JERSEY RESOLUTION AUTHORITY

Policy Statement 2024/01

The JRA's Approach to setting MREL

Issued: [insert month]202[insert year]

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.
CET 1	Common Equity Tier 1 capital.
Covered deposits	Deposits covered by the Jersey DCS.
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.
EBA	European Banking Authority.
FSB	Financial Stability Board
G-SIB	Global Systemically Important Banks
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 DCS	Jersey Bank Depositors Compensation Scheme.
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.
LAA	Loss absorption amount. The amount of capital resources the JRA, in consultation with the JFSC, deems necessary for an institution to absorb losses in resolution.
MCR	Minimum Capital Requirement.
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 this MREL Policy Statement.
PS2023/01	The JRA's Policy Statement 2023/01 'Resolution Planning and Resolvability'.
RCA	Recapitalisation amount. The amount of capital resources the JRA, in consultation with the JFSC, deems necessary for a Jersey Bank, or its successor entity, to meet its authorisation requirements in relation to its activities, or parts thereof, following the application of resolution tools.
Resolution entity	A legal person established in Jersey or elsewhere, which is identified by the relevant Resolution Authority as an entity in respect of which the resolution plan provides for resolution action.
Resolution Law	Bank (Recovery and Resolution) (Jersey) Law 2017.
RWAs	Risk Weighted Assets.
Subsidiary	Shall be construed in accordance with Article 2 of the Companies Law.
TE	Total Exposure (as used to calculate a bank's Leverage Ratio).
TLAC	Total Loss-Absorbing Capacity.

Table of Contents

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1 Executive Summary

1.1 Objective

1.1.1 This Policy Statement sets out the JRA's approach to setting Minimum Requirements for Own Funds and Eligible Liabilities (MREL) and associated MREL requirements. In doing so our objective is to have an MREL Policy that:

1.1.1.1 aligns to international standards;

1.1.1.2 facilitates the effective resolution of Jersey Incorporated Banks (JIBs);

1.1.1.3 is proportionate to nature of Jersey's Banking industry;

1.1.1.4 can be applied to existing JIBs; and

1.1.1.5 could be applied to a bank headquartered in Jersey in the future.

1.2 Main Aims

1.2.1 The main aims of our MREL Policy are to ensure that:

1.2.1.1 MREL is only applicable to JIBs;

1.2.1.2 MREL levels are set based on a loss absorption amount (LAA) plus a recapitalisation amount (RCA);

1.2.1.3 External MREL levels vary depending on the preferred resolution strategy of each JIB:

- Bank Winding Up: External MREL should equal the JFSC's Pillar 1 and 2 Capital Requirements (or, if higher, any applicable leverage ratio requirements);
- Sale or Transfer: External MREL should be between 1 and 2 times JFSC Pillar 1 and 2 Capital Requirements; and
- Bail-in: External MREL should equal 2 times JFSC Pillar 1 and 2 Capital Requirements;

1.2.1.4 Capital buffers must be usable without entry into resolution;

1.2.1.5 For JIBs that are part of groups with bail-in resolution strategies, internal MREL will be set at a level between 75% and 90% of external MREL and in consultation with Home Resolution Authorities;

1.2.1.6 Internal MREL will need contractual clauses to enable write down and conversion is possible without the JIB being placed into resolution by the JRA;

1.2.1.7 MREL Eligible Liabilities must, amongst other things, be subordinated to operational liabilities (i.e. deposits); and

1.2.2 JIBs may request alternative approaches aligned to requirements in Home Jurisdictions, if the JIB can justify that the alternative approach adequately addresses the applicable Risk to Resolution as set out in the JRA's Policy Statement 2023/01 'Resolution Planning and Resolvability' (PS2023/01)[1].

[1] https://jra.org.je/images/documents/20240229-PS2023-01-JRA-Approach-to-Resolution-Planning-and-Resolvability-v02.00.pdf

1.2.3 The JRA will give consideration, on a case-by-case basis, to the eligibility of any existing instruments that satisfy most, but not all, of the requirements of the MREL Policy Statement and that have been established prior to its publication (i.e. 'grandfathering' of existing instruments).

1.3 Implementation

1.3.1 As set out in section 9 below, MREL will be implemented over a four-year transition period. The JRA expects existing JIBs to meet:

1.3.1.1 interim state MREL by 31 December 2026; and

1.3.1.2 final state MREL by 31 December 2028.

1.3.2 The JRA will work with JIBs and the JFSC on a trilateral basis to set interim and final state MREL during the transition period. This will be based on JIB's latest ICAAPs and, where applicable, the most recent resolvability assessments of JIB's groups.

1.3.3 JIBs are expected to report levels of MREL using the JRA's MREL Reporting Template on an annual basis commencing as at 31 December 2025.

2 Background

2.1.1 The JRA was established as Jersey's Resolution Authority on 31 January 2022 in accordance with the Bank (Recovery and Resolution) (Jersey) Law 2017 (the Resolution Law).

2.1.2 The JRA has statutory responsibility to prepare for and administer the resolution of banks in Jersey. In doing so the JRA aims to:

2.1.2.1 Ensure continuity of banking services and Critical Functions in Jersey;

2.1.2.2 Protect and enhance the stability of the financial system in Jersey;

2.1.2.3 Protect and enhance public confidence in the stability of the financial system in Jersey;

2.1.2.4 Protect public funds;

2.1.2.5 Protect covered deposits (deposits covered by Jersey's Deposit Compensation Scheme); and

2.1.2.6 Protect client assets.

2.1.3 On 11 August 2023 the JRA issued PS2023/01, which sets out the overriding requirements and capabilities that the JRA expects Jersey Banks to develop to demonstrate that they are resolvable.

2.1.4 This MREL Policy Statement sets out the JRA's approach to setting MREL and associated MREL requirements.

2.1.5 The following publications have been used to help develop this MREL Policy Statement. Jersey Banks may wish to consult these for additional information:

2.1.5.1 The Financial Stability Board's Total Loss-Absorbing Capacity (TLAC) Principles and Term Sheet[2];

2.1.5.2 The Financial Stability Board's Guiding Principles on the Internal Total Loss-Absorbing Capacity of G-SIBs ('Internal TLAC')[3];

2.1.5.3 The Bank of England's approach to setting a minimum requirement for own funds and eligible liabilities[4]; and

2.1.5.4 The Single Resolution Board's Policy on Minimum Requirements for Own Funds and Eligible Liabilities[5].

[2] https://www.fsb.org/2015/11/total-loss-absorbing-capacity-tlac-principles-and-term-sheet/

[3] https://www.fsb.org/2017/07/guiding-principles-on-the-internal-total-loss-absorbing-capacity-of-g-sibs-internal-tlac-2/

[4] https://www.bankofengland.co.uk/paper/2021/the-boes-approach-to-setting-mrel-sop

[5] https://www.srb.europa.eu/en/content/srb-publishes-mrel-policy-under-banking-package

3 Statutory Framework

3.1 Setting MREL

3.1.1 Article 26 of the Resolution Law requires that the JRA shall, in consultation with the JFSC, set a MREL for each Jersey Bank. It also makes it an offence for a Jersey Bank not to comply with MREL.

3.1.2 The Resolution Law does not set out details regarding how the JRA should set MREL. Accordingly, this MREL Policy Statement sets out the basis by which the JRA will set MREL.

3.2 Resolvability Assessments

3.2.1 The Resolution Law requires that the JRA shall carry out resolvability assessments of Jersey Banks. Resolvability assessments include, amongst other things, consideration of the extent to which a Jersey Bank has arrangements in place to provide for sufficient financial resources, including eligible liabilities, to support critical functions and core business lines during resolution.

3.2.2 As set out in PS2023/01, Jersey Banks must have sufficient capacity to absorb losses to support effective execution of the preferred resolution strategy and recapitalise them to a level that enables them to comply with conditions for regulatory authorisation and to maintain market confidence.

3.2.3 The JRA is of the view that failure to hold sufficient MREL, in accordance with this MREL Policy Statement, would constitute a material impediment to resolvability in accordance with Article 25 of the Resolution Law.

~~3.2.1~~3.2.4 Article 25 of the Resolution Law provides the JRA with the power to require Jersey Banks to implement measures to improve their resolvability, including requiring a Jersey Bank to issue eligible liabilities or take other steps to meet MREL.

3.3 Contractual Recognition of Bail-in Requirements

3.3.1 Once in force, Article 72 of the Resolution Law sets out contractual recognition of bail-in requirements in respect of non-Jersey law contracts that create eligible liabilities.

3.3.2 As explained in section 6.5, the JRA continues to work with the Government of Jersey to refine the requirements of Article 72. It is expected that the amendments will align to the requirements of this MREL Policy Statement.

~~3.3.1~~3.3.3 Once amendments to the Resolution Law are finalised, we anticipate allowing a period of two years for JIBs to ensure compliance with contractual recognition of bail-in requirements.

4 What is MREL and its Scope?

4.1.1 MREL is a limit set by resolution authorities, in consultation with regulatory authorities, to ensure that banks maintain sufficient eligible instruments to absorb losses and recapitalise the bank during resolution. As a result, MREL helps protect critical functions by facilitating implementation of the preferred resolution strategy for each bank.

4.1.2 MREL can take the form of regulatory capital (own funds) and certain types of liabilities (eligible liabilities) that would be expected to be written down and/or converted to equity if a JIB fails. Without limiting the JRA's power to write down or convert eligible liabilities, this MREL Policy Statement applies additional eligibility criteria that instruments must comply with to be deemed MREL Eligible Liabilities. These are detailed further in section 6 below.

4.1.3 This MREL Policy Statement only applies to JIBs. Whilst no Jersey Banks are currently headquartered in Jersey, it provides for the eventuality that a bank might be headquartered in Jersey in the future. The JRA will consult with Home Resolution Authorities when setting MREL requirements for JIBs that are part of a group.

4.1.4 The primary responsibility for supervising capital adequacy and MREL requirements in respect of Jersey Branches rests with the home supervisory and resolution authorities in the bank's home jurisdiction. Hence, Jersey Branches are excluded from the scope of the MREL Policy Statement.

4.1.5 JIBs may request to apply alternative approaches aligned to requirements in Home Jurisdictions, if the JIB can justify that the alternative approach adequately addresses the applicable Risk to Resolution as set out in PS2023/01. The onus is on the JIB to demonstrate that the Risk to Resolution is appropriately addressed by the suggested alternative approach. The JRA will consider any such request in consultation with the JFSC and the applicable Home Resolution Authority.

5 Framework for Setting MREL and MREL Calibration

5.1 Resolution Strategies

5.1.1 Calibration of the required MREL to achieve the chosen resolution strategy depends upon the capital requirements, loss absorption amount and the recapitalisation amount.

5.1.2 MREL will be set to ensure that Jersey Banks can be resolved in line with their agreed resolution strategies. The chosen approach may well depend upon the circumstances at the time of the failure of the bank. The preferred strategy may not be chosen if a different approach is deemed to be more appropriate at that moment in time.

5.1.3 Broadly speaking, there are three resolution strategies open to the JRA and Home Resolution Authorities:

5.1.3.1 Bail-in: Sufficient of the equity of the bank is written off, and debts written down, to absorb losses. Then the bank is recapitalised – the debtholders whose debt was written down are issued equity and become the new shareholders. In the medium-term, the bank would be restructured to address the causes of failure and restore market confidence.

5.1.3.2 Sale or transfer: The bank or some of its assets and liabilities are sold immediately or after a short period. This may include transferring its critical functions to a temporary 'bridge bank' controlled by the JRA, before being sold on.

5.1.3.3 Bank winding up: The bank would enter a Bank Winding Up, a form of insolvency. The Jersey DCS would provide protection of up to £50,000 for deposits placed in Jersey per person, per Jersey banking group, for local and international depositors[6]. Note that the overall amount of compensation that the Jersey DCS can pay out is limited to £100 million in each 5-year period.

5.1.4 The JRA's approach to setting preferred resolution strategies is summarised in section 3.2 of PS2023/01.

[6] Refer to Jersey DCS website for more information. https://www.jerseydcs.je/

5.2 Calibration of MREL

5.2.1 MREL requirements are designed to be set so that after the use of the bail-in tool, the bank's capital position would be high enough for it to continue functioning with sufficient market confidence. Therefore, there is a need for MREL to both absorb losses (loss absorption amount (LAA)) and allow recapitalisation of the bank (recapitalisation amount (RCA)).

5.2.2 MREL is equal to the sum of the LAA and the RCA. Where:

5.2.2.1 LAA is equal to the bank's capital requirements as set by the JFSC (excluding the capital conservation buffer, and systemic buffer); and

5.2.2.2 RCA is equal to the range between 0 to 100% of the LAA, depending on the agreed resolution strategy.

5.2.3 The exact required amount of MREL will depend upon the chosen resolution strategy for a bank, where applicable, in conjunction with the group resolution strategy.

5.2.4 MREL is expressed as a percentage of:

Risk weighted assets (RWAs)

Or

Total Exposures (TEs) as used to calculate the Leverage Ratio.

5.2.5 Both RWA and TE are to be calculated in line with the JFSC prescribed methodology. The LAA and RCA are both based on the Pillar 1[7] and Pillar 2 requirements.

5.2.6 Capital buffers must be usable without entry to resolution. Therefore, the capital conservation buffer and systemic buffer will be excluded when determining and monitoring MREL. In practice this means that JIBs will need to maintain normal capital buffers in excess of MREL (see also figure 1 in section 5.6 below).

5.3 Minimum Capital Requirement

5.3.1 In accordance with the JFSC's Basel III: Immediate Implementation (quick wins) consultation[8], the forward-looking position on minimum capital requirements is:

Total Capital Requirement:

- Pillar 1 = 8%
- Pillar 2 = variable by bank

Combined Buffer:

- Capital conservation buffer = minima being 2.5%
- Systemic buffer[9] = systemic bank 1%, highly systemic bank 1.5%, 2.5% or 3.5%

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[7] For example, given the implementation timelines for MREL and the JFSC's planned implementation of Basel 3, the Pillar 1 requirement for Total Capital will be 8% of RWA.

[8] https://www.jerseyfsc.org/industry/consultations/basel-iii-immediate-implementation-quick-wins/

[9] The JFSC plans to consult on Systemic importance in H1 2025. Indicative figures for the systemic buffer are provided here based on the JFSC's previous Basel 3 position paper issued June 2021 (https://www.jerseyfsc.org/industry/sectors/banking/basel-iii/pp-basel-iii-further-proposals-2021/)

5.4 External vs Internal MREL

5.4.1 In developing the preferred resolution strategy for JIBs, the JRA will (in conjunction with the Home Resolution Authority where applicable), identify the resolution entity within the group, this being the entity to which resolution powers would be applied.

5.4.2 The resolution entity would be expected to issue external MREL instruments.

5.4.3 Where necessary, internal MREL instruments would be issued from legal persons that are not themselves resolution entities. Internal MREL instruments are issued directly or indirectly to the resolution entity in the JIB's group.

5.4.4 Internal MREL instruments have the effect of passing losses within the group so that they can then be absorbed by the shareholders and creditors of the resolution entity through use of the resolution powers. Where a group is made up of operating entities that are material to the delivery of critical functions provided by the banking group, it is important that these operating entities have internal MREL resources so that they can be recapitalised without having to place each of them into a resolution process.

5.5 Scaling of Internal MREL Requirement

5.5.1 Setting appropriate external MREL means that banking groups as a whole will have enough loss-absorbing capacity to be resolvable. If internal MREL were set in the same way as external MREL, the sum of the internal requirements could exceed the external requirement. This is because subsidiaries in a group often have exposures to each other which net out at the group level. Accordingly, and in line with the Financial Stability Board (FSB) Total Loss-Absorbing Capacity (TLAC) Standard, where a JIB is part of a group with an appropriate group resolution strategy, the JRA will set internal MREL at a level that is between 75% and 90% of the equivalent external MREL requirement.

5.5.2 The requirement is explained in the 'Financial Stability Board Guiding Principles on the Internal Total Loss-absorbing Capacity of G-SIBs[10]'. Term sheet 18 states (noting TLAC is similar to MREL):

5.5.2.1 TLAC generally should be distributed as necessary within resolution groups in proportion to the size and risk of exposures of its material sub-groups.

5.5.2.2 Each material sub-group must maintain internal TLAC of 75% to 90% of the external Minimum TLAC requirement that would apply to the material sub-group if it were a resolution group, as calculated by the host authority. The actual Minimum Internal TLAC requirement within that range should be determined by the host authority of the material sub-group in consultation with the home authority of the resolution group.

[10] https://www.fsb.org/2017/07/guiding-principles-on-the-internal-total-loss-absorbing-capacity-of-g-sibs-internal-tlac-2/

5.6 MREL Calibration – Jersey Headquartered Bank

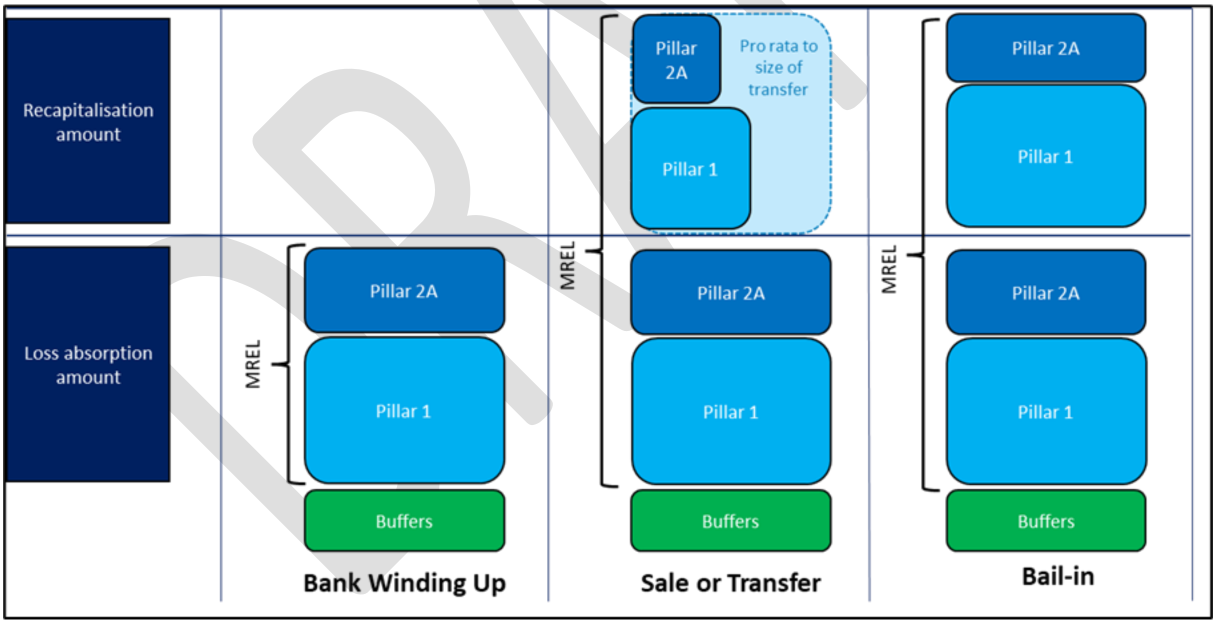
5.6.1 For a Jersey Headquartered Bank, external MREL must be set on both an individual bank and group consolidated basis. The starting point for the MREL calculation is the loss absorption amount, which will equal the bank's capital requirements as set by the JFSC. The additional MREL on top of this, will depend upon the agreed resolution strategy. The assumption is that external MREL will be (see also figure 1):

Bank Winding Up:	MREL = minimum capital requirement.
Sale or Transfer:	MREL = up to 2x minimum capital requirement, pro rata to size of transfer.
Bail-in:	MREL = 2 x minimum capital requirement.

5.6.2 In the case of a Sale or Transfer resolution strategy, MREL may be reduced in cases where it is expected that less than the entire balance sheet of the JIB will be sold or transferred. Consideration will also be given to whether any Pillar 2 components would cease to be relevant.

5.6.3 Capital buffers, set by the JFSC, must be held in excess of MREL (see figure 1 below). However, in times of stress, these buffers may be utilised to absorb losses on a going concern basis.

Figure 1: Illustration of the required MREL for the three resolution strategies, consisting of the Loss Absorption Amount and Recapitalisation Amount, relative to required Capital position.



5.7 MREL Calibration – Subsidiaries of Overseas Headquartered Banks

5.7.1 For JIBs that are part of wider banking groups, the JRA will work with Home Resolution Authorities to determine the level of internal MREL necessary.

5.7.2 The intra-group distribution of internal MREL must ensure that sufficient loss absorbing capacity is pre-positioned within the group to ensure that losses in the JIB can be absorbed and passed to the agreed resolution entity.

5.7.3 The JRA expects that internal MREL for JIBs that are part of wider banking groups will be scaled in the range of 75 to 90% of the full amount of MREL that it would otherwise be required to maintain if the JIB were itself a Jersey Headquartered Bank.

5.7.4 In considering the internal MREL scalar applied to each JIB the JRA will consider:

5.7.4.1 the risk profile of the JIB and the expected amount of internal MREL required to absorb losses and recapitalise the JIB;

5.7.4.2 the overall credibility and feasibility of the home authority's resolution strategy for the resolution group;

5.7.4.3 comparability with requirements imposed on other JIBs with similar business activities and risk profiles; and

5.7.4.4 the availability (or absence) of non-pre-positioned MREL at the resolution entity level that the JRA is satisfied could reliably and flexibly be deployed to absorb losses and recapitalise the JIB as necessary to support the execution of the resolution strategy.

5.7.5 Internal MREL must include contractual clauses to enable write down and conversion without the JIB being placed into resolution by the JRA.

5.7.6 The JRA expects to propose an amount for internal MREL for JIBs where the home authority has not yet published the necessary regulations or developed a credible resolution plan. In these situations, the JRA will be guided by the principles set out in this MREL Policy Statement.

~~Minimum Authorised Share Capital~~

5.7.7 ~~Ideally a JIB's authorised share capital will be unlimited; however, JIBs must ensure that their authorised share capital is sufficient to allow for a bail-in of all MREL eligible instruments.~~

5.8 The process for setting MREL

5.8.1 The JRA will set MREL, in consultation with the JFSC and, where applicable, Home Resolution Authorities, and as an extension of the JFSC's review of JIB's ICAAPs. In doing so the JRA will take account of its latest resolvability assessment of the JIB and/or the most recent resolvability assessment of the JIB's group.

5.8.2 The JRA will issue a letter to each JIB setting MREL and, where necessary, explaining its rationale for doing so.

5.8.3 MREL will be updated on a periodic basis alongside the JFSC's review of JIB's ICAAPs, or sooner if circumstances dictate.

5.8.4 The JRA will work with JIBs and the JFSC on a trilateral basis to set interim and final state MREL during the transition period.

6 Subordination and Eligibility Requirements

6.1 Subordination

6.1.1 Subordination is about establishing a clear order of creditor priority, meaning that subordinated debt absorbs losses before other more senior liabilities, such as deposits. The subordination of liabilities used for MREL can substantially increase the likelihood of a successful resolution because it simplifies use of the bail-in tool.

6.1.2 Subordination ensures that a sufficient quantum of the appropriate types of instruments are on the balance sheet to effectively absorb losses and facilitate smooth recapitalisation in resolution.

6.1.3 Subordination of MREL facilitates the JRA's use of stabilisation powers as it reduces risks associated with applicable safeguards set out in the Resolution Law; for example, the requirement (set out in Article 35(g)) to ensure that no creditor shall incur greater losses than would have been incurred had the bank been wound up under relevant insolvency proceedings unless it is in the public interest (commonly referred to as the 'no creditor worse off than insolvency' (NCWO) safeguard).

6.1.4 Accordingly, the JRA plans to require JIBs to issue eligible instruments which are fully subordinated to operational liabilities (see definition of MREL Eligible Liabilities in section 6.2 below).

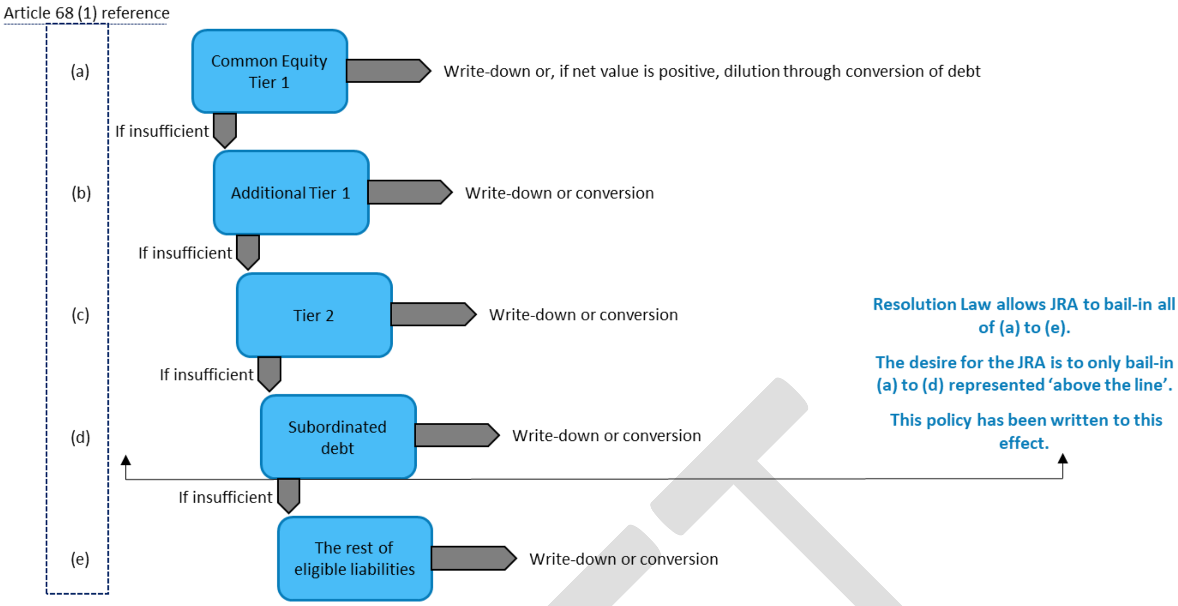
6.1.5 Given the current structure of Jersey Banks and the requirements of the Resolution Law, contractual subordination is felt to be the best way to achieve this desired outcome in the most straight forward manner. Contractual subordination provisions should be governed by Jersey Law.

6.1.6 Structural subordination may be appropriate in certain circumstances. However, Article 26 of the Resolution Law provides for MREL to be set at the level of the Jersey Bank, not any Jersey incorporated holding company.

6.1.7 Article 68 of the Resolution Law prescribes the sequence of write down or conversion, see figure 2.

6.1.8 Article 30 details the priority of claims and this does not currently provide for statutory subordination.

Figure 2: Summary of the liability cascade for a bail-in resolution strategy



6.2 Definition of MREL Eligible Liabilities

6.2.1 As defined by the Resolution Law, "eligible liabilities" means liabilities and capital instruments that do not qualify as Common Equity Tier 1 instruments, Additional Tier 1 instruments or Tier 2 instruments of a bank and which are not excluded from the exercise of the write down or conversion power under Article 65(7) (see also section 6.4 below).

6.2.2 However, for the purposes of setting and monitoring MREL for resolvability purposes, MREL Eligible Liabilities are defined as being eligible liabilities that are:

6.2.2.1 subordinated to operational liabilities; and

6.2.2.2 that are not excluded by section 6.3 below.

6.2.3 The JRA continues to work with the Government of Jersey to make changes to the Resolution Law with the objective of narrowing the definition of MREL (which currently includes certain deposits) whilst maintaining the power to bail-in certain deposits in circumstances where this would be necessary to achieve the resolution objectives, see figure 2.

6.3 Liability Exclusion

6.3.1 For the purposes of setting and monitoring MREL for resolvability purposes, a liability would need to be excluded from MREL Eligible Liabilities if:

6.3.1.1 the instrument that creates the liability is not issued or fully paid up;

6.3.1.2 the liability is owed to, or secured or guaranteed by, the institution itself;

6.3.1.3 the purchase of the instrument that creates the liability was funded directly or indirectly by the institution itself;

6.3.1.4 the liability has a remaining maturity of less than one year;

6.3.1.5 the liability arises from a derivative contract held by the institution;

6.3.1.6 the liability arises from a deposit in respect of which the depositor's rights, in any proceedings relating to the insolvency of the institution, would be preferred to the rights of other creditors; or

6.3.1.7 the instrument that creates the liability is governed by the law of a third country and the JRA is not satisfied that a decision by the JRA to convert or write down the liability would be effective under that law.

6.4 Items excluded from write down or conversion

6.4.1 Article 65(7) of the Resolution Law details the items that the JRA is not able to write down or convert.

6.4.2 The items excluded from write down are summarised as:

6.4.2.1 Covered deposits.

6.4.2.2 Secured liabilities, including covered bonds and financial instruments used for hedging.

6.4.2.3 Liabilities arising from the bank holding client assets, if protected under Jersey insolvency law.

6.4.2.4 Liabilities arising from a fiduciary relationship (bank as fiduciary), if protected under Jersey insolvency law.

6.4.2.5 Liabilities to credit institutions (excluding intra-group) with original maturity of less than 7 days.

6.4.2.6 Liabilities with remaining maturity of less than 7 days owed to settlement systems and their participants and arising from participation in such system.

6.4.2.7 Certain other liabilities relating to accrued employee salary, commercial or trade creditors, Jersey tax and social security and the Jersey Bank Depositors Compensation Board (as per Article 65(7)(g) of the Resolution Law).

6.5 Contractual recognition of bail-in: Article 72 of the Resolution Law

6.5.1 Article 72 states that a bank shall 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.

6.5.2 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 JRA's bail-in powers.

6.5.3 The JRA continues to work with the Government of Jersey to refine the requirements of Article 72 to align with the current requirements of the European Union's Bank Recovery and Resolution Directive and the United Kingdom's approach to implementation thereof. This will include:

6.5.3.1 Limiting contractual recognition of bail-in requirements so that they apply only to JIBs;

6.5.3.2 Limiting application to contracts relating to instruments that qualify as MREL Eligible Liabilities;

6.5.3.3 Allowing for scenarios where it is impracticable to include contractual recognition of bail-in provisions in respect of an MREL Eligible Liability.

6.5.4 In relation to scenarios where it is impracticable to include contractual recognition of bail-in provisions in respect of an MREL Eligible Liability:

6.5.4.1 The JRA expects JIBs to make their own reasoned assessment regarding impracticability and be prepared to justify their assessment if asked;

6.5.4.2 The JRA does not consider loss of competitiveness or profitability to be grounds for an impracticability judgement;

6.5.4.3 The following factors may indicate impracticability:

- Authorities in the third country have informed the JIB that they will not allow it to include contractual recognition language in relevant agreements or instruments;
- It is illegal in the third country for the JIB to include contractual recognition language in relevant agreements or instruments;
- The liability/instrument is governed by international protocols that the JIB has no ability to amend;
- Contractual terms are imposed on the JIB by virtue of its membership and participation in bodies where it is necessary to use standard terms for all members and impracticable to amend these bilaterally; and
- The liability that would be subject to contractual recognition of bail-in requirements is contingent on a breach of the contract.

6.5.5 Where a JIB identifies that it is impracticable to include contractual recognition of bail-in provisions in a relevant agreement or instrument, it must notify the JRA in writing explaining the rationale for its conclusions.

6.5.6 If the JRA disagrees with the JIB's determination of impracticability, we will require the JIB to implement contractual recognition of bail-in provisions within three months (or 6 months in the case of complex notifications).

~~6.5.3~~6.5.7 Once the necessary amendments to Article 72 of the Resolution Law have been made, it is expected that JIBs will be given two years to implement contractual recognition of bail-in requirements, including making any notifications in respect of impracticability in respect of existing contracts.

6.6 Internal MREL: Contractual Triggers

6.6.1 One of the principal purposes of internal MREL is to avoid the need to use statutory resolution powers on subsidiaries that sit below the group resolution entity. By being able to limit the use of stabilisation powers to the level of the resolution entity, internal MREL removes the execution risk in co-ordinating the use of tools simultaneously across multiple jurisdictions and entities as well as reducing the risk that counterparties of a material subsidiary seek to close-out or terminate arrangements at operating subsidiaries.

6.6.2 To achieve this, internal MREL eligible liabilities must be capable of being written down or converted to equity without or ahead of any use of resolution powers in relation to the entity that issues them.

6.6.3 Internal MREL eligible liabilities must therefore contain a contractual clause that allows the JIB to write down and/or convert the instrument to equity when certain conditions are met.

6.6.4 The absence of contractual triggers in internal MREL is likely to constitute an impediment to resolution on the grounds that:

6.6.4.1 the joint home-host trigger envisaged by the contractual trigger provides the mechanism for the home and host authorities to agree whether additional resources are required by the relevant subsidiary in addition to the capital provided by the conversion of the internal MREL; and

6.6.4.2 the ability to trigger all internal MREL simultaneously provides assurance that all relevant subsidiaries are well-capitalised and ensures that the surplus resources are available to the subsidiaries (if any) that require additional resources.

6.7 Internal MREL: Instrument holder

6.7.1 Banks should ensure that the issuance of internal MREL by a subsidiary credibly supports the resolution strategy and the passing of losses and recapitalisation needs to the resolution entity.

6.7.2 Internal MREL eligible liabilities must therefore be issued either directly or indirectly via other entities in the same resolution group to the applicable resolution entity.

6.8 Mismatching of internal and external MREL

6.8.1 Differences in the form of internal and external MREL may weaken the resilience and resolvability of a group. However, it is recognised that it may not be possible to match internal MREL to external MREL in all cases.

6.8.2 JIBs and the JRA should periodically review the extent to which internal MREL resources of a subsidiary differ in form — such as equity or debt, currency, maturity, interest rate, and other terms and covenants — from the MREL issued externally from the resolution entity to identify risks any such differences may pose to the resilience and resolvability of the group.

6.8.3 Where applicable, this review will be performed in conjunction with the JIB's group and the Home Resolution Authority.

6.8.4 The output from JIB's reviews should be included in JIB's self-assessments of compliance with this MREL Policy Statement. The JRA will consider the extent of any mismatching as part of resolvability assessments.

6.9 Limiting Contagion

6.9.1 Article 33 (2)(b) of the Resolution Law seeks to protect and enhance the financial system in Jersey by preventing contagion. Therefore, when assessing the resolvability of a JIB, the JRA will consider the extent to which inter-bank activity increases the risk of contagion.

6.9.2 Similarly, the FSB in its 'Principles on Loss-absorbing and Recapitalisation Capacity of G-SIBs in resolution' advises that:

6.9.2.1 Authorities should place appropriate prudential restrictions on G-SIBs' and other internationally active banks' holdings of instruments issued by G-SIBs that are eligible to meet the Minimum TLAC requirement.

6.9.3 The JRA plans to work with the JFSC to develop appropriate rules to limit the extent that JIBs can hold investments in the external MREL (or equivalent instruments) of other banking groups.

6.9.4 In the meantime, JIBs are requested to report any holdings in the external MREL (or equivalent instruments) of other banking groups as part of their self-assessments of compliance with this MREL Policy Statement.

6.10 Grandfathering and Existing Instruments

6.10.1 The JRA will give consideration, on a case-by-case basis, to the eligibility of any existing instruments that satisfy most, but not all, of the requirements of the MREL Policy Statement and that have been established prior to its publication (i.e. 'grandfathering' of existing instruments).

6.10.2 The JRA considers that, as a minimum, such grandfathered existing instruments would need to be subordinated from operational liabilities (i.e. deposits) and not otherwise be ineligible due to the requirements of section 6.3 above.

7 Governance, Reporting, Coordination and Compliance

7.1 Governance

7.1.1 JIBs must have in place adequate governance, and adequate policies, procedures, and controls to ensure adherence to this MREL Policy Statement.

7.1.2 The JRA envisages that JIBs will incorporate monitoring of MREL into existing policies, procedures and controls associated with monitoring of capital requirements and Recovery Plans. Where appropriate these should be aligned to Group policies to improve Group resolvability.

7.1.3 JIBs should have an appropriate playbook in line with the preferred resolution strategy that is evaluated and tested on a periodic basis, to be aligned at least to the two-year cycle of resolvability assessments. Where appropriate the playbook should be aligned to any equivalent playbook at a Group level.

7.2 Reporting and Data Collection

7.2.1 JIBs must have adequate Management Information Systems capabilities to identify and report, in a timely manner, information relating to its liabilities and capital structure to effectively support resolution (e.g. amounts and nature of loss absorbing and recapitalisation capacity, amounts of excluded liabilities, estimated treatment during relevant insolvency proceedings).

~~7.2.2 To satisfy this requirement, the intention is to:~~

~~7.2.2.1 Replicate EBA reporting template[11] Z, Annex I tabs 2.LIAB and 3.OWN;~~

~~7.2.2.2 Some modifications may be necessary to align to the Resolution Law and/or JFSC prudential guidelines;~~

~~7.2.2.3 In the longer term, these tabs will be incorporated into the JFSC's Prudential Return. In the meantime, the template will be developed on a standalone basis.~~

~~7.2.3~~7.2.2 JIBs are expected to monitor their MREL levels at least monthly and report MREL to the JRA annually within 20 working days of the calendar year end using the JRA's MREL Reporting Template[12] and associated guidance on completing the template[13]. The first such report shall be in respect of MREL as at 31 December 2025.

~~7.2.4~~7.2.3 JIBs should develop capabilities to be able to report this information upon request to the JRA and JFSC accurately and on a timely basis (within 2 calendar days).

~~[11] https://www.eba.europa.eu/regulation-and-policy/recovery-and-resolution/implementing-technical-standards-on-procedures-forms-and-templates-for-resolution-planning~~

[12] [Link to MREL Reporting Template to be added once published]

[13] [Link to the JRA's Guidance on completing the MREL Reporting Template to be added once published]

7.3 Monitoring

7.3.1 The JRA will monitor levels of MREL via JIB's annual submissions of the MREL Reporting Template and our on-going resolvability assessments.

7.3.2 JIBs must perform self-assessments of compliance with this MREL Policy Statement in accordance with the timeframes prescribed by PS2023/01. The first self-assessment, which is due 30 June 2026, shall set out the JIB's planned approach to meeting MREL requirements, including interim-state MREL by 31 December 2026.

7.3.3 As part of its resolvability assessments, the JRA may request that JIBs provide copies of the terms of MREL Eligible Liabilities to enable the JRA to test that these meet eligibility requirements.

7.4 MREL Breaches

7.4.1 JIBs must identify and report, in a timely manner, any impending or actual breaches of MREL, consistent with the notification requirements set out in Article 28 of the Resolution Law and section 4 of PS2023/01.

7.4.2 From the returns outlined in 7.2.2 the JRA will monitor the level of MREL and will have the ability to act if there is a breach.

7.4.3 Article 26 of the Resolution Law states that the JRA will set MREL in consultation with the JFSC. The Resolution Law states that if a Jersey Bank fails to meet MREL requirements at all times, it shall be guilty of an offence and liable to a fine.

7.4.4 A breach of MREL would equate to a material impediment to resolvability (as well as an offence as per 7.3.3) and, whilst Article 25 of the Resolution Law provides for banks to take up to 4 months to provide a plan to remediate, the JRA would work with the JFSC and the JIB to ensure any breach was remediated in a timelier manner.

8 Review and Evolution

8.1.1 The JRA will periodically review this MREL Policy Statement to assess its effectiveness and alignment with international standards. The JRA may update the MREL Policy Statement based on changes in market conditions, regulatory developments, or emerging risks. Stakeholder feedback and lessons learned from resolution exercises will also inform the evolution of the MREL framework.

9 Transitional Arrangements

9.1.1 The JRA expects JIBs to meet MREL at the earliest opportunity. However, the formal transition period will align with the JFSC's rollout of Basel III proposals and over a period of four years from publication of this MREL Policy Statement. The anticipated transition dates for an existing JIBs are:

9.1.1.1 Interim state by end 2026

9.1.1.2 Final end-state by end 2028

Resolution Strategy	Interim state by end 2026	Final end-state by end 2028
Bank Winding-Up	MREL = minimum capital requirement (MCR) **MREL = MCR**	MREL = minimum capital requirement **MREL = MCR**
Partial Transfer	MREL = up to 1.5x minimum capital requirement, pro rata to size of transfer **MREL >1 and ≤ 1.5 x MCR**	MREL = up to 2x minimum capital requirement, pro rata to size of transfer **MREL >1 and ≤ 2 x MCR**
Bail-in	MREL = 1.5 x minimum capital requirement **MREL = 1.5 x MCR**	MREL = 2 x minimum capital requirement **MREL = 2 x MCR**

9.1.2 Where a JIB transitions from Bank Winding-Up to another Resolution Strategy, it would be expected to reach the final end-state MREL within a four-year period.

9.1.3 For a JIB that is new to Jersey, MREL requirements (including any transitional period) will be determined on a case-by-case basis depending on the new JIB's business model and the assessed criticality of the new JIB to Jersey's economy.