



Consultation Paper 2024/01

The JRA's MREL Policy

A consultation on the JRA's planned MREL Policy Statement including feedback from our MREL Position Paper.

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
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
ICAAP	Internal Capital Adequacy Assessment Process.
Jersey Bank	A person registered to carry on deposit-taking business in or from within Jersey under the Banking Law
Jersey Incorporated Bank (JIB)	A Jersey incorporated company registered to carry on deposit-taking business under the Banking Law.
JFSC	Jersey Financial Services Commission
JRA	Jersey Resolution Authority
MREL	Minimum Requirements for own funds and Eligible Liabilities.
MREL Eligible Liabilities	Liabilities that are eligible to be bailed in under the Resolution Law and which also meet the criteria set out in sections 6.2 and 6.3 of the MREL Policy Statement.
MREL Policy Statement	The JRA's Policy Statement 2024/01 'The JRA's Approach to setting MREL' (a draft of which is appended to this consultation).
PS2023/01	The JRA's 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 MREL Policy along with feedback relating to the JRA's MREL Position Paper¹, published in December 2023.
- 1.1.4 The MREL Policy sets out the JRA's approach to setting MREL as well as the eligibility criteria for MREL Eligible Liabilities.
- 1.1.5 The MREL Policy is relevant to JIBs that the JRA has determined perform Critical Functions in Jersey.

1.2 Feedback received

- 1.2.1 We engaged with all JIBs as part of our MREL Position Paper consultation. Two JIBs responded formally to that consultation.
- 1.2.2 JIBs were generally supportive of our planned approach although they raised some concerns regarding the cost of implementing MREL and observations relating to MREL reporting, contractual recognition of bail-in requirements and minimum authorised share capital.
- 1.2.3 Having considered the feedback and progressed our work on other aspects of MREL, we have made amendments to the MREL Policy Statement. These can be summarised as follows:
 - 1.2.3.1 Expanded the executive summary to include a sub-section on the implementation of MREL;
 - 1.2.3.2 Expanded the statutory framework section (section 3) to describe how our MREL Policy Statement interacts with resolvability requirements of the Resolution Law and to refer to planned changes to the Resolution Law relating to contractual recognition of bail-in requirements;
 - 1.2.3.3 Removed requirements associated with minimum authorised share capital (the JRA retains the power, under the Resolution Law, to set minimum authorised share capital, if deemed necessary);
 - 1.2.3.4 Added a new section (section 5.8) which sets out at a high level the process by which MREL will be set in practice;

¹ <https://jra.org.je/images/documents/20231219-JRA-Position-Paper-MREL-v01.00.pdf>

- 1.2.3.5 Expanded the section on contractual recognition of bail-in requirements (section 6.5) to include provisions relating to impracticability and the expectation that JIBs will have two years to implement these requirements once amendments to the Resolution Law are finalised;
 - 1.2.3.6 Clarification that some mismatching of internal and external MREL is expected and how any such mismatching should be considered by both JIBs and the JRA;
 - 1.2.3.7 Inclusion of references to the JRA's MREL Reporting Template, which has been developed based on the Prudential Regulatory Authority's equivalent template and is included as part of this consultation (along with associated guidance on how to complete it); and
 - 1.2.3.8 Added section 7.3 on monitoring, which clarifies our expectations for self-assessments and the potential to test eligibility of MREL Eligible Liabilities as part of resolvability assessments.
- 1.2.4 A copy of our proposed MREL Policy tracking the key policy changes is appended to this consultation as a separate document.

1.3 Consultation

- 1.3.1 Comments are invited from interested parties on the proposals by **no later than 20 December 2024**.
- 1.3.2 Comments should be sent by email to Martin Edwards, Head of the JRA at: info@jra.org.je
- 1.3.3 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 20 December 2024** to Lisa Springate, Head of Legal and Technical at: Lisa.Springate@jerseyfinance.je

1.4 Next Steps

- 1.4.1 The JRA will review and consider all feedback received. Where appropriate, the JRA will amend the MREL Policy.
- 1.4.2 It is intended that a Feedback Paper will be issued in quarter one 2025 along with final versions of the MREL Policy.

2 Feedback on our MREL Position Paper

2.1 Volume and nature of feedback

- 2.1.1 The JRA engaged with all JIBs during the consultation process with all JIBs providing informal feedback as part of this process. Where relevant this informal feedback is captured below.
- 2.1.2 Two JIBs responded formally to the consultation. Both were broadly supportive of our planned approach to MREL but raised some observations.
- 2.1.3 Given the limited number of JIBs and to protect the anonymity of respondents, we have chosen to limit the summary of feedback received to only those material items relevant to our policy decisions.
- 2.1.4 Additionally, we have concluded not to publish a list of respondents.
- 2.1.5 The remainder of this section sets out material feedback received and the JRA's response to that feedback.

2.2 Feedback in relation to the cost of implementing MREL

- 2.2.1 All JIBs raised some level of concern regarding the cost of implementing MREL and noted that this disproportionately impacts JIBs as compared to large Jersey Branches of Overseas Incorporated Banks.
- 2.2.2 One JIB also observed that implementing MREL may reduce Jersey's competitiveness as a jurisdiction.
- 2.2.3 However, when raising these concerns, JIBs acknowledged the importance of MREL to an effective resolution regime and hence to financial stability in Jersey.

JRA Response

- 2.2.4 We are aware of the potential cost of implementing MREL having worked with each JIB on a bilateral basis to estimate the likely costs per annum of issuing internal MREL.
- 2.2.5 Whilst it is true that our MREL requirements will only impact JIBs, we do not believe it is reasonable or appropriate to extend MREL requirements to Jersey Branches.
- 2.2.6 Implementing MREL (or equivalent loss absorbing and recapitalisation capacity) is an important part of an effective bank resolution regime. Doing so brings benefits for JIBs, the banking sector and Jersey's economy. These include:
 - 2.2.6.1 Improved financial stability;
 - 2.2.6.2 Lower risk to depositors;
 - 2.2.6.3 An opportunity to use the existence of MREL and/or an effective resolution regime as a way for JIBs to generate deposits or reduce funding costs.
- 2.2.7 Additionally, by ensuring that MREL requirements do not come into force until the JFSC has amended minimum capital requirements for Basel 3, the cost of issuing internal MREL will be reduced.

- 2.2.8 From a jurisdictional competitiveness perspective, we are conscious of the potential that our MREL Policy could be considered to negatively impact on Jersey's competitiveness as a jurisdiction or to negatively influence the composition of Jersey's banking industry (i.e. it may cause existing JIBs to reconsider their legal structure or prevent new JIBs from setting up in Jersey).
- 2.2.9 From a competitiveness perspective, our jurisdictional analysis indicates that, in almost all cases, where a jurisdiction has implemented a bank resolution regime, some form of MREL (or equivalent loss absorbing or recapitalisation capacity) has been introduced. In some cases where jurisdictions have not introduced MREL (or equivalent), this has been criticised by international standard setters as it may reduce the effectiveness of the bank resolution regime.
- 2.2.10 Furthermore, our jurisdictional analysis indicates that, whilst the approach to calibrating MREL requirements may vary from one jurisdiction to another, the resulting levels of MREL are broadly consistent with our approach.
- 2.2.11 Accordingly, any potential competitive disadvantage for Jersey will only materialise in comparison to jurisdictions that do not implement bank resolution regimes. Such jurisdictions will suffer from increased financial stability risk, which we believe would offset any such potential disadvantage.
- 2.2.12 Whilst it is true that implementing MREL may increase the cost of conducting banking business in Jersey via Jersey Incorporated Bank, we believe the benefits of implementing MREL and an effective bank resolution regime outweigh these costs. Accordingly, as set out in our draft MREL Policy, we intend to continue as planned to implement MREL in Jersey.

2.3 Feedback in relation to Contractual Recognition of Bail-in

- 2.3.1 JIBs noted that they would need further details on the final legal requirements associated with contractual recognition of bail-in to be able to comment with certainty regarding how long it would take them to implement requirements. However, one estimated that subject to the detailed provisions, it should be able to achieve compliance by end 2026.

JRA Response

- 2.3.2 The JRA continues to work with the Government of Jersey in relation to changes to the Resolution Law required to implement contractual recognition of bail-in provisions. Our draft MREL Policy now includes some further details on our intended approach.
- 2.3.3 The JRA does not intend to impose specific legal clauses and will allow JIBs to implement wording consistent with their group approaches to contractual recognition.
- 2.3.4 Additionally, as set out in our draft MREL Policy, once the necessary amendments to Article 72 of the Resolution Law have been made, we intend to give JIBs a period of two years to implement contractual recognition of bail-in requirements.

2.4 Feedback in relation to MREL Reporting

- 2.4.1 One respondent requested that we consider using the Prudential Reporting Authority's MREL reporting template when developing our MREL Reporting Template.
- 2.4.2 The remaining JIBs were also comfortable with aligning MREL reporting to the Prudential Reporting Authority's template.

JRA Response

- 2.4.3 The JRA has based its MREL Reporting Template on the Prudential Reporting Authority's template.
- 2.4.4 The MREL Reporting Template and draft guidance on completing it are included as part of this consultation.

2.5 Feedback in relation to Mismatching of internal and external MREL

- 2.5.1 One respondent observed that some degree of mismatch between internal and external MREL was inevitable and that this would particularly be the case in relation to the currency in which instruments are issued (e.g. if a JIB's group does not typically issue debt instruments in a currency in which the JIB would expect to issue internal MREL).

JRA Response

- 2.5.2 We acknowledged that there will be some mismatch between internal and external MREL. Any such mismatch will need to be considered by JIBs as part of their self-assessments and by the JRA as part of our resolvability assessments. Currency mismatches could be dealt with by allowing for potential adverse foreign exchange movements when determining the level of external MREL necessary to support internal MREL. We have amended the MREL Policy to reflect this.

2.6 Feedback in relation to Minimum Share Capital Requirements

- 2.6.1 One respondent questioned whether it was necessary to ask JIBs to have unlimited authorised share capital.

JRA Response

- 2.6.2 Noting that similar requirements are not in place in other jurisdictions and the JRA has the power (under Article 74 of the Resolution Law) to cancel issued shares of a bank in resolution, the JRA has removed this requirement from the draft MREL Policy.
- 2.6.3 Article 27 of the Resolution Law allows that JRA to prescribe a minimum level of authorised share capital on a JIB specific basis and the JRA would do so if this was felt necessary to ensure resolvability of the JIB.

3 Consultation on our MREL Policy

3.1 Basis for consultation

- 3.1.1 The JRA has produced the MREL Policy Statement set out in Appendix B, to set out our intended approach to setting MREL, clarify intended eligibility criteria for MREL Eligible Liabilities, the timeline for implementing MREL and other associated topics.
- 3.1.2 The MREL Policy Statement builds on the requirement of the Resolution Law and paragraph 5.1.3 of PS2023/01 to ensure that JIBs have sufficient loss absorption and recapitalisation capacity to enable effective application of the preferred resolution strategy.
- 3.1.3 Where JIBs 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.
- 3.1.4 To assist stakeholders in reviewing and providing feedback, the draft MREL Policy included in Appendix B tracks material amendments compared to the JRA's MREL Position Paper published in December 2023.
- 3.1.5 Section 5 of this consultation paper introduces the MREL Policy and explains how it is structured. Section 6 sets out the specific consultation questions upon which we are seeking feedback.

3.2 Who will be affected by the proposals?

- 3.2.1 The proposed MREL Policy Statement will impact on JIBs and primarily on those that the JRA has determined perform Critical Functions in Jersey.
- 3.2.2 The level of impact will vary depending on the nature of each JIB, their existing minimum capital requirements (set by the JFSC) and the preferred resolution strategy. Larger JIBs will likely be impacted more significantly.

3.3 Responding to the consultation

- 3.3.1 Comments are invited from interested parties on the proposals by **no later than 20 December 2024**.
- 3.3.2 Comments should be sent by email to Martin Edwards, Head of the JRA at: info@jra.org.je
- 3.3.3 We encourage respondents to respond to all relevant questions, however this is not mandatory.
- 3.3.4 We encourage responses on a named basis as this will enable bilateral dialogue on the feedback provided.
- 3.3.5 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 20 December 2024**. The JFL contact is Lisa Springate, Head of Legal and Technical at: Lisa.Springate@jerseyfinance.je
- 3.3.6 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.

3.4 Next steps

- 3.4.1 The JRA will review and consider all feedback received. Where appropriate, the JRA will amend the MREL Policy Statement to reflect feedback received.
- 3.4.2 It is intended that a Feedback Paper will be issued in quarter one 2025 along with final versions of the MREL Policy Statement.

4 The JRA

4.1 Overview

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

4.2 Our functions

- 4.2.1 Article 7 of the Resolution Law sets out the JRA's statutory responsibilities to:
 - 4.2.1.1 make preparations to facilitate the resolution of Banks;
 - 4.2.1.2 administer the resolution of Banks;
 - 4.2.1.3 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
 - 4.2.1.4 carry out such other functions as are conferred on it by the Resolution Law or any other enactment.

4.3 Guiding principles

- 4.3.1 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:
 - 4.3.1.1 the reduction of the risk to the public of financial loss due to the financial unsoundness of a Bank;
 - 4.3.1.2 the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters; and
 - 4.3.1.3 the best economic interests of Jersey.

4.4 Resolution Objectives

- 4.4.1 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:
- 4.4.1.1 to ensure the continuity of banking services in Jersey and the provision of Critical Functions in Jersey;
 - 4.4.1.2 to protect and enhance the stability of the financial system in Jersey, including by preventing contagion and maintaining market discipline;
 - 4.4.1.3 to protect and enhance public confidence in the stability of the financial system in Jersey;
 - 4.4.1.4 to protect public funds, including by minimizing reliance on extraordinary public financial support;
 - 4.4.1.5 to protect eligible depositors to the extent that they have covered deposits; and
 - 4.4.1.6 to protect client assets.

5 Proposed MREL Policy Statement

5.1 Overview

- 5.1.1 The JRA's proposed approach to setting MREL is set out in the appended draft MREL Policy Statement (Appendix B).
- 5.1.2 The draft MREL Policy Statement has been developed with reference to the approach used by the Financial Stability Board, the Bank of England, and the European Union's Single Resolution Board.
- 5.1.3 The draft MREL Policy Statement allows for JIBs to request alternative approaches aligned to requirements in Home Jurisdictions, if the JIB can justify that the alternative approach adequately addresses the Risk to Resolution.
- 5.1.4 The draft MREL Policy Statement takes account of the composition of Jersey's banking industry and allows alignment to Group Resolution Plans where applicable and possible.
- 5.1.5 The draft MREL Policy Statement is structured as follows:
 - 5.1.5.1 Sections 1- 4 set out an executive summary, background, the statutory framework and explains what MREL is and the scope of the MREL Policy Statement.
 - 5.1.5.2 Section 5 explains the framework for setting MREL and its calibration.
 - 5.1.5.3 Section 6 sets out both the subordination and eligibility requirements.
 - 5.1.5.4 Sections 7 - 8 set out the governance, reporting, coordination and compliance as well as how the policy will be reviewed and subsequently evolve.
 - 5.1.5.5 Section 9 sets out the transitional arrangements through to full implementation by the end of 2028.

5.2 Calibration of external and internal MREL

- 5.2.1 Section 5 of the draft MREL Policy Statement sets out the basis on which MREL will be calibrated, including the relationship between MREL and resolution strategies.
- 5.2.2 Our approach is broadly based on the Bank of England's approach.
- 5.2.3 The starting point for the MREL calculation is the loss absorption amount, which will equal the JIB's minimum capital requirements as agreed with the JFSC (excluding buffers). The additional MREL on top of this, will depend upon the agreed resolution strategy. The assumption is that external MREL will be set at between one and two times minimum capital requirements.
- 5.2.4 Since all current JIBs are part of wider banking groups headquartered outside of Jersey, their MREL requirements will be based on calibration of internal MREL, which will be in the range of 75% and 90% of the equivalent external MREL.

5.3 Subordination and Eligibility criteria

- 5.3.1 Article 68 of the Resolution Law allows for the write down of deposits should the level of a Jersey Bank's losses require. Whilst there is a need to retain this power, it is the JRA's firm preference to avoid such a scenario if possible.
- 5.3.2 Accordingly, to more effectively ensure that the resolution objectives can be met, the draft MREL Policy Statement requires that MREL Eligible Liabilities be subordinated to operational liabilities (i.e. deposits).
- 5.3.3 Additionally, section 6.3 of the draft MREL Policy Statement sets out a further seven criteria for liabilities that must be excluded from MREL Eligible Liabilities.

5.4 How MREL limits are to be implemented

- 5.4.1 The JRA will work with the JFSC and JIBs on a trilateral basis to determine initial levels of MREL. This will be based on JIB's latest ICAAPs and, where applicable, will take account of the latest resolvability assessment of the JIB's group.
- 5.4.2 The JRA expects JIBs to comply with the draft MREL Policy Statement at the earliest opportunity, with the proposed formal transition period being:
 - 5.4.2.1 Interim state by end 2026; and
 - 5.4.2.2 Final end-state by end 2028.

5.5 Contractual Recognition of Bail-In Article 72

- 5.5.1 PS2023/01 states that Jersey Banks must have adequate policies, procedures, and controls in place to ensure the cross-border recognition and effectiveness of resolution actions (including complying with Article 72 of the Resolution Law once in effect).
- 5.5.2 Article 72 states that a Jersey Bank should include in its contracts a term by which the creditor or party to an agreement (governed by the law of a jurisdiction other than Jersey) which is creating an eligible liability, recognises that the liability created may be subject to write down/conversion power and agrees to be bound by any reduction in the sum owed. The rationale is to ensure counterparties contracting with Jersey Banks under third country law (i.e. not the law of Jersey), acknowledge and agree to the bail-in powers.
- 5.5.3 Article 72 was not activated at the time the Resolution Law was brought into force.
- 5.5.4 As currently drafted, Article 72 applies to all Jersey Banks. However, we do not intend to apply our bail-in powers to a Jersey Branch of an Overseas Incorporated Bank; we would expect the home resolution authority to do so, to the extent necessary, at the legal entity level. Accordingly, contractual recognition of bail-in requirements need only apply to JIBs.
- 5.5.5 The JRA continues to work with the Government of Jersey to refine the requirements of Article 72. This will include:
 - 5.5.5.1 Clarifying that contractual recognition of bail-in requirements only apply to JIBs;
 - 5.5.5.2 Clarifying that requirements only apply to contracts relating to instruments that qualify as MREL Eligible Liabilities; and
 - 5.5.5.3 Allowing for scenarios where it is impracticable to include contractual recognition of bail-in provisions in respect of an MREL Eligible Liability.

- 5.5.6 Once the Resolution Law has been amended, it is expected that JIBs will be given two years to implement contractual recognition of bail-in provisions.

5.6 MREL Reporting

- 5.6.1 To assist the JRA in monitoring JIB's compliance with MREL requirements, the draft MREL Policy Statement requires that JIBs report MREL to the JRA annually by completing our MREL Reporting Template.
- 5.6.2 Our MREL Reporting Template is based on the Prudential Regulatory Authority's equivalent template. A copy of the MREL Reporting Template and guidance on completing it are included in Appendix C and D respectively.
- 5.6.3 We continue to liaise with the JFSC with the intention of incorporating MREL reporting into its prudential reporting processes. At which point the requirement to report separately to the JRA will be removed.

6 Consultation Questions

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

Page	Question
15	Question 1: Do you agree with the JRA's planned approach to setting MREL? If not, please explain why.
11 – 14	Question 2: Do you agree with the JRA's proposals for calibrating MREL, depending upon the agreed resolution strategy? If not, please explain why.
12 – 15	Question 3: Do you agree with the JRA's proposals for calibrating internal MREL? If not, please explain why.
16 – 17	Question 4: Do you agree with the approach set out in the draft MREL Policy Statement that the JRA should only seek to bail-in liabilities as referenced in Article 68 (1) (a) to (d) inclusive and not (e)? If not, please explain why.
17 – 18	Question 5: Do you agree with the liability exclusions set out in the draft MREL Policy Statement? If not, please explain why.
18 – 19	Question 6: Do you agree with the JRA's proposals regarding contractual bail-in? If not, please explain why.
22 – 23	Question 7: Are you comfortable with the MREL reporting requirements, including the MREL Reporting Template and associated guidance? If not, please explain why.
24	Question 8: Do you agree with the proposed transition period? If not, please explain why.
All	Question 9: Do you have any other feedback in relation to the draft MREL Policy Statement?

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 MREL Policy Statement

The JRA's draft MREL Policy Statement is appended as a separate document. This version tracks the main changes compared to the JRA's previously published MREL Position Paper.

Appendix C: Draft MREL Reporting Template

An Excel copy of the JRA's proposed MREL Reporting Template is appended as a separate document.

Appendix D: Draft MREL Reporting Template Guidance

The JRA's draft MREL Reporting Template Guidance is appended as a separate document.