



Feedback Paper on Consultation Paper CP2024/03

The JRA's Restructuring and Management and Governance Guidance Notes

A feedback paper relating to the JRA's consultation on its planned Guidance Notes on Restructuring and Management and Governance capabilities required to support resolvability of Jersey Banks.

Issued: 10 December 2024

Glossary of terms

Defined terms are indicated throughout this document as follows:

Bail-in Tool	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.
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.
BRRD	The European Union’s Bank Recovery and Resolution Directive.
Business Reorganisation Plan	A plan that must be developed and implemented after a bail-in to address the causes of the JIB’s failure and restore long-term viability.
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 (OIB).
Jersey Incorporated Bank (JIB)	A Jersey incorporated company registered to carry on deposit-taking business under the Banking Business (Jersey) Law 1991.
JFSC	Jersey Financial Services Commission.
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 On 16 September 2024 we issued a Consultation Paper that sought views on our draft Restructuring and Management and Governance Guidance Notes.
- 1.1.2 The Restructuring Guidance Note impacts Jersey Incorporated Banks (JIBs) especially those performing Critical Functions, and the Management and Governance Guidance Note impacts all Jersey Banks and mainly those that are performing Critical Functions. Both Guidance Notes expand on the requirements set out in our Policy Statement 2023/01 'Resolution Planning and Resolvability'.
- 1.1.3 This Feedback Paper summarises the feedback we received and our response to that feedback.
- 1.1.4 We have considered the feedback received and made same changes to both Guidance Notes. The final versions of the Restructuring and Management and Governance Guidance Notes are appended to this Feedback Paper (including a tracked change versions) and will be published on our website.

1.2 Feedback received.

- 1.2.1 We received written responses from five Jersey Banks with respect to the draft Management and Governance Guidance Note and from two from JIBs with respect to the draft Restructuring Guidance Note.
- 1.2.2 Given the low number of responses, we received we have concluded not to publish a list of respondents. Not all respondents commented on every question raised in the consultation.
- 1.2.3 Section 2 of this Feedback paper sets out a summary of the substantive comments received and our responses to that feedback. In general respondents were supportive of the approach set out in both Restructuring and Management and Governance Guidance Notes.
- 1.2.4 Based on the feedback received we have made amendments to both Restructuring and Management and Governance Guidance Notes. These are set out in Section 2 of the Feedback Paper.
- 1.2.5 In summary:
 - 1.2.5.1 The Management and Governance Guidance Note has primarily been amended to:
 - › Provide further guidance for Jersey Branches;
 - › Clarify that the appointment of a Special Manager would be in consultation with the Home Resolution Authority and is more likely for JIBs than for Jersey Branches;
 - › Provide additional guidance relating to quality assurance and internal audit; and
 - › Provide further guidance for JIBs in respect of playbooks and dry runs.

- 1.2.5.2 The Restructuring Guidance Note has been amended to:
- › Clarify that we expect JIBs to develop capabilities to produce Business Reorganisation Plans when needed, rather than ‘off the shelf’ plans; and
 - › Clarify that the data and information required to support sale and transfer resolution strategies may vary depending on the specific JIB, nature of the financial crisis and the planned approach to resolution.

1.2.6 We are grateful to all those who took time to participate in the consultation process.

1.3 Next steps

- 1.3.1 We have taken account of the feedback we received and made some amendments to both Guidance Notes.
- 1.3.2 Final versions of the Restructuring and Management and Governance Guidance Notes (including a tracked change versions) are appended and will be published on our website.
- 1.3.3 Jersey Banks should factor the Guidance Notes into existing plans, leveraging group capabilities where relevant, to ensure that they can meet the requirements set out in PS2023/01. Self-assessments in respect of Restructuring and Management and Governance Guidance Notes are due by 30 June 2025.
- 1.3.4 Further enquiries in relation to the Consultation Paper, this Feedback Paper or the Restructuring and Management and Governance Guidance Notes may be sent to Edmore Murungu (e.murungu@jra.org.je) or Martin Edwards (m.edwards@jra.org.je).

2 Consultation Feedback

2.1 Management and Governance Consultation Feedback

The table below summarises the feedback received in response to the Consultation Paper with respect to the draft Management and Governance Guidance Note along with our responses. The ordering of questions mirrors the order of questions in the Consultation Paper.

Consultation Question	Respondent's Comments	JRA Response
<p>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.</p>	<p>We received five responses from Jersey Banks, and respondents were broadly comfortable with the Management and Governance guidance provided in relation to Jersey Banks performing Critical Functions. A few comments, questions and or recommendations were raised as follows:</p>	
	<p>Establishment of committees in resolution</p> <p>Three respondents were of the view that committees (as stated in paragraph 4.1.8 of the Guidance Note) would be convened centrally at Group level with Jersey Bank representation in a resolution event.</p>	<p>Establishment of committees in resolution</p> <p>We have added a paragraph (4.1.11) to the Guidance Note to give guidance to Jersey Branches on our expectations, which would vary depending on the size of the Jersey Branch. However, we would expect that at least one local committee would be given responsibilities relevant to local resolution activities and coordination with group level resolution governance structures.</p>

Consultation Question	Respondent's Comments	JRA Response
	<p>Appointment of a Special Manager</p> <p>One respondent questioned whether it was normal to appoint an individual as a Special Manager to make ultimate decisions in resolution.</p> <p>Two respondents pointed out that appointing a Special Manager is less likely be used in respect of Jersey Branches.</p>	<p>Appointment of a Special Manager</p> <p>Appointing a Special Manager (or equivalent e.g. Bail-in Administrator) is common placed; however, the Special Manager works under the control of the resolution authority.</p> <p>Additionally, such an appointment is most likely to take place at a group level. Therefore, given the nature of Jersey Banks, it is less likely that the JRA will need to make such an appointment.</p> <p>We have made amendments to the Guidance Note to more accurately reflect this (4.1.3 and 4.1.14).</p>
	<p>Identification of a senior person responsible for resolution related activities</p> <p>One respondent suggested that we move away from this requirement pointing out that other regulators did not see benefits in doing so, while another requested we have flexibility to allow the responsible person to be based outside of Jersey in a business-as-usual scenario.</p>	<p>Identification of a senior person responsible for resolution related activities</p> <p>Identifying a senior (and preferably local) responsible individual has significant benefits for the JRA in terms of coordinating work on resolvability. Therefore, we have maintained the expectation that such an individual is identified.</p> <p>However, for some smaller Jersey Branches mandating that this person is based in Jersey may be counterproductive (if the most suitable individual is based outside of Jersey). Therefore, we have made a minor amendment (4.1.1) to accommodate such a possibility in exceptional cases. We have also clarified our expectations in respect of Jersey Branches (4.2.2).</p>

Consultation Question	Respondent's Comments	JRA Response
	<p>Identification of key job roles which support resolution activities.</p> <p>One respondent suggested that we place emphasis on identification of key personnel rather than key job roles since in resolution it will be key employees who need to be retained and not key job roles.</p> <p>Another respondent requested that the JRA allows Jersey Banks to leverage group capabilities for ensuring key roles are suitably staffed and incentivised in resolution. It also recommended the JRA to use an outcomes-based approach in assessing if the group capabilities meet the requirements of PS2023/01.</p>	<p>Identification of key job roles which support resolution activities.</p> <p>The associated requirement of Policy Statement 2023/01 is to identify key job roles and take steps to ensure they are suitably staffed. Therefore, we have retained the Guidance Note's focus on key job roles. However, we recognise that focusing on key personnel will likely achieve a similar outcome and note that Policy Statement 2023/01 allows for Jersey Banks to request to apply alternative approaches provided these appropriately address the risks to resolution.</p> <p>It is appropriate for Jersey Banks that are part of a group with developed resolution capabilities to leverage those capabilities to assist in identifying key roles and ensuring they are suitably staffed and incentivised in resolution.</p> <p>Additionally, it is likely that several key roles will already have been identified as part of group preparations for resolution. However, there may be additional key job roles either in Jersey or overseas that relate specifically to Jersey Critical Functions.</p> <p>Given this is a Guidance Note, Jersey Banks may adopt alternative approaches to meet the associated requirements of Policy Statement 2023/01. In assessing whether requirements have been met we anticipate both understanding the processes implemented and reviewing the output (i.e. the list of key job roles identified by Jersey Banks).</p>

Consultation Question	Respondent's Comments	JRA Response
	<p>Retention of staff</p> <p>One respondent recommended that the JRA focus guidance on retaining key personnel rather than changing existing employment terms. The respondent noted that re-opening negotiation on employment contracts could take a long time and can be avoided by retention plans</p>	<p>Retention of staff</p> <p>The associated requirement of Policy Statement 2023/01 is to identify key roles and take steps to ensure they are suitably staffed. Accordingly, the respondent's focus on retention rather than amending contracts is reasonable. Accordingly, we have made amendments to the Guidance Note (4.3.7) to make it clear that amending contracts is an option not a requirement</p>
	<p>Resolution playbooks and dry runs</p> <p>One respondent requested further clarity regarding expectations of dry runs and recommended that the JRA should focus requirements on validation of playbooks rather than updating them.</p> <p>Another respondent asked the JRA to clarify whether banks are required to have separate playbooks or if they can leverage group playbooks (with addendums).</p> <p>A third respondent noted that playbooks developed by Jersey Banks are designed to support management of the bank and will not cover the activities of resolution authorities, hence it suggested updating of the wording of paragraph 4.4.4 of the Guidance Note.</p>	<p>Resolution playbooks and dry runs</p> <p>We have update section 4.4 of the Guidance Note to provide additional clarification regarding our expectations of dry runs and playbooks and, will provide further guidance to JIBs on a bilateral basis.</p> <p>Whilst the playbooks developed by Jersey Banks are primarily for the benefit of the Jersey Bank and its management, they also assist the JRA to understand Jersey Banks' planned approach and assess any risks to resolution. Therefore, we have not amended paragraph 4.4.4 of the Guidance Note.</p>

Consultation Question	Respondent's Comments	JRA Response
	<p>Assurance and Internal Audit</p> <p>Two respondents were of the view that internal audit would be less involved at branch level in Jersey.</p>	<p>Assurance and Internal Audit</p> <p>Given the nature of existing Jersey Banks, we would expect most resolution related assurance work to be undertaken at a Group level. However, there may be instances where Jersey specific quality assurance and/or audit work is necessary, especially for JIBs.</p> <p>Additionally, some group level assurance and/or audit activity may provide comfort over the Jersey Banks' resolution capabilities.</p> <p>We have expanded section 4.5 of the Guidance Note to clarify these points.</p>
<p>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.</p>	<p>Only two respondents commented in respect of this question. One was supportive of the guidance provided. The other recommended the development of resolution plans to address banks that are not performing Critical Functions after plans are in place for banks that do perform Critical Functions.</p>	<p>We expect to have resolution plans in place for all Jersey Banks. However, for those not performing Critical Functions, these would be based on Bank Winding Up (or equivalent insolvency process) as the preferred resolution strategy.</p> <p>Section 6 of Policy Statement 2023/01 includes requirements for Jersey Banks not performing Critical Functions with the first self-assessment against these requirements due on 30 June 2026.</p>

Consultation Question	Respondent's Comments	JRA Response
<p>Question 3: If applicable, please set out any other areas relating to Management and Governance that you believe require further guidance or further enhancements?</p>	<p>Respondents did not raise any concerns; however, two respondents asked the JRA to clearly segregate expectations of JIBs to those of Jersey Branches of OIBs in some parts of the Guidance Note.</p> <p>One respondent pointed out that there are some differences between the approach being used by the JRA and that of its home resolution authority.</p>	<p>The JRA has amended the Guidance Note to better explain expectations of JIBs as compared to those of Jersey Branches.</p> <p>As set out in paragraph 2.3.6 of Policy Statement 2023/01, Jersey Banks may request to apply alternative approaches provided the alternative approach adequately addresses the risks to resolution.</p>

2.2 Restructuring Consultation Feedback

The table below summarises the feedback received in response to the Consultation Paper with respect to the draft Restructuring Guidance Note along with our response. The ordering of questions mirrors the order of questions in the Consultation Paper.

Consultation Question	Respondent's Comments	JRA Response
<p>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</p>	<p>Whilst the two respondents were broadly comfortable with the Restructuring Guidance, one respondent noted that the Bank of England does not include such requirements in its Statement of Policy on Restructuring.</p> <p>The respondent further noted that, whilst removing interconnectedness increases the effectiveness of certain strategies, there may be a trade-off with operational efficiencies in business as usual.</p> <p>The same respondent also queried what actions the JRA expects to be taken and whether Jersey Banks simply need to justify their current structure.</p>	<p>Whilst the Bank of England's Statement of Policy on Restructuring Planning does not set out requirements associated with structure, complexity and interdependencies, such requirements are consistent with achieving resolvability and it is appropriate for JIBs to give ex-ante consideration to reducing unnecessary complexity and interconnectedness as part of business as usual.</p> <p>However, given the nature of existing JIBs it is likely that such consideration will have already taken place (or be in progress) at a group level reducing the need for changes at the level of each JIB.</p> <p>Changes may be more likely for Sale and Transfer resolution strategies (e.g. to enhance separability of Critical Functions).</p> <p>As a minimum we would expect banks to consider existing structures to ensure these do not pose undue risk to the Preferred Resolution Strategy as set by the Home Resolution Authority and the JRA.</p>

Consultation Question	Respondent's Comments	JRA Response
<p>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.</p>	<p>One respondent was broadly comfortable but raised a concern that two weeks is an unrealistic period to complete amendments to a business reorganisation plan.</p> <p>The other respondent was supportive of developing restructuring capability but requested clarity in respect of:</p> <ul style="list-style-type: none"> › Expectations related to trading activities – noting the necessity of this should be informed by the size, scale, and complexity of such activity; and › Expectations for developing capabilities to generate Business Reorganisation Plans in crisis rather than maintaining these 'off the shelf.' 	<p>The two-week period for updating a business reorganisation plan is set in the Resolution Law and is consistent with BRRD. Therefore, we have not amended the Guidance Note.</p> <p>We agree that the extent to which Business Reorganisation Plans include content on wind down of trading activities will vary based on the size, scale, and complexity of such activity. However, we do not believe the Guidance Note needs to be amended in this respect as paragraph 4.2.14 already acknowledges that wind down of trading activities is unlikely to be a significant feature of Bank Reorganisation Plans.</p> <p>We have added a paragraph (4.2.2) to clarify that we would expect JIBs to develop capabilities rather than 'off the shelf' Business Reorganisation Plans.</p>
<p>Question 3: Are you comfortable with the guidance provided to Jersey Incorporated Banks in relation to separability assessments? If not, please explain why</p>	<p>None of the respondents commented in respect of this question.</p>	<p>We are proceeding with the guidance as drafted.</p>

Consultation Question	Respondent's Comments	JRA Response
<p>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.</p>	<p>One respondent recommended that the list of data and documents to be included in a Virtual Data Room can change depending on the size and complexity of the Jersey Bank, the reason for the financial crisis and which resolution tool is being deployed.</p>	<p>We have added paragraph 4.5.5 to the Guidance Note to clarify the point raised by the respondent.</p>
<p>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</p>	<p>One respondent noted it is broadly comfortable with the guidance provided.</p>	<p>We are proceeding with the guidance as drafted.</p>
<p>Question 6: Are you comfortable with the guidance provided in relation to Jersey Incorporated Banks not performing Critical Functions? If not, please explain why.</p>	<p>One respondent recommended development of resolution plans to address banks that are not performing Critical Functions after plans are in place for banks that do perform Critical Functions.</p>	<p>We expect to have resolution plans in place for all Jersey Banks. However, for those not performing Critical Functions, these would be based on Bank Winding Up (or equivalent insolvency process) as the preferred resolution strategy.</p> <p>Section 6 of Policy Statement 2023/01 includes requirements for Jersey Banks not performing Critical Functions with the first self-assessment against these requirements due on 30 June 2026.</p>

Consultation Question	Respondent's Comments	JRA Response
<p>Question 7: Are you comfortable with the supplementary guidance on Self-Assessments? If not, please explain why.</p>	<p>One respondent recommended extending the date for delivery of the initial self-assessment to provide a year post publication of the final guidance note (31 December 2025) as they will need more time and resources to complete this work.</p> <p>The other respondent noted it is broadly comfortable with the guidance but raised an observation regarding our requirement to perform self-assessments against Restructuring by 30 June 2025 and again by 30 June 2026. The respondent highlighted that the Bank of England has recently moved from requiring self-assessments every two years to requiring them periodically, with the next one planned 3 years after the last one.</p>	<p>This consultation relates to a Guidance Note. The Restructuring requirements (that need to be self-assessed against) were published in August 2023 in Policy Statement 2023/01, including the deadline for initial self-assessments. Accordingly, we have not extended the self-assessment deadline from 30 June 2025.</p> <p>The previously agreed phased rollout of Jersey's Resolution Regime sees banks conduct partial self-assessments against certain risks to resolution by 31 December 2024 and 30 June 2025 followed by the first full self-assessment against all risks to resolution by 30 June 2026. Self-assessments are then envisaged every two years (aligned with the Bank of England's previous approach). We anticipate reconsidering the frequency of self-assessments after the first full self-assessments have been reviewed.</p>

Consultation Question	Respondent's Comments	JRA Response
<p>Question 8: If applicable, please set out any other areas relating to Restructuring that you believe require further guidance?</p>	<p>One respondent asked the JRA to provide further examples of the types of contracts referred to in the Guidance Note.</p>	<p>Having reviewed the Guidance Note we believe sufficient examples are provided and generic references to contracts need to be interpreted widely by Jersey Banks in the context of considering the guidance provided. For example, where applicable, contracts relevant to Separability Assessments will vary and need to be identified on a case-by-case basis.</p> <p>Accordingly, no amendments have been made in respect of this point.</p> <p>We are happy to provide bilateral guidance to JIBs as they apply the guidance.</p>

Appendices**Appendix A: Tracked change version of Management and Governance Guidance Note**

A tracked change version of Management and Governance Guidance Note is appended as a separate document.

Appendix B: Tracked change version of Restructuring Guidance Note

A tracked change version of Restructuring Guidance Note is appended as a separate document

Appendix C: Final version of Management and Governance Guidance Note

The final version of Management and Governance Guidance Note is appended as a separate document.

Appendix D: Final version of Restructuring Guidance Note

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