

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**COMMITTEE *for* ECONOMIC DEVELOPMENT**

**DEPOSIT COMPENSATION SCHEME AMENDMENTS**

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled “Deposit Compensation Scheme Amendments”, dated 14<sup>th</sup> May, 2024, they are of the opinion:-

1. To approve the recommended amendments to the Deposit Compensation (Bailiwick of Guernsey) Ordinance, 2008, as set out in section 3 of the policy letter.
2. To direct the preparation of such legislation as may be necessary to give effect to the above decision.

The above Propositions have been submitted to His Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

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The Presiding Officer  
States of Guernsey  
Royal Court House  
St Peter Port

14<sup>th</sup> May, 2024

Dear Sir

**1      Executive Summary**

- 1.1      The Committee *for* Economic Development (the “**Committee**”) recommends that amendments are made to the legislation governing the Bailiwick’s Deposit Compensation Scheme (the “**DCS**”), namely the Deposit Compensation (Bailiwick of Guernsey) Ordinance, 2008 (the “**Ordinance**”).

**2      Background to the Deposit Compensation Scheme**

- 2.1      The DCS was introduced in 2008 at the height of the Global Financial Crisis<sup>1</sup>, which highlighted vulnerabilities in the liquidity, and solvency, of banks around the world and the potential impact on depositors, including those with deposits in Bailiwick of Guernsey (the “**Bailiwick**”) licensed banks, when banks become insolvent.
- 2.2      The drafting of legislation establishing the DCS, under section 46 of the Banking Supervision (Bailiwick of Guernsey) Law, 1994, was given the highest possible priority, being prepared and enacted within a period of some six weeks.
- 2.3      Since then, amendments have been made to the Ordinance, and other legislation relating to the DCS, on a number of occasions<sup>2</sup>. Non-legislative developments

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<sup>1</sup> See Billet D’État XIX 2008, 26 November 2008.

<sup>2</sup> Including to (i) expand the scope of the DCS to include charities, (ii) expand the ability of the DCS Board and the Guernsey Financial Services Commission to share information, (iii) make amendments to augment the scheme’s liquidity, (iv) make amendments to the provisions governing appointment of DCS Board Members, (v) make minor amendments to deal with technical drafting issues and (vi) give the DCS a higher degree of preference, as a creditor, in a bank insolvency.

have also been approved by the States of Guernsey including (i) moving from a partially pre-funded DCS, as originally proposed, to a wholly post-funded DCS, and (ii) the establishment, by the States, of a £15,000,000 liquidity facility to provide for faster payment in the event of a bank default triggering the DCS.

- 2.4 However, in many aspects the DCS remains in its original form. After the DCS was established, in 2009 the Basel Committee on Banking Supervision, and the International Association of Deposit Insurers, published the Core Principles for Effective Deposit Insurance Systems (the “**Core Principles**”) which set an international benchmark for jurisdictions to use in establishing, or reforming, deposit insurance systems. The Core Principles were revised in 2014 and have been incorporated into the Financial Stability Board’s Key Standards for Sound Financial Systems. It is anticipated that international assessments of the Bailiwick’s compliance with international financial standards will take account of the extent to which our DCS meets these principles.
- 2.5 The DCS Board, and the Committee, have undertaken a review of the DCS against the Core Principles, taking account of the particular circumstances of the Bailiwick, as a small jurisdiction, to ensure that compliance is proportionate. The Core Principles have already influenced some of the amendments made to the DCS and the recommendations, in this policy letter, represent further recommendations which are designed to enhance (i) the protection offered to depositors with Guernsey banks and (ii) compliance with the Core Principles.

### **3 Recommended Amendments**

#### **3.1 Statement of Objectives**

Core Principle 1 requires public policy objectives for a deposit insurer to be formally specified and publicly disclosed. The Committee considers that appropriate objectives to which the DCS Board must have regard in exercising its functions would be (i) the protection of the interests of depositors and (ii) contributing to the financial stability of the Bailiwick. Whilst objectives do not need to be stated in legislation, the Committee considers this the most unambiguous way to ensure that this principle is met and recommends that the Ordinance is amended accordingly. Such a provision should include a power for the objectives to be amended by regulation to ensure they can be amended swiftly in future, if needs be, to reflect developments in this area.

#### **3.2 Operational Independence of DCS Board**

Core Principle 3 requires that a deposit insurer is operationally independent.

In order to unambiguously demonstrate compliance with this principle, it is recommended that the Ordinance be amended to state, for the avoidance of

doubt, that the DCS Board is independent of the Committee.

Also, at present, section 3(9) of the Ordinance allows the Committee to prescribe the procedures of the DCS Board, which may include the procedures by which the members of the DCS Board may appoint alternates. The Committee has never exercised this power and believes that this provision should be repealed to reinforce the operational independence of the DCS Board. The Committee does not consider that it is appropriate to allow for the appointment of alternates in the context of the DCS Board comprising statutory appointees who have been selected by the Committee, and whose appointments have been laid before the States.

### 3.3 Remuneration of DCS Board Members

The Committee recommends that the words “as the Board thinks fit” at the end of section 3(3A) are amended to read “as the Committee thinks fit”. Whilst the Committee will always engage with the DCS Board in setting the terms of appointment of members, it retains ultimate responsibility for the appointment and must ultimately be satisfied as to the terms. The proposed amendment is consistent with other provisions of the Ordinance in that regard. The Committee also recommends that section 4 is amended to clarify, for the avoidance of doubt, that the power of the DCS Board under section 4(2) of the Ordinance (to exercise all the powers that a company registered in Guernsey with unlimited objects may exercise) exists for the purpose of the Board carrying out its statutory functions under the Ordinance and does not extend to setting, or varying, the terms and conditions on which Board members hold office (including as to remuneration, expenses, pensions, retirement and other conditions of service).

### 3.4 Disclosure

Section 5 of the Ordinance governs the ability of the DCS to disclose information to third parties. It is recommended that this section should be amended to permit additional categories of disclosure, by the DCS Board, to:

- (i) the Committee;
- (ii) an auditor of a participant, or former participant, in the DCS, if it appears, to the DCS Board, that the disclosure would enable, or assist, the DCS Board to discharge its functions, or would otherwise be in the interests of depositors;
- (iii) a person, or body, responsible for a scheme for compensating depositors in another jurisdiction, if it appears to the DCS Board that the disclosure would enable, or assist, the recipient of the

information, or the DCS Board, to discharge its functions - if the recipient has given a written undertaking that the information will not be further disclosed without the prior consent of the DCS Board;

- (iv) a person, or body, that is granted resolution powers to resolve banks in default (whether in the Bailiwick or elsewhere) if it appears, to the DCS Board, that the disclosure would enable, or assist, the recipient of the information, or the DCS Board, to discharge its functions - if the recipient has given a written undertaking that the information will not be further disclosed without the prior consent of the DCS Board; and
- (v) a liquidator, administrator or receiver of a participant bank whether in the Bailiwick or elsewhere.

The Ordinance should also be amended to allow the Committee to amend, and prescribe additional, categories of permitted disclosure by regulation.

### 3.5 Declaration of Default

3.5.1 Section 9(2) of the Ordinance requires the Guernsey Financial Services Commission (the “**Commission**”) to make a declaration of default within twenty one (21) days where certain specified trigger events have occurred. In order to reflect the ambition of paying compensation as soon as possible, in the event of a default, it is recommended that this is amended to require the Commission to make a declaration as soon as possible and in any event within twenty one (21) days.

3.5.2 Since the DCS was first established, bank resolution regimes have been established in many jurisdictions and proposals are being developed for a bank resolution law in Guernsey. Bank resolution may mean that depositors are adequately protected in some cases, without the need for the DCS to pay compensation.

It is therefore recommended that the Commission should not be required to declare a default where a bank is subject to, or in the opinion of the Commission is likely to be subject to, a resolution action that would mean that the triggering of the DCS is not necessary or appropriate.

### 3.6 Payment of Compensation

At present, section 12(8) of the Ordinance allows the DCS Board to delay payment of compensation in certain specified circumstances. It is recommended that this should be amended to permit delay, or refusal, on expanded grounds

including:

- (i) where there is any reason for which the bank in default would, but for the default, have had a right, or duty, to postpone or refuse payment of the deposit;
- (ii) pending the determination of any dispute as to ownership of the deposit; or
- (iii) where the bank has classified the account as dormant.

The Committee also believes that it should have a power to make regulations amending, or prescribing further, circumstances in which payment of compensation can be delayed, or refused, to allow for future evolution of this provision.

### 3.7 Maximum Amount of Compensation Payable

In the event of two licensed banks amalgamating, a depositor with deposits in both banks may lose some of the protection of their deposits under the DCS where the combined total of deposits exceeds the maximum compensation of £50,000 per person, per licensed bank.

Where two banks amalgamate, it is recommended that the Ordinance should require banks to advise depositors of the potential change in the level of protection and provide for protection of deposits to continue at the same level as applied immediately pre-amalgamation for a period of three months post-amalgamation.

Whilst the Committee considers that, subject to the forgoing, the maximum amount of compensation payable to any claimant should remain at £50,000, it also believes that it would be appropriate to allow the Committee to specify an alternative sum by regulation. This would ensure that the maximum amount of compensation can be amended, should this be considered appropriate in the future.

### 3.8 Levies on Participants for the Purposes of Compensation

Section 18(8) of the Ordinance provides that where a participant bank which is required to pay a compensation levy to the DCS Board is itself declared to be in default before it has paid the levy, that liability may be deferred or cancelled in the absolute discretion of the DCS Board and, if it is, the total amount to be raised by the levy shall be reduced accordingly. It is proposed that the DCS Board should have the discretion to reallocate the shortfall to the remaining participant banks, subject to the other restrictions in the Ordinance on the amount that any

participant can be required to contribute.

### 3.9 Cooperation

3.9.1 Section 20 of the Ordinance requires Guernsey banks to cooperate with the DCS Board in making available to it such documents, and information, in such form and verified in such manner as the DCS Board may require to carry out its functions.

3.9.2 The existing duty of cooperation extends to any successor of a Guernsey bank, including a liquidator, receiver or administrator. A liquidator, etc., of a Guernsey bank that is a branch of a foreign company may be subject to the laws of another jurisdiction in respect of his, or her, conduct of the relevant insolvency proceedings. It is therefore recommended that the duty of cooperation in such cases should be subject to any order of the Royal Court to the contrary, to allow the Court to make an appropriate order in cases where a conflict of laws may arise.

### 3.10 Single Customer View to Facilitate Faster Speed of Payment

3.10.1 In the context of deposit insurance, “Single Customer View” (“**SCV**”) refers to all the relevant financial information, relating to a single customer, being accessible in a standard format. This facilitates quicker payment of compensation by the DCS in the event of a bank failure, as it reduces the amount of work required to process claims and ensures that depositors are not paid out multiple times where they have a number of accounts with the same bank.

Whilst the Ordinance requires compensation to be paid within three (3) months<sup>3</sup>, the accepted International Standard, as set out in the International Association of Deposit Insurers Core Principles, require deposit compensation schemes to be able to reimburse most depositors within seven (7) days. Payment of compensation to most depositors within seven (7) days is a challenging target in the context of a small post-funded DCS and will require further preparatory work, before it could be implemented. It is recommended that the Ordinance should be amended to allow the Committee, by regulation, to amend the existing provision regarding speed of payment of compensation.

Faster payment of compensation is, however, something to which the DCS Board aspires notwithstanding the current three (3) month statutory period for payment, and the DCS Board has advised that implementation of SCV is an essential step in order to speed up payment of compensation.

3.10.2 Historically, Guernsey banks have not all maintained a SCV and there has been

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<sup>3</sup> Section 15(1) of the Ordinance.

no standard format for such data. The DCS Board has engaged with the Association of Guernsey Banks (the “**AGB**”) regarding the voluntary adoption of a standard format SCV file and a standard format has been agreed in conjunction with the Jersey Bank Depositors Compensation Scheme Board, the Scheme Manager of the Isle of Man Depositors Compensation Scheme, the Association of Jersey Banks and Association of Isle of Man Banks. Guernsey banks have a statutory duty to cooperate with the DCS Board in making available all documents and information, in such form and verified in such manner, as the DCS Board may require to carry out its functions. This obligation should be sufficient to permit the DCS Board to require SCV data in a required format. However, given the particular importance of SCV to timely payment of compensation, the Committee considers it appropriate that the Ordinance is amended to make specific provision for the DCS Board to determine and publish details of a standard SCV format which Guernsey banks would be obliged to adopt and the timeframe within which such banks would be required to submit these files. Further engagement by the DCS Board with the banks would be required for the DCS Board to determine whether it is necessary to exercise this power and, if so, in what manner.

### 3.11 Information to Depositors

Section 27 of the Ordinance requires banks to make information regarding the DCS available to current and intending depositors. The DCS Board has the power to issue recommended wording. The DCS Board has requested the power to issue directions as to mandatory wording, format, placement and position of such wording. The Committee recommends that section 27 is amended to give the DCS Board such powers.

It is also recommended that the Ordinance should be amended to make a failure to comply with the requirements of section 27, or any direction of the DCS Board under that section, an offence.

### 3.12 Straight Through Payout

“Straight Through Payout” (or “**STP**”) is a term used in the EU referring to payment of compensation, in the event of a bank failure, without manual intervention in individual cases, relying on data provided by banks.

At present, the DCS requires a qualifying claimant, who wishes to claim compensation, to make an application and provides that the DCS Board has the right of subrogation to the rights of any such applicant in respect of their deposit.

In insurance, subrogation refers to the right of an insurer to step into the shoes of a policyholder where the insurer has made payment to that person in respect of loss incurred by them which is covered by an insurance policy.



In the context of the Ordinance, the concept of subrogation was used to reflect the right of the DCS Board to step into the shoes of a depositor and to acquire the depositors' rights once compensation under the scheme has been paid. Where money is subsequently available for distribution to creditors in the liquidation of a failed bank, after the payment of compensation by the DCS, this means that the DCS will receive any payment which would have been due to the depositor, rather than that distribution being made to the depositor in addition to the compensation they have received. The Ordinance provides for the repayment, by the DCS Board to the depositor, of any amount which the DCS Board receives, over and above the amount of compensation paid, to ensure that the depositor is not financially disadvantaged in that situation by having claimed compensation.

In order to give effect to the above arrangements, the Ordinance provides that no compensation shall be paid until a claimant has agreed, in writing, that (i) rights in respect of a qualifying deposit vest in the DCS Board, (ii) the depositor will provide the necessary assistance to the DCS Board to enable it to exercise those rights, and (iii) the depositor will pay to the DCS Board any amount that he or she receives in respect of those rights.

These provisions introduce an inevitable delay in the processing of potential claims for compensation. The DCS Board has recommended that the requirement for an application, and agreement in writing to the vesting of rights, should be removed and that these should be made automatic.

This proposal engages the property rights of depositors. Article 1 Protocol 1 ("A1P1") of the European Convention on Human Rights the "**Convention**") is protected in Guernsey both by virtue of the extension of the Convention and also in domestic law, by virtue of the Human Rights (Guernsey) Law, 2000. The contractual right to repayment of a bank deposit, and the right to claim as a creditor of the bank in any insolvency proceeding, are property rights. Automatic subrogation of those rights to the DCS Board, by operation of law, necessarily involves an interference with those rights. A1P1 allows a State to interfere with such property rights in the public interest and subject to such conditions provided for by law and by the general principles of international law. Measures that are deemed necessary to control the use of property in accordance with the general interest must be proportionate and done for a legitimate aim. The measure must be rationally connected to the aim and the aim could not be achieved in a less intrusive manner.

The Committee has carefully considered the appropriate balance between the legitimate aims of the DCS and the need to respect property rights. The DCS Board is obliged to repay to a qualifying claimant any amount received by it in respect of the qualifying claimant's deposit which exceeds the amount of

compensation paid in respect of that deposit<sup>4</sup>. As such, a depositor will receive the same amount in respect of their qualifying deposit as they would have done in the liquidation of a bank. Compensation from the DCS would be paid within three (3) months, which is very likely to be sooner than any distribution in an insolvency process and repayment by the DCS Board of any excess amount ultimately received by it in respect of a qualifying deposit should be made promptly. The Committee therefore believes that it is appropriate (i) to dispense with the mandatory requirement for an application for compensation, permitting the DCS Board to pay compensation, without an application from the depositor, where it considers that it has sufficient information to do so, and (ii) to provide for subrogation to the rights of the qualifying claimant where compensation is paid, without requiring agreement in writing from the depositor.

It is proposed that the DCS Board should retain the right to require an application from particular categories of depositor, or in respect of particular categories of deposit, in appropriate cases, e.g. where it does not have sufficient information to determine the amount of compensation payable.

### 3.13 Immunity from Liability

Section 30 of the Ordinance grants statutory immunity from liability to the DCS Board, the Committee and any members, officers or servants thereof for anything done in good faith in the discharge, or purported discharge of functions under the Ordinance.

Since the Ordinance was enacted, the standard form of such statutory clauses, in Guernsey, has changed to include provisions that this does not prevent an award of damages in respect of an act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000. It is recommended that section 30 is amended accordingly.

### 3.14 Scope of Coverage in Respect of Partnerships

Since the establishment of the DCS, the DCS Board has taken the view that deposits which represent partnership property, held by partners in general partnerships<sup>5</sup> comprised of natural persons, would be within the current scope of coverage of the DCS. The current Scheme Leaflet states that “Partners in non-limited partnerships holding accounts for their own benefit would be treated as joint account holders.”

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<sup>4</sup> Section 23(4) of the Ordinance.

<sup>5</sup> i.e. not limited partnerships or a limited liability partnerships.

The DCS Board has advised the Committee that it considers that deposits held by partners, which represent partnership property, should not be within the scope of the DCS and it is proposed that the Ordinance should be amended to clarify that this is the case.

### 3.15 Scope of Coverage in Respect of Guardianship, etc.

The DCS Board has recommended, to the Committee, that the scope of the DCS should be extended to cover deposits made by a guardian.

In Guernsey, there are two types of guardianship at customary law. Tutelle governs the appointment of a tuteur (guardian) in the case of a minor (i.e. a person below the age of 18) with no living parent. In addition, in the context of children, legislation provides for the appointment of guardians and for a wider range of person who can have parental responsibility in relation to a child than just parents and guardians<sup>6</sup>.

Curatelle governs the appointment of a curateur (guardian) in the case of a patient (a person over 18 who has been found to be unable to manage their own affairs for reasons of infirmity of mind or body). Legislation<sup>7</sup> providing for lasting powers of attorney has been enacted in the Bailiwick, by which an individual can appoint another person as an attorney to make decisions about their property and financial affairs, including when they no longer have capacity to do so themselves.

The Committee believes that the Ordinance should be amended to provide that a deposit should be a qualifying deposit for the purposes of the DCS if it is made:

- (i) on behalf of a child under the age of 18 by a tuteur, guardian, or any person with parental responsibility; and/or
- (ii) on behalf of a patient by a curateur, or an attorney pursuant to a lasting power of attorney.

### 3.16 Minor and Consequential Amendments

The Committee intends that the opportunity should be taken to make such further minor, consequential and/or non-substantive amendments to the Ordinance as are necessary or appropriate.

## **4 Compliance with Rule 4**

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<sup>6</sup> See the Children (Guernsey and Alderney) Law, 2008 and the Children (Sark) Law, 2016.

<sup>7</sup> See the Capacity (Bailiwick of Guernsey) Law, 2020.

4.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.

4.2 In accordance with Rule 4(1):-

- a) The propositions contribute to the States' objectives and policy plans by supporting the financial services sector.
- b) In preparing the propositions, consultation has been undertaken with the Policy & Finance Committee of the States of Alderney, the Policy & Finance Committee of the Chief Pleas of Sark, the DCS Board, the Commission and the AGB.
- c) The propositions have been submitted to His Majesty's Procureur for advice on any legal or constitutional implications.
- d) There are no financial implications to the States of carrying the proposal into effect.

4.3 In accordance with Rule 4(2):

- a) The propositions relate to the Committee's purpose and policy responsibilities to advise the States and to develop and implement policies on matters relating to its purpose, including (i) the promotion and development of all sectors of business, including financial services, and (ii) the reputation of the Island as a centre for commerce and industry.
- b) The propositions have the unanimous support of the Committee.

Yours faithfully

N R Inder  
President

S J Falla  
Vice-President

A Kazantseva-Miller  
N G Moakes  
S P J Vermeulen

A Mancini  
A Niles  
Non-States Members