

# Full steam ahead: the Bank (Recovery and Resolution) (Jersey) Law 2017

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The Bank (Recovery and Resolution) (Jersey) Law 2017 (the “**Law**”) comes into force on 31 January 2022.

This new note supplements our [earlier briefing note](#) on the Law and includes recommendations for meeting requirements on banks under the Law.

## Background

The origin of this legislation in the 2008 financial crisis, with the huge injection of public money to aid failing banks by way of government bail-out, is well known. The purposes of the Law, aligned with those of legislation put in place internationally, are summarised in our earlier note.

Jersey’s role as an IFC means that there will be particular international interest in the protection of customer deposits, and the existing protection is confirmed in this new regime for prompt and orderly regulatory, and effectively state, intervention in a failing bank in Jersey. Necessarily Jersey has followed the model of the EU and UK approach (please see our earlier note), including by provisions for assisting a foreign jurisdiction where equivalent bank resolution action has been taken against an international bank with business in Jersey. The Law therefore corresponds to and complements equivalent legislation of other jurisdictions.

## Whom does the Law apply to?

The Law will apply to any person/entity registered to carry on deposit-taking business in Jersey under the Banking Business (Jersey) Law 1991 (and, to an extent, to any Jersey company that is a subsidiary or holding company of such a business).

## Resolution Authority and Resolution Fund

Our earlier note referred to the Law establishing the Jersey Resolution Authority (the “**JRA**”), and its suite of tools for dealing with distressed or failing banks in Jersey, including applying a ‘bail-in’ tool to its shareholders and creditors (i.e. bank resolution, such provisions allowing the JRA to cancel or write-down all or some of the liabilities owed by a failing bank in Jersey and/or convert such liabilities into equity).

The JRA is also equipped with investigatory powers to ensure Jersey banks have complied with their various obligations under the Law, and will have the ‘Resolution Fund’ (again please see our earlier note) including for providing short-term funding and the provision of guarantees or capital. Banks in Jersey will have to contribute to this Fund.

## Other impact on banks

The Law provides for certain actions to be undertaken by banks, including those referred to below.

## Recovery plan

Every bank in Jersey will be required – at such times as the Jersey Financial Services Commission (the “**Commission**”) may specify – to formulate a recovery plan explaining what the bank intends to do in the event that its financial position deteriorates significantly and in particular, what actions the bank would take to restore its financial position.

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## Resolution plan

The JRA must, as far as practicable and as it deems necessary, carry out an assessment of a bank in Jersey to determine the extent to which that bank is resolvable and draw up a resolution plan for that bank which is proportionate to the systemic importance of the bank or its group.

## Contractual recognition of bail-in

The Law will require banks to include a 'bail-in term' in certain documents (contractual documents creating an "eligible liability" of the bank where the liability is governed by the law of a non-Jersey jurisdiction), and this is not limited only to 'new' documents or the bank's 'own documents'. Under that provision, the bank's counterparties acknowledge that such liability is subject to the JRA's exercise of write-down and conversion powers. Note that subsidiaries and holding companies of deposit-taking businesses are also subject to this requirement. The inclusion of a bail-in term in such documents is intended to reduce the susceptibility of the JRA's bail-in powers to challenge under foreign law.

The Law will immediately be amended on its coming into force, so that the requirement for such 'contractual recognition of bail-in' will come into effect at a later date (to enable banks to make necessary preparations).

A bank's failure to comply with any of these requirements renders it guilty of an offence and liable to a fine. Any such failure will not prevent the bail-in tool being deployed in respect of that bank.

## Recommendations

Amongst other things:

- Banks should ensure early communication with the Commission with regard to the timing of production, and particular requirements, of their recovery plans. For international banks with a presence in Jersey, not only will the Jersey recovery plan need to fulfil the requirements of the Law, it will also of course need to work with existing group recovery plans required in other jurisdictions;
- Banks should engage early with the JRA to establish what information will be required for the JRA's drawing up of resolution plans (especially if there is an international regulatory dimension or an existing group resolution plan in other relevant jurisdictions), and the timings for this. Banks should also ensure internal processes are established to enable them to react promptly to the JRA's annual review of its resolution plans and other JRA requests for information; and
- Banks (including, as above, subsidiaries and holding companies) should consider which of their liabilities are 'eligible liabilities' which will be subject to 'contractual recognition of bail in' requirements, undertake a review of their terms and conditions and other documentation to establish which will need to include such a bail-in term, consider an appropriate form of such term and put in place procedures for the inclusion of such provisions when the requirement for 'contractual recognition of bail-in' comes into effect.

## How we can assist you

We shall be pleased to provide advice and assistance on contractual recognition of bail-in and other aspects of the Law. Please contact your usual Carey Olsen contact, or a member of the team listed below.

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