



Jersey

## **BANKING BUSINESS (DEPOSITORS COMPENSATION) (AMENDMENT No. 2) (JERSEY) REGULATIONS 2020**

### **Contents**

#### **Regulation**

1	Interpretation .....	3
2	Amendment of Regulation 1 (interpretation) .....	3
3	Amendment of Regulation 16 (Board must take preliminary steps in respect of default) .....	3
4	Insertion of Regulation 21A (offences: applications) .....	4
5	Amendment of Regulation 24 (reduction in amount of compensation) .....	4
6	Amendment of Regulation 25 (annual administration levy) .....	4
7	Insertion of Regulations 35A and 35B (information) .....	4
8	Insertion of Regulation 35C (criminal liability of officers and others) .....	7
9	Citation and commencement .....	8

#### **ENDNOTES 9**

Table of Endnote References .....	9
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## **BANKING BUSINESS (DEPOSITORS COMPENSATION) (AMENDMENT No. 2) (JERSEY) REGULATIONS 2020**

*Made*

*21st January 2020*

*Coming into force*

*28th January 2020*

**THE STATES** make these Regulations under Article 37 of the Banking Business (Jersey) Law 1991<sup>1</sup> –

### **1 Interpretation**

In these Regulations a reference to a Regulation or Part by number only is to the Regulation or Part of the same number in the Banking Business (Depositors Compensation) (Jersey) Regulations 2009<sup>2</sup>.

### **2 Amendment of Regulation 1 (interpretation)**

In Regulation 1 –

- (a) in the definition “bank” for “Banking Business (Jersey) Law 1991” there is substituted “Banking Law”;
- (b) after the definition “bank in default” there is inserted –

“ “Banking Law” means the Banking Business (Jersey) Law 1991<sup>3</sup>.”.

### **3 Amendment of Regulation 16 (Board must take preliminary steps in respect of default)**

At the end of Regulation 16 there is inserted –

- “(8) Regulations 35A(3) and (4) apply to a notice under this Regulation as they apply to an information notice under that Regulation.
- (9) A bank commits an offence, and is liable to a fine, if it fails without reasonable cause to comply with a notice sent to it under paragraph (2).
- (10) An administrator of a bank in default commits an offence, and is liable to a fine, if the administrator fails without reasonable cause to comply with a notice sent to the administrator under paragraph (3) or (4).”.

#### 4 Insertion of Regulation 21A (offences: applications)

After Regulation 21 there is inserted –

##### **“21A Offences related to applications**

- (1) A person commits an offence, and is liable to imprisonment for a term of 2 years and to a fine, if the person, in connection with an application to the Board for compensation, knowingly or recklessly provides –
  - (a) information that is false, misleading or deceptive in a material particular; or
  - (b) a document that contains any such information.
- (2) A person commits an offence, and is liable to imprisonment for a term of 2 years and to a fine, if the person –
  - (a) makes an application to the Board for compensation; and
  - (b) knowingly fails to inform the Board of any subsequent event that reduces the amount of compensation that may be claimed.”.

#### 5 Amendment of Regulation 24 (reduction in amount of compensation)

At the end of Regulation 24 there is inserted –

- “(4) A person commits an offence, and is liable to imprisonment for a term of 2 years and to a fine, if the person fails without reasonable cause to comply with paragraph (3).”.

#### 6 Amendment of Regulation 25 (annual administration levy)

In Regulation 25(7)(a) for “Banking Business (Jersey) Law 1991” there is substituted “Banking Law”.

#### 7 Insertion of Regulations 35A and 35B (information)

After Regulation 35 there is inserted –

“Information

##### **35A Powers to demand information, and to specify format**

- (1) Articles 26(1), (3), (5), (13), (14) and (15) of the Banking Law apply in relation to these Regulations –
  - (a) with the substitution, for references to the Commission, of references to the Board; and
  - (b) with the substitution, for references to the performance of functions under that Law, of references to the performance of functions under these Regulations.

- (2) Without prejudice to the generality of paragraph (1), the Board may at any time serve a notice on a bank under Article 26 of the Banking Law, as applied by paragraph (1), requiring the bank to provide the Board, within a time specified in the notice, with either or both of the following –
  - (a) information consisting of a statement of the total amount held, as at a time specified in the notice, by that bank by way of eligible deposits;
  - (b) other information, specified in the notice, that –
    - (i) relates to eligible deposits held by the bank, and
    - (ii) is relevant to the raising of a levy or to any other matter connected with the functions of the Board or any other person under these Regulations, or connected with the operation of the depositors compensation scheme.
- (3) The Board may, after consulting the Minister, include in an information notice a requirement that the information is to be provided in a format specified in the notice.
- (4) For the purpose of paragraph (3) –
  - (a) an information notice is a notice served on a bank under –
    - (i) Article 26 of the Banking Law as applied by paragraph (1), or
    - (ii) paragraph (2);
  - (b) different formats may be specified in respect of different descriptions of banks and different descriptions of information;
  - (c) a format may be specified by reference to a general notice published by the Board in a manner that, in the opinion of the Board, is likely to bring the notice to the attention of banks; and
  - (d) the specified format may include any description of electronic record, as defined by the Electronic Communications (Jersey) Law 2000<sup>4</sup>, and any description of electronic communication, as defined by that Law.
- (5) Nothing in paragraph (4)(b), (c) or (d) limits any of paragraphs (1), (2) and (3).
- (6) If a notice under paragraph (2) includes a requirement to provide information under paragraph (2)(a), the Board may, after consulting the Minister, specify in the notice that the information is to be provided forthwith.
- (7) A person commits an offence, and is liable to imprisonment for a term of 6 months and to a fine, if the person –
  - (a) fails without reasonable excuse to comply with a requirement imposed on the person under this Regulation; or
  - (b) obstructs an officer, or an agent, exercising powers under Article 26(5) of the Banking Law, as applied by paragraph (1) or (2).

- (8) For the purpose of Article 26(14) of the Banking Law, as applied by paragraph (1) of this Regulation, the reference to proceedings under Article 26(12) or 22 of that Law is to be read as a reference to proceedings under any of –
  - (a) paragraph (7)(b) of this Regulation;
  - (b) Regulation 21A(1); and
  - (c) Article 22(1) of the Banking Law.
- (9) Paragraph (10) applies to any information (including any document or answer) that –
  - (a) is obtained by the Board under this Regulation;
  - (b) is not also obtained under Regulation 16, or held for the purpose of paying compensation or verifying a claim for compensation; and
  - (c) consists of or includes personal data, within the meaning of the Data Protection (Jersey) Law 2018<sup>5</sup>, relating to a person as a depositor of a bank other than a bank in default.
- (10) The Board must –
  - (a) as soon as is practicable after obtaining the information, encrypt it if it is not already encrypted; and
  - (b) ensure that it is encrypted at all times at which it –
    - (i) is held by or on behalf of the Board, and
    - (ii) is not in use for a purpose that requires it to be temporarily decrypted.
- (11) For the purposes of the Data Protection (Jersey) Law 2018 and the Data Protection Authority (Jersey) Law 2018<sup>6</sup>, a contravention of paragraph (10) is to be treated as also being a contravention of Articles 8(1) and 21(1) of the Data Protection (Jersey) Law 2018.
- (12) Paragraphs (10) and (11) are in addition to, and are not to be read as derogating from, any duty imposed on the Board by or under the Data Protection (Jersey) Law 2018 (and in particular by Article 8(1)(f), or Article 21(1) as read with Article 21(2)(a), of that Law) or by any other law.

### **35B Disclosure of information**

- (1) Article 42 of the Banking Law applies, subject to paragraph (2), in relation to information received under or for the purposes of these Regulations as it applies in relation to information received under or for the purposes of the Banking Law.
- (2) The Board, or a person who is, or is acting as, an officer, servant or agent of the Board, may disclose information –
  - (a) to any of the following persons –
    - (i) the Viscount,
    - (ii) the Comptroller and Auditor General,
    - (iii) the administrator of a bank in default, if the information concerns the bank;

- (b) to the Minister, if the information –
  - (i) concerns the administration or operation of the scheme, and
  - (ii) does not consist of or include personal data, within the meaning of the Data Protection (Jersey) Law 2018<sup>7</sup>, relating to a person as a depositor;
- (c) to the Commission, or to a person acting on its behalf, to enable or assist the Commission to discharge a function under an enactment that gives the Commission a supervisory function; or
- (d) to any person –
  - (i) for the purpose of enabling or assisting the Board, or a person acting on its behalf, to discharge the Board’s functions under these Regulations,
  - (ii) with a view to the investigation of a suspected offence or to the institution of criminal proceedings, or otherwise for the purposes of criminal proceedings (in each case whether in Jersey or elsewhere and whether under these Regulations or otherwise),
  - (iii) in connection with any other proceedings (whether in Jersey or elsewhere) arising out of these Regulations,
  - (iv) in compliance with a court order,
  - (v) for the purpose of obtaining advice on the performance by the Board of its functions under these Regulations, or
  - (vi) for the purpose of cooperating with any person or body administering a bank depositors compensation scheme (however called) in another jurisdiction in respect of a bank in default.”.

## **8 Insertion of Regulation 35C (criminal liability of officers and others)**

- (1) In the heading of Part 4, for “PROVISION” there is substituted “PROVISIONS”.
- (2) After the heading of Part 4 there is inserted –

### **“35C Criminal liability of officers and others**

Article 52(1) of the Banking Law applies to an offence under these Regulations as it applies to an offence under that Law.”.

**9 Citation and commencement**

These Regulations may be cited as the Banking Business (Depositors Compensation) (Amendment No. 2) (Jersey) Regulations 2020, and come into force 7 days after they are made.

**L.-M. HART**

*Deputy Greffier of the States*



## ENDNOTES

### Table of Endnote References

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<i>1</i>	<i>chapter 13.075</i>
<i>2</i>	<i>chapter 13.075.30</i>
<i>3</i>	<i>chapter 13.075</i>
<i>4</i>	<i>chapter 04.280</i>
<i>5</i>	<i>chapter 15.240</i>
<i>6</i>	<i>chapter 15.245</i>
<i>7</i>	<i>chapter 15.240</i>