

It's Pay-Back Time

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Wendy Benjamin, September 2009

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Following a political commitment at the height of the banking crisis last year, the establishment of a depositor compensation scheme for accounts held in banks in Jersey was in principle unanimously approved by the States Assembly on 15 July 2009.

The draft **Banking Business (Depositors Compensation) (Jersey) Regulations 200-** and various supplemental regulations will now be scrutinised and will be brought back to the States Assembly for a full debate later this year.

The stated aim of the proposed scheme is to provide depositors with compensation quickly in the unlikely event of a bank failure and thus to minimise hardship by enabling depositors to carry on with their everyday economic activities.

The regulations provide for the establishment of a permanent, standalone scheme administered by an independent board. The scheme will be activated in the event that a Jersey bank becomes bankrupt. The overall liability of the scheme will be capped at £100 million over each five year period and will be funded by capped levies on the banks in Jersey that hold eligible deposits at the time that the bank

in default became bankrupt. The States of Jersey will make up any shortfall in funding and provide short-term liquidity, possibly through loans to the scheme.

Consequential amendments will be made to the Island's income tax law to allow tax deduction of contributions made by banks to the scheme and to exempt from income tax compensation paid to depositors under the scheme. There would therefore be a loss of tax revenues equivalent to ten per cent of any bank contributions made to the scheme.

COMPENSATION LIMITS

Private individuals, whether resident in Jersey or not, will be able to claim up to £50,000 per person, per Jersey banking group affected. Executors will also be able to claim in respect of a deceased individual's estate. Charities will be protected too, although partners of a partnership and companies will not. It is anticipated that the first £5,000 of a valid claim will be paid within seven working days with the balance payable

within three months. That seems a very challenging time scale.

If the depositor is entitled to claim compensation under a scheme in another jurisdiction (for instance, the home jurisdiction of the bank in default), the depositor will not be able to claim under the Jersey scheme except to the extent that the Jersey board agrees with the body administering the compensation scheme in that jurisdiction.

In any event, the amount of compensation that may be claimed from the Jersey scheme may also be reduced by the amount received by the depositor from an insurance policy or from the administrators of the bank in default. The board will acquire rights of subrogation from the depositor to enable it to claim as a creditor in the defaulting bank's insolvency.

COMPETITOR JURISDICTIONS

The Jersey scheme was drawn up after the findings of independent consultants Oxera's economic analysis of the available options and if approved in its current form will provide compensation to depositors in line with competitor jurisdictions. The equivalent Guernsey and Isle of Man schemes also provide for compensation of up to £50,000. Further afield in some of Appleby's other jurisdictions Bermuda and BVI do not currently have depositor compensation schemes.

TOP 500 BANKING GROUPS

With 46 banks and deposits of over £195 billion in Jersey as at March 2009, the authorities must expect that the strict licensing policy for deposit-taking business in the Island will continue to minimise the likelihood of a bank in Jersey failing. Historically, successful applicants had to be part of financial institutions of international stature and reputation, and specifically had to be members of the global top 500 banking groups by reference to their Tier 1 capital base, or financial services conglomerates of equivalent size. That requirement remains but a new strengthened and consolidated licensing policy was issued by the

Jersey Financial Services Commission (the "Commission") in June 2009.

LICENSING POLICY

When the Commission determines whether or not new applicants are fit and proper persons to be registered for deposit-taking business under the Island's banking laws, it considers a number of key areas which are set out in detail in the licensing policy under the following headings: general, stature, home jurisdiction, competence, organisation and systems, and ownership and control. A detailed examination of each of these requirements is outside the scope of this article.

However, some additional requirements reflecting the banking crisis have been introduced. These include a requirement that applicants belong to a group that is of systemic importance in its home jurisdiction such that, in a crisis, the home jurisdiction would look to actively support the group and that, in turn, the relevant jurisdiction is capable of providing adequate support, if needed, to its systemically important banks.

Of course the home jurisdiction must be considered to operate an adequate regime of financial supervision, taking into account relevant reports such as those produced by the IMF as well as responses to the Commission's own enquires in respect of the home supervisor's adherence to the Basel Committee's Core Principles for Banking Supervision.

The numerous requirements which must be fulfilled before an applicant is registered (or re-registered) for deposit-taking business and the high degree of financial reporting to and supervision by the Commission should continue to protect Jersey's excellent reputation as a banking centre. Indeed the Minister for Economic Development, Senator Alan Maclean, when welcoming the States' decision to approve the compensation scheme in principle pointed out that "... the best protection for depositors lies in the strength of Jersey's banks, all of which are in the top 500 banking groups in the world", and suggested that the compensation scheme will provide extra

reassurance and an appropriate level of protection for depositors in line with current international practice.

Should you have any questions or requests for further information, please contact:

Wendy Benjamin

Partner

wbenjamin@applebyglobal.com

Tel: +44 (0)1534 818057

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Bahrain Suite 2215 Level 22 West Tower Bahrain Financial Harbour King Faisal Highway Manama Kingdom of Bahrain Tel +973 1750 2848 Fax +973 1750 2847	Bermuda Canon's Court 22 Victoria Street PO Box HM 1179 Hamilton HM EX Bermuda Tel +1 441 295 2244 Fax +1 441 292 8666	British Virgin Islands No 56 Admin Drive Wickhams Cay 1 PO Box 3190 Road Town Tortola VG 1110 British Virgin Islands Tel +1 284 494 4742 Fax +1 284 494 7279	Cayman Islands Clifton House 75 Fort Street PO Box 190 Grand Cayman KY1-1104 Cayman Islands Tel +1 345 949 4900 Fax +1 345 949 4901	Hong Kong 8 th Floor Bank of America Tower 12 Harcourt Road Central Hong Kong Tel +852 2523 8123 Fax +852 2524 5548
Jersey PO Box 207 13-14 Esplanade St Helier Jersey JE1 1BD Channel Islands Tel +44 (0)1534 888 777 Fax +44 (0)1534 888 778	London 2nd Floor 2 Royal Exchange Bldgs London EC3V 3LF United Kingdom Tel +44 (0)20 7283 6061 Fax +44 (0)20 7469 0540	Mauritius 8 th Floor Medine Mews La Chaussée Port Louis Mauritius Tel +230 203 4300 Fax +230 210 8792	Seychelles Level 2B Caravelle House Manglier Street Victoria, Mahe Seychelles Tel +248 225 281 Fax +248 225 282	Zurich Bahnhofstrasse 52 CH-8001 Zurich Switzerland Tel: +41 44 214 6525 Fax: +41 44 214 6524