compensation,may appeal to the Royal Court against the decision on the ground that, on the facts available to the Board, its decision was unreasonable.
- (2) A bank that is dissatisfied by a decision of the Board requiring the bank to pay an annual administration levy or a compensation levy may appeal to the Royal Court against the decision on the grounds that –
  - (a) the bank is not liable to pay a levy;
  - (b) the Board has miscalculated the amount of the levy or any instalment of the levy that the bank is required to pay; or
  - (c) the Board has miscalculated the date on which the levy or any instalment of the levy becomes payable.<sup>49</sup>
- (3) Unless the Royal Court otherwise directs, an appeal by a bank under paragraph (2) does not suspend the operation of a notice sent to the bank under Regulation 25B.<sup>50</sup>
- (4) The Minister for Treasury and Resources may appeal to the Royal Court against a decision of the Board requiring the payment of a shortfall under Regulation 30 on the grounds that –
  - (a) the shortfall is not payable;
  - (b) the Board has miscalculated the amount of the shortfall; or
  - (c) the Board has miscalculated the date on which the shortfall is payable.
- (5) Unless the Royal Court otherwise directs, an appeal by the Minister for Treasury and Resources under paragraph (4) does not suspend the operation of a notice sent to the Minister under Regulation 30(4).
- (6) On an appeal under this Article, the Royal Court may make any order it considers appropriate.
- (7) A reference in this Regulation to miscalculation includes miscalculation by virtue of a decision, that is unreasonable having regard to all the circumstances of the case, to treat any costs as recurring administrative costs or as default-related administrative costs.<sup>51</sup>

## **PART 4**

### **FINAL PROVISION**

#### **36 Citation**

These Regulations may be cited as the Banking Business (Depositors Compensation) (Jersey) Regulations 2009.

## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement	°Projet No (where applicable)
Banking Business (Depositors Compensation) (Jersey) Regulations 2009	<a href="#">R&amp;O.114/2009</a>	6 November 2009	<a href="#">P.86/2009</a>
Banking Business (Depositors Compensation) (Amendment and Miscellaneous Provision) (Jersey) Regulations 2012	<a href="#">R&amp;O.109/2012</a>	2 October 2012	<a href="#">P.78/2012</a>
States of Jersey (Appointment Procedures) (Jersey) Law 2018	<a href="#">L.13/2018</a>	11 May 218	<a href="#">P.97/2017</a> (re-issue)
Public Finances (Jersey) Law 2019	<a href="#">L.10/2019</a>	23 July 2019 ( <a href="#">R&amp;O.67/2019</a> )	<a href="#">P.28/2019</a>

°Projets available at [www.statesassembly.gov.je](http://www.statesassembly.gov.je)

### Table of Renumbered Provisions

Original	Current
37	Spent, omitted

### Table of Endnote References

<sup>1</sup> Regulation 1	amended by R&O.109/2012, L.10/2019
<sup>2</sup> Regulation 6(1)	amended by R&O.109/2012
<sup>3</sup> Regulation 6(3)	amended by R&O.109/2012
<sup>4</sup> Regulation 6(4)	amended by R&O.109/2012
<sup>5</sup> Regulation 7(2)	amended by R&O.109/2012
<sup>6</sup> Regulation 8(1)	amended by R&O.109/2012
<sup>7</sup> Regulation 8A	inserted by R&O.109/2012
<sup>8</sup> Regulation 10(2)	amended by L.13/2018
<sup>9</sup> Regulation 3(2A)	inserted by L.13/2018
<sup>10</sup> Regulation 10(6)	deleted by R&O.109/2012
<sup>11</sup> Regulation 10(7)	deleted by R&O.109/2012
<sup>12</sup> Regulation 12(6)	deleted by R&O.109/2012
<sup>13</sup> Regulation 13(1)	amended by R&O.109/2012
<sup>14</sup> Regulation 14(2A)	inserted by R&O.109/2012
<sup>15</sup> Regulation 14(10)	deleted by L.10/2019
<sup>16</sup> Regulation 16	heading amended by R&O.109/2012
<sup>17</sup> Regulation 16(3)	amended by R&O.109/2012
<sup>18</sup> Regulation 16(6)	amended by R&O.109/2012
<sup>19</sup> Regulation 17	heading amended by R&O.109/2012
<sup>20</sup> Regulation 17(1)	amended by R&O.109/2012
<sup>21</sup> Regulation 17(2)	amended by R&O.109/2012
<sup>22</sup> Regulation 17(3)	amended by R&O.109/2012

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- <sup>23</sup> Regulation 17(4) substituted by R&O.109/2012  
<sup>24</sup> Regulation 17(5) inserted by R&O.109/2012  
<sup>25</sup> Cross-heading substituted by R&O.109/2012  
<sup>26</sup> Regulation 25 substituted by R&O.109/2012  
<sup>27</sup> Regulation 25A inserted by R&O.109/2012  
<sup>28</sup> Regulation 25B inserted by R&O.109/2012  
<sup>29</sup> Regulation 25C inserted by R&O.109/2012  
<sup>30</sup> Regulation 26 heading amended by R&O.109/2012  
<sup>31</sup> Regulation 26 amended by R&O.109/2012  
<sup>32</sup> Regulation 27 heading amended by R&O.109/2012  
<sup>33</sup> Regulation 27 amended by R&O.109/2012  
<sup>34</sup> Regulation 28 heading amended by R&O.109/2012  
<sup>35</sup> Regulation 28(1) amended by R&O.109/2012  
<sup>36</sup> Regulation 29 heading amended by R&O.109/2012  
<sup>37</sup> Regulation 29(1) amended by R&O.109/2012  
<sup>38</sup> Regulation 29(2) amended by R&O.109/2012  
<sup>39</sup> Regulation 29(3) amended by R&O.109/2012  
<sup>40</sup> Regulation 29(4) amended by R&O.109/2012  
<sup>41</sup> Regulation 29(5) amended by R&O.109/2012  
<sup>42</sup> Regulation 30(1) amended by R&O.109/2012  
<sup>43</sup> Regulation 30(3) amended by R&O.109/2012  
<sup>44</sup> Regulation 30(4) amended by R&O.109/2012  
<sup>45</sup> Regulation 31(1) amended by R&O.109/2012  
<sup>46</sup> Regulation 31(2) amended by R&O.109/2012  
<sup>47</sup> Regulation 32 substituted by R&O.109/2012  
<sup>48</sup> Regulation 33(4) added by R&O.109/2012  
<sup>49</sup> Regulation 35(2) amended by R&O.109/2012  
<sup>50</sup> Regulation 35(3) amended by R&O.109/2012  
<sup>51</sup> Regulation 35(7) added by R&O.109/2012