

Dormant Bank Accounts

Summary:

A law has been prepared that would enable dormant bank accounts to be used for good causes. This document aims to set out the responses to the consultation in summary form and identifies the changes to the draft law before debate by the States of Jersey Assembly.

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Supporting documents attached:
Dormant Bank Accounts (Jersey) Law 201-

How we will use your information

The information you provide will be processed for the purpose of consultation. The Department of the Chief Minister will use your information in accordance with the Data Protection (Jersey) Law 2005 and the Freedom of Information (Jersey) Law 2011. Please note that we may quote or publish responses to this consultation but we will not publish the names and addresses of individuals. If you do not want any of your response to be published, you should clearly mark it as confidential. Confidential responses will be included in any summary of statistical information received and views expressed.

Response to consultation

A consultation took place in which the Assistant Chief Minister invited responses on the draft Dormant Accounts (Jersey) Law 201- (the “**Draft Law**”). The aim of the Draft Law is to transfer balances in “dormant” bank accounts (i.e. accounts where contact has been lost with the customer for 15 years) from banks to a central fund called the Jersey Reclaim Fund. The Jersey Reclaim Fund will be administrated by government and used to support a number of good and charitable causes in the local community.

The Draft Law should not disadvantage the customer because they can still claim their money back from the Jersey Reclaim Fund (via their bank) at any time. The bank will pay the customer their money and ask for the sum back from the Jersey Reclaim Fund. Importantly such persons do not have to find out information about the Jersey Reclaim fund or to seek new contact details. Instead they can contact their bank and their bank will repay them their funds. The bank will in turn be entitled to ask for the monies paid out to the customer from the Jersey Reclaim Fund to ensure that the bank is not out of pocket.

This response to the consultation paper identifies the comments made to the consultation paper and the changes made as a result of those responses to the Draft Law.

Feedback on this consultation

We value your feedback on how well we consult or seek evidence. If you have any comments on the process of this consultation (as opposed to the issues raised) please contact Communications.Unit@gov.je

Response to Consultation on Dormant Accounts Law 201-

Introduction

1. The Assistant Chief Minister invited responses on the draft text of a Dormant Accounts (Jersey) Law 201- (the “**Draft Law**”). A total of fifteen responses were received by Jersey Finance and twelve further comments from persons. Many of the respondents only addressed certain issues.
2. The paper aims to summarise the issues raised and the government's responses.

Question 1: Should precious stones and precious metal custody accounts be included as accounts captured by the Draft Law?

3. There were fairly evenly split responses over whether the scheme should be limited to bank accounts or should include precious stones and precious metals.
4. Some raised points were raised about the difficulties relating to the inclusion of such assets including the potential for fluctuating values. Many banks responded that they do not hold such assets and so the question was not relevant to their business models. Others commented that they would not look to transfer over such assets on a voluntary basis because of the risk of litigation should a person lose money because of such a decision. One bank commented that jewellery should be excluded because of the sentimental nature of such items.
5. As the decision whether to transfer such assets would be at the option of the bank (i.e. a bank may choose to transfer the proceeds of sale of precious metals and precious stones to the Jersey Reclaim Fund rather than being compelled to do so by the terms of the statute), it is considered appropriate to leave such classes within the scope of the legislation. This would enable a bank to pay over the proceeds of such assets in appropriate circumstances. However one change because of the complications in reporting values on such assets which may not have been valued is to remove the requirement to produce returns even if none are being transferred.

Question 2: Should any other types of accounts be captured by the Draft Law at this initial stage?

6. The overwhelming response was that no other classes of assets should be added to the list already contained in the legislation. Consequently no changes have been made to the legislation.

Question 3: Should the period of dormancy match the period of dormancy in the UK?

7. The overwhelming response by respondents was that the dormancy period should match the UK period of dormancy. Many banks headquartered in the UK stated that their commercial requirements were to try to create a scheme that enabled their systems to match those that they already had in place in the UK. It was also stated that we should try to bring in a system that matches the Isle of Man and Guernsey, if possible if there are also to legislate in this area.

Question 4: Should no-mail accounts be included in the Scheme? Should the definition of dormancy vary from the UK definition by not including accounts if there are transactions on related accounts?

8. The paper form of the consultation paper varied slightly from the electronic consultation questionnaire and so these two questions are answered together in this section.
9. The overwhelming response was that that “no-mail” accounts should be included in the scheme as there were very few, if any, still in existence. The responses also supported the variance from the UK definition by not including accounts if there are transactions on related accounts. The UK Reclaim Fund commented that the key to such transactions are whether they are initiated by the customer or by the bank. These comments resulted in amendments being made to the Draft Law.

Question 6: Should there be a requirement on a bank to send a notice to the last known address, once an account is identified as dormant, in order to attempt to protect customers, by notifying them that their account is being transferred to the Jersey Reclaim Fund?

10. The Draft Law contained the proposal to require each bank to attempt to contact the customer one last time at the last known address in order to notify them that the account is going to be transferred to the Jersey Reclaim Fund. This *de minimis* process is set out in Article 6(1)(c). However, several respondents argued that in cases where there was a known risk of fraud then there should be the ability to depart from this requirement. In response to such concerns the Draft Law has been amended to give a bank the option of not contacting the customer if the bank believes that writing to the last known address may lead to a risk of fraud.

Question 7: Should non-sterling accounts be included in the scheme?

11. The overwhelming majority of responses agreed with the government proposal to include accounts that are held in currencies other than pound sterling should be included in the scheme. Interestingly, it is also something that the UK Dormant Assets Commission will be considering over the course of 2016 for introduction in the UK.

Question 8: Should the Jersey Reclaim Fund, the bank or the account holder bear the risk of currency fluctuation?

12. Only just over half of the respondents directly responded to this question. Of those who responded, over half (ten) stated that the bank or the account holder should bear the risk of currency fluctuations. The remainder were fairly evenly split between the risk remaining with the Jersey Reclaim Fund and the customer. This response has caused the government to carefully consider the proposal.

13. Further discussions were held with an overseas reclaim fund as to their experiences concerning the likelihood of claims, and the effect of the Jersey Reclaim Fund being responsible for fluctuations in currency. Having considered the responses as a whole and the results of the further research certain factors were considered persuasive in addition to those stated in the consultation paper.

14. If the Jersey Reclaim Fund was at risk for fluctuations in currency then significantly higher reserves would need to be held to guard against the risks of a large fall in the pound relevant to other currencies or a dramatic strengthening of other currencies. This would lead to a reduction in the funds that could be paid over to good causes and the holding of larger reserves. Responses of those who did not directly respond on this issue were mainly of the view the law should aim to maximise the returns for good causes. It is also the case that the Minister has the power under Article 9(2) to pay appropriate sums to a particularly deserving claimant providing, in layman's language, that there are sufficient sums in the Jersey Reclaim Fund to pay such bearing in mind the size of the Jersey Reclaim 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 them of the reason that the account was dormant.
15. Having considered all the factors, it was decided that a fundamental aim of the legislation was to maximise the return for good causes, and that injustice could be prevented in appropriate cases, therefore after careful consideration, that the risk of currency fluctuations should fall on the customer rather than the bank or the Fund.

Question 9: Should payment of balances into the Jersey Reclaim Fund scheme be compulsory or optional?

16. The majority of respondents thought that the scheme in respect of dormant accounts with money in them should be compulsory. Many banks responded that they believe that payments of dormant accounts should be compulsory because it would reduce the risks of a depositor challenging a bank for taking the decision to pay monies across to the scheme. It was acknowledged by a number of banks that the risks of action being taken was very low. Therefore the Draft Law will continue to state that payments of dormant accounts will be compulsory.

Question 10: If optional, do you think that there is a risk that the sum of the balances transferred will be less than if the scheme was compulsory?

17. Those who responded to this question stated that the chances of the sums paid over to the reclaim fund being reduced were increased if the scheme was voluntary rather than compulsory. Therefore no change has been made.

Question 11: Can respondents think of any scenarios where issues may arise through the bank acting as the agent of the Jersey Reclaim Fund?

18. The majority of respondents did not consider scenarios where issues may arise because of an agency agreement arising under the proposed statute. However, there were also a number of responses raised including the conflict of interest between the bank acting for itself and for the Jersey Reclaim Fund. In response it is believed that this system is designed to be similar to that which is adopted in the UK and which many of the banks support following. It was also raised that there is a risk that banks may have different policies in respect of refunding customers and that there was a risk that treatment might be different depending on the institution banked with. This risk applies across all banking activity and is not believed to be a significant obstacle to such a policy being carried through to the final statute.

19. Finally the interplay between Article 11 setting out the duties of the bank and Article 19 which sets out the areas in which the bank acts as the agent of the Minister was commented on. The answer to how the Article interrelate is that Article 11 sets out the duties of the bank by statute while Article 19 states that in certain of these areas where the bank has a duty, it acts as the agent of the Jersey Reclaim Fund and the Minister may by Order set out the manner in which the bank should act. This is an unusual agency arrangement as it is set up by statute rather than by virtue of a negotiated agency agreement between the parties. There were no issues raised that resulted in a change to these clauses.

Question 12: Are the terms of the agency agreement sufficient and comprehensive for the purpose of protecting the Jersey Reclaim Fund?

20. The majority of the respondents thought that the terms of the agency agreement as set out in the Draft Law were sufficient for the protection of the Jersey Reclaim Fund. The provisions therefore have remained unaltered. However, following discussions with another reclaim fund an Order will be drafted in due course to add to the existing terms. The aim will be for these terms to mirror those which exist in the UK.

Question 13: Is it reasonable that the level of interest to be added on dormant accounts after transfer to the Jersey Reclaim Fund is set at zero and the proceeds used for good causes? If not, what is an appropriate level of interest?

21. An overwhelming majority of respondents agreed with the proposal that the level of interest rates should be set at zero. Some of those who disagreed believed that the rate should be clear regardless of the level that was set. One respondent thought that where the interest level was unclear then this should be determined by the ombudsman or by the courts. Another respondent questioned whether it was fair to change the terms of the account after the account was opened. Comments by those who supported the opposing view stated that interest should be set at zero in order to minimise the risks of disputes and that this was probably the most practical option.
22. Taking into account the fact that the majority of respondents supported the existing Draft Law no amendments have been made.

Question 14: Are the time scales proposed reasonable in order to allow customers to contact their bank and for banks to process the administration of transfers?

23. The overwhelming majority of respondents supported the timescales set out in the draft legislation, therefore no amendments are proposed.

Question 15: Should the banks be required to report balances in relation to precious metals and precious stones? If not, then please give reasons?

24. The consultation paper asked whether balances should be reported by banks in relation to precious metals and precious stones. While the majority of written responses favoured banks reporting balances in relation to precious metals and stones further enquiry revealed that this was on the basis that such assets were included on a compulsory basis rather than a voluntary basis. Some responses also set out practical difficulties with the approach set out in the Draft Law relating to valuing such assets. Accordingly as a decision has been made to propose that such assets are not included on a compulsory basis this requirement has been withdrawn.

Question 16: Is the proposed mechanism for the Jersey Reclaim Fund to reimburse the banks sufficiently practical?

25. The overwhelming number of respondents supported the mechanism as drafted. However, there were several comments that reclaiming only once a year was too stringent in the case of large claims or that banks should receive the money back from the Jersey Reclaim Fund prior to reimbursement of the customer. Discussion with the UK reclaim fund revealed that they allow reclaims 4 times a year with the banks paying monies over to the customer before seeking a reclaim from the fund. Therefore, weighing these factors into account the same process as that in the UK is proposed to be adopted to bring Jersey in line with banks who already have systems in place in line with UK requirements.

Question 17: Do you agree with the proposed use of the funds generated by the Dormant Accounts Law? If not please state what you would suggest as an alternative. For example, should the funds be divided proportionally or thematically sector by sector?

26. This was the one question on which all respondents answered. The majority supported the proposals contained in the legislation but there were also a number of comments that certain sectors should be excluded: three thought that sport or professional sport should be excluded; one thought that churches but not good causes supported by churches should be excluded; one thought that the funds should be used to supplement support for culture and the arts, another thought that a larger scale use of the funds should be realised. Some commented that existing States spending should not decrease as a result of use of any funds. Others stated that they supported the Minister handing responsibility for spending the money to an independent party such as the Association of Jersey Charities, or the Arts Trust in different sectors. It was also stated that it should be clear that the heads were separate so that an application under say public participation in sport should not also get funding from the general charities head unless it was for a different aim.

27. Therefore, in response to the comments Article 21 has been amended to make it clear that the head of charitable purposes is other charitable purposes separate to the other heads. No other changes have been made because the majority of the consultation responses supported how the clause was drafted.

Question 18: Is the proposed timescale for banks to build systems too long, too short or about right? If your answer is that the timescale is too long or too short please state what length of time is considered appropriate?

28. Seven banks responded on these issues saying that the time proposed for transitional provisions is about right with one saying that the timing is too short. Comments from the banking industry indicate that there are substantial changes needing to be implemented at this point in time including changes relating to the Common Reporting Standard and FATCA. Therefore the five years proposed was a reasonable transitional period taking into account many other changes that are also taking place at present. Accordingly on change has been proposed to the Draft Law.

29. Question 19 contained a series of issues which related only to banks. They were technical questions put in order to see what procedures would need to be put in place by the banks and whether the proposed tests for dormancy would work.

30. The responses demonstrated that banks currently adopt very different procedures for dealing with dormant accounts, that the current periods of dormancy used vary significantly, that only one bank will be able to produce the data necessary without systems changes and many will have to do a manual review of old accounts to determine whether they are older than 15 years as opposed to their existing dormancy period. Not all banks are able to tell if there are customer initiated transactions on all linked accounts through a computer guided search. Not all banks hold information on the last time that a customer was in contact with them and therefore whether there was contact more recently than the last customer initiated transaction.

31. The banks were not able to give the likely costs of the project until there is a clear scope to be investigated. Likewise the time scale for the project to change systems in order to identify dormant accounts was not known until the scoping exercise has taken place.
32. These answers given by the banks support their answers to Question 18 that changes will be necessary to many systems and that these changes may take longer than one year for some banks.

Conclusions and next steps

33. The Draft Law has been amended in many places as a result of the feedback to the consultation. A number of other changes were identified as a result of the final checking process. The final Draft Law was identified as ready to be lodged and is attached to this document. If the Draft Law was to be adopted by the Privy Council and registered in the Royal Court by July it is likely that the first monies identified by the banks as dormant could be paid across at the beginning of 2017. However there will be a significant transitional period in respect of many dormant accounts and so the full amount of dormant accounts will not be known for a further 5 years.
34. The next steps include working with Treasury to ensure that the relevant forms are prepared for reporting to take place by the banks and that the relevant processes and procedures are put in place. Further consultation will take place with the banking industry in order to ensure that these are fit for purpose.