



Consultation Paper 2024/03

Management and Governance and Restructuring Guidance Notes

A consultation on the JRA's planned Guidance Notes for Jersey Banks in relation to Management and Governance and Restructuring.

Issued: 16 September 2024

Glossary of terms

Defined terms are indicated throughout this document as follows:

Bank	A person registered to carry on deposit-taking business in or from within Jersey under the Banking Law; or A company incorporated under the Companies Law that is a Holding Company or a Subsidiary of a person so registered.
Banking Law	Banking Business (Jersey) Law 1991
Bail-in	The mechanism described in Article 65(1) of the Bank (Recovery and Resolution) (Jersey) Law 2017 for recapitalizing a bank or exercise of the write down or conversion power.
Companies Law	Companies (Jersey) Law 1991
Critical Function	Activities, services, or operations the discontinuance of which is likely to lead to the disruption of services that are essential to the real economy in Jersey or the disruption of financial stability due to the size, market share, external and internal interconnectedness, complexity, or cross-border activities of a bank or bank's group, with particular regard to the substitutability of those activities, services, or operations.
Holding Company	Has the meaning given by Article 2(4) of the Companies Law.
Jersey Bank	A person registered to carry on deposit-taking business in or from within Jersey under the Banking Law.
Jersey Branch	The Jersey operations of an Overseas Incorporated Bank.
JFSC	Jersey Financial Services Commission
JIB	Jersey Incorporated Bank. A Jersey incorporated company registered to carry on deposit-taking business under the Banking Law.
JRA	Jersey Resolution Authority
PS2023/01	Policy Statement 2023/01 'Resolution Planning and Resolvability'
Resolution Law	Bank (Recovery and Resolution) (Jersey) Law 2017
Subsidiary	Shall be construed in accordance with Article 2 of the Companies Law.

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1 Executive Summary

1.1 Overview

- 1.1.1 The JRA is established as Jersey's Resolution Authority, under the Resolution Law, to minimise the impact of the failure of a Jersey Bank and to ensure public funds are protected.
- 1.1.2 On 11 August 2023 the JRA issued Policy Statement 2023/01 'Resolution Planning and Resolvability' (PS2023/01), which sets out the overriding requirements and capabilities that the JRA expects Jersey Banks to develop to demonstrate that they are resolvable.
- 1.1.3 This Consultation Paper sets out the JRA's Guidance Notes in relation to Management and Governance and Restructuring. The Guidance Notes provide guidance to Jersey Banks in respect of the respective requirements set out in PS2023/01).
- 1.1.4 The Management and Governance Guidance Note is relevant to all Jersey Banks but especially to those identified by the JRA as performing Critical Functions in Jersey.
- 1.1.5 The Restructuring Guidance Note is only relevant to Jersey Incorporated Banks (JIBs). It reflects that restructuring requirements vary considerably depending on each JIBs preferred resolution strategy. However, JIBs are encouraged to consider all aspects of the Restructuring Guidance Note as part of this consultation in case there is a need to amend their resolution strategies in the future.

1.2 Feedback

- 1.2.1 Comments are invited from interested parties on the proposals by **no later than 1 November 2024**.
- 1.2.2 Comments should be sent by email to Martin Edwards, Head of the JRA at: info@jra.org.je
- 1.2.3 Whilst we encourage respondents to provide comments directly to us, should you wish to submit comments anonymously, please provide comments via Jersey Finance Limited (JFL). Please submit comments **by 1 November 2024** to Lisa Springate, Head of Legal and Technical at: Lisa.Springate@jerseyfinance.je

1.3 Next Steps

- 1.3.1 The JRA will review and consider all feedback received. Where appropriate, the JRA will amend the Guidance Notes.
- 1.3.2 It is intended that a Feedback Paper will be issued in December 2024 along with final versions of both Guidance Notes.

2 Consultation

2.1 Basis for consultation

- 2.1.1 The JRA has produced the Guidance Notes included in Appendices B and C which set out our guidance in relation to Management and Governance and Restructuring respectively.
- 2.1.2 The Guidance Notes are not intended to impose any additional requirements on Jersey Banks over and above the requirements in the Resolution Law and PS2023/01. Rather, they provide guidance to Jersey Banks regarding the capabilities they must develop to demonstrate that they are resolvable.
- 2.1.3 We will use the Guidance Notes to assist us in determining whether associated requirements have been met as part of our resolvability assessments of Jersey Banks. Where Jersey Banks cannot demonstrate the requirements have been met, the JRA has powers under the Resolution Law to require them to implement measures to improve their resolvability.
- 2.1.4 Section 4 of this consultation paper introduces the Guidance Notes and explains how they are structured. Sections 5 and 6 set out the specific consultation questions upon which we are seeking feedback

2.2 Who will be affected by the proposals?

- 2.2.1 The proposed Management and Governance Guidance Note will impact all Jersey Banks. The impact will be greatest for those Jersey Banks that perform Critical Functions in Jersey.
- 2.2.2 The Restructuring Guidance Note will mainly impact JIBs. The extent of the impact will vary depending on the preferred resolution strategy of each JIB.
- 2.2.3 Jersey Banks that are part of groups that have already implemented resolution planning requirements will be less impacted than those that are not.

2.3 Responding to the consultation

- 2.3.1 Comments are invited from interested parties on the proposals by **no later than 1 November 2024**.
- 2.3.2 Comments should be sent by email to Martin Edwards, Head of the JRA at: info@jra.org.je
- 2.3.3 We encourage respondents to respond to all relevant questions, however this is not mandatory.
- 2.3.4 We encourage responses on a named basis as this will enable bilateral dialogue on the feedback provided.
- 2.3.5 Should you wish to submit comments anonymously, please provide comments via JFL. JFL will then submit your anonymised comments to the JRA. Comments should be submitted to JFL **by 1 November 2024**. The JFL contact is Lisa Springate, Head of Legal and Technical at: Lisa.Springate@jerseyfinance.je
- 2.3.6 Unless otherwise requested by the respondent, the JRA will aggregate responses and paraphrase them on an anonymised basis for the purposes of producing a Feedback Paper. If a sufficient volume of responses is received, a list of respondents will be published in an appendix to the Feedback Paper.

2.4 Next steps

- 2.4.1 The JRA will review and consider all feedback received. Where appropriate, the JRA will amend the Guidance Notes.
- 2.4.2 It is intended that a Feedback Paper will be issued in December 2024 along with final versions of both Guidance Notes.

3 The JRA

3.1 Overview

- 3.1.1 The JRA is established under the Resolution Law to minimise the impact of a bank failure and to ensure public funds are protected.
- 3.1.2 The JRA plays a key role in upholding Jersey's status as a leading international finance centre by:
 - 3.1.2.1 reducing the risk of financial loss due to bank failure;
 - 3.1.2.2 protecting and enhancing the reputation and integrity of Jersey; and
 - 3.1.2.3 considering the best economic interests of Jersey.

3.2 Our functions

- 3.2.1 Article 7 of the Resolution Law sets out the JRA's statutory responsibilities to:
 - 3.2.1.1 make preparations to facilitate the resolution of Banks;
 - 3.2.1.2 administer the resolution of Banks;
 - 3.2.1.3 carry out such functions in relation to Bank resolution or recovery or such incidental or ancillary matters as are required or authorised by the Resolution Law or the Regulations; and
 - 3.2.1.4 carry out such other functions as are conferred on it by the Resolution Law or any other enactment.

3.3 Guiding principles

- 3.3.1 Article 8 of the Resolution Law provides that, in exercising our functions, the JRA may take into account any appropriate matter, but that we should have particular regard to:
 - 3.3.1.1 the reduction of the risk to the public of financial loss due to the financial unsoundness of a Bank;
 - 3.3.1.2 the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters; and
 - 3.3.1.3 the best economic interests of Jersey.

3.4 Resolution Objectives

- 3.4.1 Article 33 of the Resolution Law provides that, in exercising our resolution powers or applying resolution tools in respect of a Bank, we should have regard to and choose resolution tools and powers that best achieve the following resolution objectives:
 - 3.4.1.1 to ensure the continuity of banking services in Jersey and the provision of Critical Functions in Jersey;
 - 3.4.1.2 to protect and enhance the stability of the financial system in Jersey, including by preventing contagion and maintaining market discipline;
 - 3.4.1.3 to protect and enhance public confidence in the stability of the financial system in Jersey;
 - 3.4.1.4 to protect public funds, including by minimizing reliance on extraordinary public financial support;
 - 3.4.1.5 to protect eligible depositors to the extent that they have covered deposits; and
 - 3.4.1.6 to protect client assets.

4 Proposed Management and Governance and Restructuring Guidance Notes.

- 4.1.1 The JRA's guidance in respect of Management, Governance and Restructuring in Resolution are set out in the appended Guidance Notes (Appendices B and C).
- 4.1.2 The draft Guidance Notes are the next steps of our phased rollout of Jersey's Resolution Regime, having committed to consult on these in quarter three 2024. They have been created using published source documents of other Home Resolution Authorities, primarily the Bank of England and the Single Resolution Board as well as guidance from the Financial Stability Board.

Management and Governance Guidance Note

- 4.1.3 The Management and Governance Guidance Note is structured as follows:
 - 4.1.3.1 Section 1-3 set out the background, scope and a summary of the overriding objective of the Guidance Note.
 - 4.1.3.2 Section 4 sets out guidance applicable to Jersey Banks performing Critical Functions, which includes guidance on:
 - › governance in resolution;
 - › identifying an appropriate member of senior management to manage resolution-related activities;
 - › management in resolution;
 - › local resolution playbooks;
 - › quality assurance and internal audit;
 - 4.1.3.3 Section 5 sets out guidance applicable to Jersey Banks not performing Critical Functions.

Restructuring Guidance Note

- 4.1.4 The Restructuring Guidance Note is structured as follows:
 - 4.1.4.1 Sections 1 and 2 set out the background to and a summary of the overriding objective of the Restructuring Guidance Note.
 - 4.1.4.2 Section 3 provides general guidance to JIBs in relation to restructuring and, in respect of Jersey Branches, general guidance in relation to other requirements that overlap with restructuring (e.g. Communications Planning).
 - 4.1.4.3 Section 4 sets out guidance applicable to JIBs performing Critical Functions, which includes guidance on:
 - › structure, complexity and interdependencies;
 - › business reorganisation plans for JIBs where bail-in is the preferred resolution strategy;
 - › evaluation of business reorganisation plans for JIBs where bail-in in the preferred resolution strategy;
 - › preparing and maintaining separability assessments for JIBs where transfer or sale (including partial transfers) is the preferred resolution strategy;

- › capabilities required to support transactions where transfer or sale (including partial transfers) is the preferred resolution strategy; and
- › the use of wider group capabilities to meet the restructuring requirements and expectations.

4.1.4.4 Section 5 sets out guidance applicable to Jersey Banks not performing Critical Functions which includes guidance on:

- › Jersey Banks that are part of banking groups and or entities where the preferred resolution strategy is bail-in, transfer or sale; and
- › Jersey Banks where the preferred resolution strategy is bank winding-up (or equivalent in the home jurisdiction).

4.1.4.5 Section 6 provides guidance on JIB's self-assessments.

5 Management and Governance Consultation Questions

The table below sets out the questions that the JRA seeks feedback on and the corresponding pages of the draft Management and Governance Guidance Note containing content relevant to each question.

Page	Question
6-11	Question 1: Are you comfortable with the Management and Governance guidance provided in relation to Jersey Banks performing Critical Functions? If not, please explain why.
12	Question 2: Are you comfortable with the Management and Governance guidance provided in relation to Jersey Banks not performing Critical Functions? If not, please explain why.
All	Question 3: If applicable, please set out any other areas relating to Management and Governance that you believe require further guidance or further enhancements?

6 Restructuring Consultation Questions

The table below sets out the questions that the JRA seeks feedback on and the corresponding pages of the Restructuring Guidance Note containing content relevant to each question.

Page	Question
9	Question 1: Are you comfortable with the guidance provided to Jersey Incorporated Banks in relation to structure, complexity, and interdependencies? If not, please explain why
9-13	Question 2: Are you comfortable with the guidance provided to Jersey Incorporated Banks in relation to developing and evaluating Business Reorganisation Plans? If not, please explain why.
14-15 and Appendix A	Question 3: Are you comfortable with the guidance provided to Jersey Incorporated Banks in relation to separability assessments? If not, please explain why.
15-17 and Appendix B	Question 4: Are you comfortable with the guidance provided to Jersey Incorporated Banks in relation to capabilities to support transactions where transfer or sale is the preferred resolution strategy? If not, please explain why.
17	Question 5: Are you comfortable with the guidance provided to Jersey Incorporated Banks in relation to the use of group capabilities to meet restructuring requirements? If not, please explain why.

Page	Question
18-19	Question 6: Are you comfortable with the guidance provided in relation to Jersey Incorporated Banks not performing Critical Functions? If not, please explain why.
20-21	Question 7: Are you comfortable with the supplementary guidance on Self-Assessments? If not, please explain why.
All	Question 8: If applicable, please set out any other areas relating to Restructuring that you believe require further guidance?

Appendix A: List of representative bodies and other persons who have been sent this consultation

- 1.1 All persons registered to carry on deposit-taking business in or from within Jersey under the Banking Law
- 1.2 Jersey Banker's Association
- 1.3 Jersey Financial Services Commission
- 1.4 Government of Jersey
- 1.5 Jersey Bank Depositors Compensation Board

Appendix B: Draft Management and Governance Note.

The JRA's draft Management and Governance Guidance Note is appended as a separate document.

Appendix C: Draft Restructuring Guidance Note.

The JRA's draft Restructuring Guidance Note is appended as a separate document.