



Jersey

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

## **Official Consolidated Version**

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Jersey

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

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

**THE ECONOMIC DEVELOPMENT COMMITTEE**, in pursuance of Articles 5, 8, 9, 11, 20, 34 and 51 of the [Banking Business \(Jersey\) Law 1991](#)<sup>1</sup>, on the recommendation of the Jersey Financial Commission and having consulted with such persons as appear to the Committee to represent the interests of accountants and registered persons, orders as follows –

Commencement [[see endnotes](#)]

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### **1 Interpretation**

(1) In this Order –

“deposit”, in relation to a deposit advertisement, means the deposit in relation to which the advertisement contains –

- (a) an invitation to make such a deposit; or
- (b) information that is intended or might reasonably be presumed to be intended to lead directly or indirectly to the making of such a deposit;

“deposit-taker” means, in relation to a deposit, the person carrying on the deposit-taking business taking the deposit;

“the Law” means the [Banking Business \(Jersey\) Law 1991](#).<sup>2</sup>

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

### **2 Exempt transactions defined**

A transaction described as an exempt transaction in Articles 3 to 7, inclusive, is prescribed for the purposes of Article 8(3) of the Law as a transaction to which the prohibition in Article 8(1) of the Law does not apply.

### 3 Charities

- (1) It is an exempt transaction for a charity to accept a sum if –
  - (a) the sum is paid by another charity; or
  - (b) no interest or premium is payable in respect of the sum.
- (2) In this Article “charity” means an institution, trust or undertaking, whether corporate or not, that is established for charitable purposes.

### 4 Industrial and Provident Societies

- (1) It is an exempt transaction for an industrial and provident society to accept a sum in the form of withdrawable share capital.
- (2) In this Article “industrial and provident society” means a society registered or deemed to be registered under the Industrial and Provident Societies Act 1965 of the United Kingdom as applied to Jersey by the Industrial and Provident Societies (Channel Islands) Order 1965.

### 5 Advocates and solicitors

- (1) It is an exempt transaction for a practising advocate or a practising solicitor to accept a sum in the course of his or her profession.
- (2) In this Article –
  - (a) “practising advocate” means an advocate who is qualified to act as such under the [Advocates and Solicitors \(Jersey\) Law 1997](#);
  - (b) “practising solicitor” means –
    - (i) a solicitor who is qualified to act as such under the [Advocates and Solicitors \(Jersey\) Law 1997](#), or
    - (ii) a person who is qualified to act as a solicitor under any of section 1 of the Solicitors Act 1974 of the United Kingdom, Article 4 of the Solicitors (Northern Ireland) Order 1976 or section 4 of the Solicitors (Scotland) Act 1980 and who is, for the time being, practising as such from or within Jersey.

### 6 Investment dealers

- (1) It is an exempt transaction for a person to accept a sum –
  - (a) to engage in any form of investment dealing activity for or on behalf of the person by whom or on whose behalf the sum was paid; or
  - (b) to engage in any service activity on behalf of that person.
- (2) In this Article –

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

“service activity” means any of the following activities –

  - (a) to make or agree to make –

- (i) arrangements with a view to another person buying, selling, subscribing for or underwriting a particular investment, or
  - (ii) arrangements with a view to a person who participates in the arrangements, buying, selling, subscribing for or underwriting investments;
- (b) to manage, or offer to manage, assets, belonging to another person if –
- (i) the assets consist of or include investments, or
  - (ii) the arrangements for their management are such that the assets may consist of or include investments at the discretion of the person managing or offering or agreeing to manage them and either they have at any time done so or the arrangements have at any time been held out as arrangements under which they would do so;
- (c) to establish, operate or wind up a collective investment scheme, including acting as a trustee or custodian of a recognized fund, as that term is defined in the [Collective Investment Funds \(Recognized Funds\) \(Rules\) \(Jersey\) Order 2003](#).<sup>3</sup>

## 7 Trustees

It is an exempt transaction for a person to accept a sum as a trustee –

- (a) to lend it, in such a way that it is segregated from his or her own assets, to one or more persons in any part of the world duly authorized to carry out a deposit-taking business; or
- (b) in the course of carrying on the business of a trustee.<sup>4</sup>

## 8 Exempt persons

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

## 9 Application for registration<sup>5</sup>

- (1) A person may apply for registration under Article 9 of the Law by delivering to the Commission an application in the form approved or provided by the Commission.<sup>6</sup>
- (2) <sup>7</sup>

## 10 <sup>8</sup>

## 11 Conditions of registration

- (1) It is a condition of every registration under the Law that the registered person –
  - (a) must not commence without the Commission's consent a new activity in Jersey, being activity that has or may have a significant effect on the business or profitability of the registered person;

- (b) must remove a director, controller or manager of the registered person appointed under Article 24(1) of the Law if the Commission so requires on the grounds that the Commission does not consider the director, controller or manager to be a fit and proper person to hold such office; and
    - (c) must comply promptly with a notice issued under Article 26(1) of the Law.
- (2) If the registered person is a branch of an organization it is an additional condition of registration of the registered person under the Law that the registered person –
  - (a) must appoint a senior officer, approved by the Commission, outside Jersey to fulfil the obligations imposed by the Law on the registered person;
  - (b) must ensure that the person so appointed informs the Commission of the name of the principal manager of the registered person in Jersey and that of any deputy and, within 14 days, notifies the Commission of any change in those offices; and
  - (c) must, unless exempted by the Commission, appoint a branch auditor approved by the Commission.
- (3) If the registered person is a subsidiary of an organization it is an additional condition of registration of the registered person under the Law that the registered person –
  - (a) must not establish or acquire a representative office, a branch or a subsidiary outside Jersey without the Commission’s approval;
  - (b) must not participate with others in a joint venture outside Jersey involving a deposit-taking, banking or investment business without the Commission’s approval;
  - (c) must not enter into an exposure to any one person or a group of connected persons that exceeds 25% of the registered person’s agreed capital resources without the Commission’s approval; and
  - (d) must publish and provide to the Commission relevant accounts.<sup>9</sup>
- (4) In paragraph (3)(d) “relevant accounts” means accounts –
  - (a) that have been prepared in accordance with generally accepted accounting principles;
  - (b) that show a true and fair view of the profit or loss of the registered person for the relevant accounting period, and of the state of the registered person’s affairs at the end of the period; and
  - (c) that comply with any other requirements of the Law and of the [Companies \(Jersey\) Law 1991](#).
- (5) The relevant accounts referred to in paragraph (3)(d) must be published within 3 months of the date of the balance sheet although a registered person may instead publish for the use of depositors and potential depositors –
  - (a) summarized accounts of the registered person in a form determined by the Commission; or
  - (b) “true and fair” audited accounts.

## 12 Control of advertising

- (1) This Article applies to a deposit advertisement issued by –

- (a) a registered person that is a company incorporated in Jersey;
  - (b) a registered person that is a branch of a company incorporated outside Jersey;
  - (c) a person other than a registered person, who issues or intends to issue a local deposit advertisement.
- (2) It does not apply to a deposit advertisement issued in a place outside Jersey by a registered person that is a company incorporated outside Jersey if the advertisement is for –
- (a) the business of the company as a whole; or
  - (b) a branch or other office of the company outside Jersey, if the sole mention in the advertisement of the branch or other office in Jersey is as a part of a geographical list of the places where that company carries on its business.
- (3) A deposit advertisement must not be issued in Jersey unless it complies with the conditions specified in Schedule 2.
- (4) In this Article “local deposit advertisement” means a deposit advertisement –
- (a) published in a newspaper, magazine or journal circulating principally in Jersey;
  - (b) published by means of a broadcast (whether in sound or vision or a combination of sound and vision) received principally in Jersey; or
  - (c) published by means of any other electronic communication, as that term is defined by the [Electronic Communications \(Jersey\) Law 2000](#), where Jersey is featured as an essential element of the advertisement.

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

- (1) This Article applies to a person who –
- (a) is the auditor of a registered person; or
  - (b) has been appointed under Article 26 of the Law to make a report in respect of a registered person.
- (2) The person must immediately report to the Commission without informing the registered person if the person becomes aware of the probable existence of exceptional circumstances.
- (3) Exceptional circumstance are circumstances in which the interests of depositors in the registered person could be prejudiced if there were to be made known to the management of the registered person the fact that a person to whom this Article applies was aware of the existence of the circumstances.
- (4) So, for example (but without limiting the generality of the paragraph (3)), a report must be made to the Commission under paragraph (2) if the person has reason to believe –
- (a) that the directors or members of the senior management of a registered person have committed fraud or misappropriated property or intend to do so;
  - (b) that the directors or members of the senior management are acting in an irresponsible or reckless manner with respect to the registered person’s affairs, or intend to do so; or

- (c) that there has been, or is likely to be, an occurrence of material significance for the exercise in relation to the registered person of the Commission's powers or functions under the Law.
- (5) A person to whom this Article applies must also report circumstances in respect of a registered person directly to the Commission if having advised the registered person to inform the Commission of those circumstances within a specified period the person is satisfied that the registered person has not done so or has not done so fully or in an adequate manner.

#### **14 Citation**

This Order may be cited as the Banking Business (General Provisions) (Jersey) Order 2002.

**SCHEDULE 1<sup>10</sup>**

(Article 8)

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

Subject to the following conditions –

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

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

Subject to the following conditions –

1. The Company shall not change its auditors without the prior consent of the Commission.
2. All Board members and directors must be approved by the Commission.
3. The Commission shall be free to impose such additional conditions on the activities of the company as it considers necessary for the protection of the members.
4. The Company shall operate according to rules which are consistent with those used by Credit Unions operating in the United Kingdom.
5. The Company shall enter into an Insurance Bond in a format acceptable to the Commission to protect the savings of members from fraud or theft.
6. The Company shall provide the Commission with such information about its business/activities at such frequency as the Commission may request.

7. The Company shall permit Officers of the Commission or persons authorized by it for the purpose to carry out inspections of any part of the Company's activities and shall give such persons such assistance in inspection as they may reasonably require.
8. The Company shall submit copies of its annual audited accounts to the Commission within 3 months of its financial year end.

**SCHEDULE 2<sup>11</sup>**

(Article 12(3))

**CONDITIONS APPLICABLE TO A DEPOSIT ADVERTISEMENT****1 General**

- (1) A deposit advertisement must state –
  - (a) the full name of the deposit-taker; and
  - (b) the business address of the deposit-taker in Jersey.
- (2) It must also state –
  - (a) if the deposit-taker is not a company incorporated in Jersey, its place of incorporation, or in the case of a body other than a company, the place of its head office;
  - (b) if the deposit-taker is a company incorporated in Jersey, that copies of the deposit-taker's latest audited accounts are available for inspection on request; or
  - (c) if the deposit-taker is not a registered person, that fact together with details its place of registration, if any.
- (3) Sub-paragraph (2)(b) shall not apply in relation to a deposit advertisement issued by the exhibition of a cinematograph film or by way of sound or television broadcasting if the advertisement contains a statement that further particulars will be sent if application is made to the address specified in the advertisement, and those particulars include the information specified in that sub-paragraph.

**2 Interest**

- (1) If a deposit advertisement specifies a rate of interest payable on deposits the advertisement must state –
  - (a) any minimum amount that must be deposited to earn the rate of interest;
  - (b) any period of time during which no interest will be payable;
  - (c) any minimum period of time during which a deposit must be retained by the deposit-taker in order to earn the rate of interest;
  - (d) any minimum period of notice that must be given before repayment may be required of a deposit earning the rate of interest; and
  - (e) the intervals at which the interest will be paid.
- (2) If the rate of interest that is specified is not an annual rate of simple interest, the advertisement must state the basis on which the rate will be calculated.
- (3) If the rate of interest that is specified may be varied during the period for which the deposit will be held this must be stated in the advertisement.

- (4) If interest will or may not be paid in full at the rate that is specified, this must be stated in the advertisement, and the advertisement must state the nature and the amount of or rate of any deductions that will or may be made from the interest before payment.
- (5) If the rate of interest that is specified is or may not be the rate at which interest will be payable in respect of deposits on the date on which the advertisement is issued this must be stated in the advertisement, and the advertisement must state the date on which interest was payable at the rate that is specified, such date being as close as reasonably practicable to the date on which the advertisement is issued.
- (6) If an advertisement specifies more than one rate of interest payable in respect of deposits of a particular amount the advertisement must contain the information required by any of the foregoing sub-paragraphs in relation to each such rate.
- (7) If different rates of interest apply to deposits of different amounts, the advertisement must contain the information required by any of the foregoing sub-paragraphs in relation to each such rate.

### **3 Assets and Liabilities**

- (1) If a deposit advertisement contains a reference to the amount of the paid-up capital and reserves of a holding company of a registered person, or of a group of which the registered person is a member, the advertisement must also state with equal prominence the amount of the paid-up capital and reserves of the registered person, described as such.
- (2) If an advertisement contains a reference to the amount of the assets of a holding company of a registered person, or of a group of which the registered person is a member –
  - (a) the advertisement must, unless that amount relates to the net assets of that holding company or group and is so described, state with equal prominence the amount of the liabilities of that holding company or group described as such; and
  - (b) the advertisement must state with equal prominence the amount of the net assets of the registered person, described as such.
- (3) In this paragraph –
  - (a) “liabilities” includes provisions;
  - (b) the net assets of a company or a group shall be taken to be the total assets less the liabilities;
  - (c) a group means a company and all its subsidiaries; and
  - (d) a company also means a building society.

### **4 Deposit protection**

- (1) A deposit advertisement must state in relation to a deposit –
  - (a) in every case, whether or not the repayment of the deposit, or the payment of any interest on the deposit, would (to any extent) be covered under a scheme for compensating depositors, being a scheme established under Article 37 of the Law; and

- (b) in the case where the repayment of the deposit, or the payment of any interest on the deposit, would (to any extent) be covered under a scheme for compensating depositors established by law (and not merely by agreement) outside Jersey, that fact.
- (2) Nothing in sub-paragraph (1) prevents the inclusion in a deposit advertisement of matter relating or apparently relating to any other scheme, or an arrangement, for covering, guaranteeing, securing or otherwise protecting (to any extent) deposits, the interest on them, the repayment of deposits, or the payment of the interest on them.
- (3) If a deposit advertisement states or implies that the repayment of the deposit, or the payment of any interest on the deposit, would be covered under a scheme referred to in sub-paragraph (1) (or includes matter as described in sub-paragraph (2) relating or apparently relating to any other scheme or an arrangement) the advertisement must state –
  - (a) if, under one or more such schemes or arrangements, the repayment or payment is guaranteed (or the advertisement represents that it is guaranteed), the name of the provider of that guarantee;
  - (b) in every case, the nature and extent of the cover, guarantee, security, or protection, afforded by each scheme or arrangement; and
  - (c) in the case of any scheme referred to in sub-paragraph (1), the maxima that apply under the scheme as to repayment and payment in respect of as many of the following as the maxima are applicable to –
    - (i) an individual deposit, in the case of any one default by the deposit-taker,
    - (ii) an individual depositor, in the case of any one default by the deposit-taker,
    - (iii) the aggregate of deposits covered by the scheme, in relation to all deposit-takers to which the scheme applies.
- (4) In the case of a scheme referred to in sub-paragraph (1), it is sufficient compliance with clause (a) or (b) of sub-paragraph (3) if a deposit advertisement that refers to the scheme states the address of a website that sets out the matters specified in that clause.

## **5 Currency**

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

## **6 Supplementary Provisions**

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

## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement
Banking Business (General Provisions) (Jersey) Order 2002	<a href="#">R&amp;O.95/2002</a>	1 October 2002
Transfer of Functions (Economic Development Committee) (Jersey) Act 2003	<a href="#">R&amp;O.101/2003</a>	14 October 2003
Banking Business (General Provisions) (Amendment) (Jersey) Order 2004	<a href="#">R&amp;O.100/2004</a>	1 October 2004
Banking Business (General Provisions) (Amendment No. 2) (Jersey) Order 2006	<a href="#">R&amp;O.94/2006</a>	21 September 2006 except Article 3 which came into force on 1 October 2006
Banking Business (General Provisions) (Amendment No. 3) (Jersey) Order 2011	<a href="#">R&amp;O.102/2011</a>	25 January 2012
Banking Business (General Provisions) (Amendment No. 4) (Jersey) Order 2016	<a href="#">R&amp;O.89/2016</a>	22 August 2016

### Table of Renumbered Provisions

Original	Current
1(3)	spent, omitted from this revised edition
14	spent, omitted from this revised edition
9A	Lapsed
9B	lapsed
15	14
Schedule 1A	lapsed

### Table of Endnote References

<sup>1</sup> The power to prescribe fees by Order of the Minister has been replaced by a power for the Jersey Financial Services Commission to publish fees (see chapter 13.075 as amended by L.33/2007). Accordingly, all provisions of this Order prescribing fees lapsed on 24 January 2008 and have been removed.

<sup>2</sup> Article 1(1) substituted by R&O.102/2011

<sup>3</sup> Article 6(2) amended by R&O.102/2011

<sup>4</sup> Article 7 amended by R&O.102/2011

<sup>5</sup> Article 9 substituted by R&O.100/2004, amended by R&O.94/2006

<sup>6</sup> Article 9(1) amended by R&O.102/2011

<sup>7</sup> Article 9(2) deleted by R&O.89/2016

<sup>8</sup> Article 10 deleted by R&O.89/2016

<sup>9</sup> Article 11(3) amended by R&O.102/2011

<sup>10</sup> Schedule 1 amended by R&O.102/2011

<sup>11</sup> *Schedule 2*                      *amended by R&O.102/2011*