

Dormant Bank Accounts

Summary:

A law has been prepared that will enable the balances from dormant bank accounts to be used for charitable and other related causes.

This document sets out guidance for banks (as defined in the Law) on the process for dealing with dormant accounts including as to the relevant forms to be used for notifications. The forms (which comprise a notice and an Excel spreadsheet) are found in the Appendix. The Guidance has been prepared in association with the banks.

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Supporting documents:

Dormant Bank Accounts (Jersey) Law 2017

(cif 17 July 2017) save for Articles 10(1)(d), 20 and 30(3)

<https://www.jerseylaw.je/laws/enacted/PDFs/L-01-2017.pdf>

Dormant Bank Accounts (Jersey) Law 2017 Appointed Day Act 2017

(cif 4 July 2017)

<https://www.jerseylaw.je/laws/enacted/PDFs/RO-072-2017.pdf>

Dormant Bank Accounts (Notices, Fees and Terms of Agency) (Jersey) Order 2017 (cif 17 July 2017)

<https://www.jerseylaw.je/laws/enacted/PDFs/RO-076-2017.pdf>

Introduction

The Dormant Bank Accounts (Jersey) Law 2017 (the "**Law**") came into force on 17 July 2017 together with the Dormant Bank Accounts (Notices, Fees and Terms of Agency) (Jersey) Order 2017. The aim of the Law is to transfer balances in "dormant" bank accounts (that is, in general terms, accounts where contact has been lost with the customer for at least 15 years) from banks to a central fund called the Jersey Reclaim Fund (the "**Fund**"). The Chief Minister has responsibility under the Law for its operation but the Fund will be administered by the States Treasury and Exchequer (the "**Department**"). The Law requires that some of the money in the Fund is to be retained to cover potential claims from bank customers. The remainder will be used to support a number of charitable purposes in the local community and the costs of the Charity Commissioner.

The customer of the bank can claim their money back from the Fund (via their bank) at any time. The bank will pay the customer their money and then seek reimbursement from the Fund. Importantly, customers do not have to find out information about the Fund or seek new contact details. Instead they simply contact their bank and, after verification, their bank will repay them their funds. It is for the bank to then reclaim those sums from the Fund.

These Guidance Notes set out the requirements for a bank in relation to the notification of dormant accounts, making a transfer to the Fund (via the Department) and thereafter seeking any reimbursement in respect of money paid out to a former bank customer. They also deal with transitional provisions.

Dormant Bank Accounts (Jersey) Law 2017

To whom does this Law apply?

1. Under Article 4 a bank is defined to mean:
 - a. a person who is registered under the Banking Business (Jersey) Law 1991 and carries on deposit taking business within the meaning of that Law; or
 - b. a person who, as part of a business, takes safe custody (but not ownership) of precious stones or precious metals; or
 - c. a person prescribed for the purposes of this Article.
2. No persons have been prescribed under sub-paragraph (c) and there is no current intention to do so.
3. The institutions registered under the Banking Business (Jersey) Law 1991 are listed on the relevant pages of the JFSC website.

What is a dormant account?

4. The account must be held by a bank in Jersey as part of its activity of accepting deposits. (Precious metals or stones held by a bank in Jersey in its activity of accepting safe custody are also included in the definition of account – see paragraphs 10-12 below). All accounts regardless of by whom they are held (for example an individual or a corporate entity) may become dormant. Accounts that are held in currencies other than pound sterling are included in the scheme.
5. Article 5 sets out the test for dormancy. In summary, a bank account is classed as dormant if there have been no transactions carried out on the account that were initiated by a holder(s) of the account for a period of 15 consecutive years, and there is no evidence held by the bank of the account holder having made any contact with the bank in relation to that account by any means of communication for 15 years.
6. An account is not to be treated as dormant if there is evidence held by the bank of contact having been made at any time during the 15 year period in relation to a linked account.
7. An account will not be dormant if it is an account with a financial disincentive for making a withdrawal from the account or if withdrawals are not permitted.

Time does not start to run for a fixed term deposit account until the end of the term. Uncashed cheques and unapplied credits are not currently included in the definition.

8. An account that is closed by a bank prior to the 15 year period without the funds being paid out to the account holder will be classed as a dormant account for the purposes of the Law only once the 15 years expires. For example, accounts may be closed for Anti-Money Laundering “**AML**” reasons where the balance is still retained by the bank.
9. Subject to the bank's terms and conditions, where more than one account is held by an account holder and the accounts are deemed dormant, the balances may be amalgamated with or netted off against each other to determine whether or not funds are available to be paid to the Jersey Reclaim Fund.

How does the Law apply to precious stones and precious metals?

10. Precious stones and precious metals are partially within the scope of the scheme as transfer may take place on a voluntary basis but is not compulsory. Unless an election is made for transfer, these items are not to be the subject of notifications from the bank/ financial services provider to the Department in contrast to the mandatory treatment of bank accounts set out above.
11. The definition of precious stones and metals includes bullion and coins but excludes jewellery. The dividing line between jewellery and precious stones and precious metals is a matter for the bank to determine. The Law requires the sale of the precious stones and metals and the transfer of the sterling equivalent of their value to the Fund if the bank elects for transfer of the precious stones and metals. Because of the risks attached to this decision, it is expected that a prudent approach will be taken by a bank.
12. If such an election is made, notification to the Department of the immediate intention to transfer the equivalent value in sterling of the precious metals and precious stones should be given on **Notice 2**. This should be filed in the December of the relevant year. (There is no requirement to file a Notice 1 dealing with precious stones and precious metals although they can be added to Notice 1 if a bank so wishes).

Notifications by banks to the States Treasury and Exchequer (on behalf of the Chief Minister)

13. Notices are to be sent to the Chief Minister c/o Head of Investment Management, Treasury and Investment Management, States Treasury and Exchequer, Cyril Le Marquand House, The Parade, St Helier, Jersey JE4 8UL. Alternatively, they can be forwarded by email to DormantBankAccounts@gov.je

The timeline for notifications and transfers is as follows. A relevant year runs from 1 July to 30 June.

Returns should still be submitted even where the figures are nil.

1 July to 30 September – notification by bank to the Department of accounts that have fallen dormant in the preceding relevant year (**Notice 1**)

1 July to 30 September – bank to give notice of the balance of every dormant account to the person in whose name the account is held at the person's last address known to the bank, unless the bank believes that writing to that address may lead to a risk of fraud. Also to advise that the balance is to be transferred as a dormant account balance by the end of the year unless contact is made.

1 July to 30 September – [not applicable in Year 1] bank to submit Annual Statement in respect of the preceding relevant year (using **Notice 3**) of (i) amounts paid out to account holders making a claim, (ii) amounts reclaimed from Minister, and (iii) amounts not paid out. A return should still be submitted even where the figures are zero.

30 September to 30 October - Department to confirm to the bank the balances that will be accepted (and to provide the banks with the account details for the transfer).

1 December to 31 December - If no response from customer AND no refusal by Minister, bank obliged to transfer funds and must notify the Department using **Notice 2** of their intention to transfer the particular funds, including as to any election to transfer the equivalent monetary balance for precious stones and metals.

By 31 December - Transfers must be received by the Department.

14. Accounts with balances below £100 sterling may be aggregated, with a bulk sum figure being reported to the Minister together with notice as to the number of accounts included in this aggregated sum.
15. The bank must ascribe a unique identifier (of its own choosing) to each account that it transfers which will be stated on the notification form – (usually Notice 1). This same unique identifier should be used on all subsequent forms and correspondence relating to that account.
16. The Participant ID Number to be inserted on the form is the registration number given to a bank by the JFSC on the banking register – which will follow the format DCxxxx.

Accounts in a foreign currency

17. As noted above, the initial notification to the Department must be made on Notice 1. For foreign currency accounts the balance should be stated as well as the pound sterling equivalent as at the date of filing of Notice 1. As any conversion will in fact only take place at the time of transfer the sterling figure on Notice 1 may well change by the time the actual transfer takes place due to fluctuations in the exchange rate.

Anti-Money Laundering and Counter the Financing of Terrorism requirements

18. The bank may hold accounts as to which there are concerns in connection with AML and Counter the Financing of Terrorism (“CFT”) requirements or other obligations imposed by law.
19. The Law states in Article 11(2) that, *“Nothing in this Law affects any duty of a bank to comply, in respect of the account and the claim, with any law that imposes obligations on the bank in relation to taxation, anti-money laundering or terrorist financing, or with any other obligation imposed by law.”*
20. Therefore, any accounts that are subject to a Suspicious Activity Report with a “No Consent” to act on the account raised by the Joint Financial Crime Unit should not be disclosed under the Dormant Accounts regime.
21. In respect of these accounts, the Government is currently in the process of finalising draft legislation pursuant to which the Attorney General will be able to make an application to the Royal Court to consider whether funds under longer term “no consent” provisions can be proved to be from legitimate sources. If the application is uncontested or should it be found by the court that the moneys are not legitimate, the monies will be transferred

to a separate fund to be established and held by the Department. This legislation will be consulted on later in 2017 with a view to introduction before May 2018. It is for this reason that disclosure under the Dormant Accounts regime will not be required.

Notification to the customer

22. Article 7 requires that within three months of the 30 June in each year a bank must in relation to every account that it holds that has fallen dormant in the preceding relevant year give notice of the balance to the person in whose name the account is held at the person's last address known to the bank, unless the bank believes that writing to that address may lead to a risk of fraud. The bank should also advise that the balance is to be transferred to the Fund as a dormant account balance by 31 December unless contact is made.
23. The precise format of the notification to the customer is up to the bank. Whether there is a risk of fraud is a general phrase subject to its ordinary meaning and may be interpreted broadly.

Transfers - and accounts not to be transferred

24. Technically the Law gives a two month window until 30 November in each year during which time the Department can notify the bank of any refusal to accept a transfer if it appears to the Minister reasonable to do so. However, as a matter of practice the Department will aim to notify the banks of any refusal by 30 October.
25. Obviously, where the holder of the account, at any point up to transfer, notifies the bank that the account is not dormant, the account will no longer be classified as dormant and is not to be transferred.
26. If there is neither refusal by the Minister nor contact from the account holder, the bank must, by 31 December, complete Notice 2, setting out the balances which are to be transferred, and then make the transfers.
27. In the case of balances in a foreign currency, they should be converted no more than two working days before the day of transfer at the prevailing rate of the day (or at such other rate as is prescribed). Providing that the terms and conditions of the account allow such, Article 14(1) of the Law permits the bank to deduct from the amount to be transferred, reasonable fees and expenses incurred in this respect.

Who owes the debt to the account holder? How does an account holder make a claim? What is the mechanism for reimbursement from the Fund?

28. Article 9 states that after a transfer by a bank to the Jersey Reclaim Fund the holder of the account no longer has a right against the bank but has a right to be repaid from the Jersey Reclaim Fund in respect of the amount transferred. This means that the whole or part of the balance that was transferred is no longer a debt owed, or value due, by the bank.
29. However, the Law requires that a customer whose account has been deemed dormant and whose money has been transferred over to the Fund, should, in the first instance, approach the relevant bank to obtain repayment of their money. The bank acts as agent for the Fund and must act with regard to their former customers as if they were existing customers. If approached by a former customer, a bank must carry out CDD and AML checks on the customer and be satisfied that they are the person who is entitled to the balance of an account. Once a bank is so satisfied, it must pay the monies over to the customer and then seek a refund from the Fund (see below). Banks can choose to pay the sum to the customer in whatever manner they wish. However, it is generally anticipated that a bank will pay the customer the money either through a bank transfer or through reopening the account (or opening a new account).
30. Banks can make reclaims four times a year from the Jersey Reclaim Fund. A claim can be made by submitting the relevant form to the Department by 31 March, 30 June, 30 September or 31 December for the Minister to process the application during the quarter that follows each of those dates. This is a similar process to that which operates in the UK. The form to be completed is set out at **Notice 4**. The bank must seek reimbursement within three years of making payment to the account holder, failing which the claim will be out of time. This limitation period is to give certainty to the Fund as to the value held. The bank will also bear the risk if it makes a payment out in error. An example is if a bank reimburses someone who is not the actual account holder. In such circumstances the bank should notify the Fund of the error and repay to the Fund any moneys received by the bank from the Fund in respect of that claim.

What is the level of interest on dormant accounts after transfer to the Jersey Reclaim Fund?

31. The Law states that an account holder is not entitled to interest on the balance transferred in respect of any period during which the monies are held

by the Fund unless the Minister makes an Order stating otherwise. No Order has been made or is intended to be made at this time.

32. Interest is not paid in order to minimise the risk of disputes. However, prior to transfer to the Fund, the level of interest is governed by the terms and conditions of the account. Should circumstances arise where the bank is liable to repay the customer a larger sum than that transferred to the Fund because the amount transferred to the Fund did not include the full amount of interest due on the account prior to transfer according to the bank's terms and conditions, the additional interest element cannot be reclaimed from the Fund (as it was never paid over) and the liability lies with the bank.

Who bears the risk of currency fluctuations or changes in the value of precious metals or stones?

33. The Law states that the account holder bears the risk of currency fluctuations or changes in the value of precious stones or precious metals. This decision was made because the account holder has had the opportunity to reclaim his or her monies prior to the account becoming dormant.
34. Article 9 sets out that the holder of an account that is converted from a foreign currency to sterling and transferred to the Fund has no right to receive the monies in the foreign currency but only the right to receive the sum that was transferred post conversion.
35. Fluctuations in value may mean that the customer receives a greater or lesser value in sterling than that to which they may feel entitled. Where the fluctuation has affected a customer negatively, in exceptional cases, the Minister has the power under Article 9(2), to pay a sum greater than their entitlement provided that there are sufficient sums in the Fund to pay a claim bearing in mind the size of the Fund, other potential claims and other relevant factors. An example of such an exceptional case might be where a person was held unjustly as a prisoner abroad and was unable to contact his bank to inform it that the account was not dormant.

Record keeping requirements

36. Article 11 states that the bank has the duty to retain the records that the bank has created or acquired relating to the relevant dormant account and to any holder of that account. Article 19 states that the bank acts as the agent of the Minister and the Fund. This includes complying with the necessary record-keeping obligations as well as the fulfilment of any other legal or regulatory obligations arising out of client relationships.

37. The purpose of keeping the records is, not least, to ensure that, should a former customer return to claim his or her money, the bank is able to verify their identity in accordance with the usual rules on AML, CTF and any other relevant requirements for customer due diligence.
38. At this time, there is no time limit placed on the length of time that records must be kept. However, the Minister may vary Article 11 by Order if a suitable protocol can be determined and the government will liaise further with the banks in this regard.

Transitional provisions / accounts that are already dormant

39. Provisions that are applicable to the transitional phase are Articles 5, 7 and 29 of the Law.
40. **For accounts that have become dormant in the relevant preceding year to the Law coming into force**, the usual procedures as set out in this Guidance Note will operate.
41. Thus on the basis that the Law came into force on 17 July 2017, if an account became dormant due to the expiry of the 15 year period at some point between 1 July 2016 and 30 June 2017, Notice 1 must be filed by the end of September 2017 and Notice 2 filed together with transfers made by the end of December 2017. The first Article 12 Annual Statement (on Notice 4) will not be due until the end of September 2018. The first period for any reclaims from the Minister as to monies repaid to account holders will be open until 31 March 2018.

(Technically, these accounts are of course accounts which were dormant when the Law comes into force, but they should be dealt with separately.)

42. **Where an account is dormant when this Law comes into force**, the bank has two options:
 - (i) it can elect to transfer the account to the Minister pursuant to Article 7(8)(b) of the Law at any point up to 1 July 2018. The bank should (at any time before 1 July 2018) file Notice 5B (rather than Notice 1) which notifies the account to the Minister and also gives notice of the intention to transfer on a particular date subject to the agreement of the Minister. This is an optional process and applies on an account by account basis (ie the bank is not committing to the transfer of all balances in accounts it holds which were dormant when the Law came into force by transferring one or more accounts in this way); or

(ii) it can use Notice 5A rather than Notice 1 to give notice of the accounts to the Minister and file this between 1 July – 30 September 2018. (The bank should also file a Notice 1 in relation to accounts that have fallen dormant between 1 July 2017 – 30 June 2018 in the usual way). The transfer of moneys would then take place by the end of December 2018 with use of Notice 2 in connection with the actual transfer. If some account balances have already been transferred using option (i) those details should not be replicated on Notice 5A.

43. **Where it is not possible to determine the exact date that an account has become dormant or whether an account is in fact dormant** according to the provisions of the Law, for instance where the transaction history has not been migrated during a platform change, Article 5(2) applies and the bank can make an application to the Minister for consideration of the particular circumstances.
44. Article 5(2) enables accounts to be classed as dormant for the purposes of this Law even if the period during which no transactions have been carried out or no contact has been made in relation to the account is less than 15 years if the Minister agrees to treat the account as dormant. The Minister will consider this on a case by case basis balancing the interests of the account holder with the underlying principle behind the Law to gather the balances in dormant accounts.
45. In circumstances where it is known that an account holder is deceased and the personal representative has indicated that the moneys in the account will not be claimed, it is at the bank's discretion whether or not they wish to submit an application under Article 5(2) for the account to be classed as dormant.
46. Article 29 of the Law **extends the time for compliance with the Law** in certain circumstances:
- (i) where the bank has no system in place which can identify accounts as dormant, the bank has up to 5 years (from the commencement of the law on 17 July 2017) to identify dormant accounts.
- (ii) where the bank has a system in place to identify accounts as dormant but the time period used is less than 15 years, the bank does not have to introduce a new system and does not have to comply with the Law until the period of difference has expired, thereby ensuring that the accounts have been dormant for 15 years. For example, if a bank identifies accounts as dormant after ten years, the bank is not required to comply with the provisions of the Law until another five years has elapsed (taking the total

period to 15 years).

47. Significantly, neither exemption applies if a bank is able to discover whether or not any accounts held by it are dormant (as defined by the Law) by a computerized search using its existing systems.
48. Despite the provision of what might be lengthy periods permitting the postponement of compliance in these transitional provisions, banks are requested to use reasonable endeavours to identify dormant accounts in a shorter period of time, even if on a partial basis.
49. If a bank is intending to utilise the transitional provisions of Article 29, the bank is asked to advise the Department so as to assist with the Department's monitoring and checking processes.

Annual reporting

50. A bank must file an annual statement by 30 September each year (save for Year 1) on **Notice 3** (with the relevant spreadsheet) setting out for the preceding relevant year: -
 - (i) the amounts that it has paid out to account holders making a claim;
 - (ii) the amounts that it has reclaimed from the Minister;
 - (iii) the amounts that it has not paid out despite claims from account holders.

APPENDIX

Notice 1 Notice of Dormant Accounts Held

Notice of accounts which have fallen dormant during preceding year pursuant to Article 7(1) (with spreadsheet)

Notice 2 Notice of Intended Transfer

Notice of intention to transfer dormant account balances including of any election for transfer of precious stones and metals, pursuant to Article 7(9) (with spreadsheets for transfer of money OR transfer of precious stones and metals respectively)

Notice 3 Annual Notice of Repayments

Annual statement stating repayments made by bank to account holders together with sums claimed back from the Minister and monies not paid out

Notice 4 Reclaim Certificate

Reclaim Certificate from bank stating amounts paid out to customers claiming in respect of dormant accounts and making claim from Minister for reimbursement in respect of those claims (with spreadsheet)

Notice 5A Notice of Accounts Dormant at Commencement

Notice of accounts which are already dormant when the Law comes into force (akin to Notice 1) (with spreadsheet) - to be filed 1 July to September 2018.

Notice 5B Notice of Selected Accounts Dormant at Commencement

Notice of accounts which are already dormant when the Law comes into force (akin to Notice 1) (with spreadsheet) as above, but which the bank wishes to transfer pursuant to Article 7(8)(b) of the Law at any point up to 1 July 2018