



Management and Governance Guidance Note

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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.
Bail-in	The mechanism described in Article 65(1) of the Bank (Recovery and Resolution) (Jersey) Law 2017 for recapitalising a bank or exercise of the write down or conversion power.
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
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
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
PS2023/01	Policy Statement 2023/01 'Resolution Planning and Resolvability'
Special Manager	The person appointed by the JRA to replace the management of a bank in resolution (as set out in Article 42 of the Resolution Law).
Subsidiary	Shall be construed in accordance with Article 2 of the Companies Law

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1 Background

- 1.1.1 This document sets out guidance for Jersey Banks on the Management and Governance capabilities they are expected to put in place and maintain to meet the restructuring requirements set out in Policy Statement 2023/01 'Resolution Planning and Resolvability' (PS2023/01). It does not set out any additional requirements beyond those set out in PS2023/01.
- 1.1.2 The following publications have been used to help develop this Guidance Note. Jersey Banks may wish to consult these for additional guidance when developing required governance and management capabilities.
- 1.1.2.1 The Bank of England's Statement of Policy on Management, Governance and Communication¹;
 - 1.1.2.2 Section 2.1 of the Single Resolution Board's Expectations for Banks²;
 - 1.1.2.3 The Single Resolution Board's, Operational Guidance on Bail-in Playbooks, June 2022³; and
 - 1.1.2.4 Section V of the Financial Stability Board's principles of bail-in execution⁴.

2 Scope

- 2.1.1 This Management and Governance Guidance Note is relevant to all Jersey Banks:
- 2.1.1.1 Section 4 of this Guidance Note is relevant to Jersey Incorporated Banks (JIBs) and Jersey Branches that are performing Critical Functions to the Jersey economy.
 - 2.1.1.2 Section 5 is only relevant to JIBs and Jersey Branches that do not perform Critical Functions in Jersey.

¹ <https://www.bankofengland.co.uk/-/media/boe/files/paper/2021/bank-of-england-management-governance-and-communication-sop-may-2021.pdf?la=en&hash=CAC7A0C053522902E01E21B4C27A8A3C4C4023CF>

² https://www.srb.europa.eu/system/files/media/document/efb_main_doc_final_web_0_0.pdf

³ https://www.srb.europa.eu/system/files/media/document/22-06-15%20SRB%20Operational%20guidance%20on%20bail-in%20playbooks%20final_0.pdf

⁴ <https://www.fsb.org/wp-content/uploads/P301117-1.pdf>

3 Objectives

- 3.1.1 Jersey Banks should have in place robust governance processes that facilitate the preparation and implementation of the resolution strategy set by the JRA and/or the Home Resolution Authority. Additionally, they should take appropriate steps to ensure that key roles are adequately staffed in the lead up to and during resolution.
- 3.1.2 To achieve this, Jersey Banks should:
 - 3.1.2.1 Document and implement corporate governance arrangements proportionate to their size and structure with clearly defined roles and responsibilities for relevant committees and individuals to support the preparation and implementation of the preferred resolution strategy;
 - 3.1.2.2 Establish appropriate quality assurance, and where possible arrange for internal audit to ensure completeness and accuracy of information provided to the JRA and, where applicable, valuers;
 - 3.1.2.3 In the case of JIBs, maintain, evaluate, and test playbooks describing the operational aspects of the local resolution strategy;
 - 3.1.2.4 Identify an appropriate experienced member of senior management to manage resolution related activities; and
 - 3.1.2.5 Identify key roles and take steps to ensure they are suitably staffed during resolution.

4 Guidance for Jersey banks performing Critical Functions

4.1 Guidance in relation to governance in resolution

- 4.1.1 Jersey Banks should be able to ensure that effective decision-making and oversight arrangements will be in place in resolution, considering the need to ensure rapid decision-making in the context of uncertainty, and to account for changes to the Jersey Bank's governance that may be introduced in resolution.
- 4.1.2 In the case of JIBs with a bail-in resolution strategy, this may involve the appointment of a Special Manager to be responsible for taking steps to promote the resolution objectives, implement resolution actions, and to carry out certain senior management roles within the JIB.
- 4.1.3 For JIBs that are part of banking groups headquartered outside of Jersey, the JRA would consult with the Home Resolution Authority prior to appointment of a Special Manager and any such appointment would only be necessary if there were concerns regarding the fitness and probity of the JIBs senior management.

Strategic Objectives

- 4.1.4 Jersey Banks whose preferred resolution strategy is bail-in should consider how they would amend the objectives governing their decision-making at short notice upon entry into resolution. This should facilitate the alignment of the Jersey Bank's objectives and key decision-making processes with the practical aims of the resolution and any subsequent restructuring. In doing so Jersey Banks should seek to identify and mitigate any potential legal or practical constraints to amending these objectives.
- 4.1.5 In the case of a Jersey Branch, such mechanisms would be put in place at a group and/or legal entity level and cascaded down to the Jersey Branch to insure it is aligned to the objectives of the group resolution.

Decision making and oversight.

- 4.1.6 Jersey Banks should be able to nominate one or more new or existing committees to coordinate and oversee the actions that the Jersey Bank may need to take to support resolution and any associated restructuring. Jersey Banks should be able to do this at short notice during the pre-resolution contingency planning period, including by obtaining any necessary delegations or approvals from the Jersey Bank's board.
- 4.1.7 Key responsibilities of these committees should include, but not be limited to, ensuring that the Jersey Bank:
 - 4.1.7.1 devotes sufficient resource and time to resolution related actions.
 - 4.1.7.2 engages external stakeholders (including authorities) as necessary and appropriate; and
 - 4.1.7.3 takes sound decisions on resolution related matters without undue delay.
- 4.1.8 The JRA does not expect Jersey Banks to establish committees in business-as-usual for this purpose. However, Jersey Banks should consider what committees might be required in a resolution event, as well as:
 - 4.1.8.1 what the specific responsibilities of these committees would be;
 - 4.1.8.2 how these committees would interact with other existing committees and boards;

- 4.1.8.3 what membership such committees would need to ensure that there is sufficient expertise, seniority and challenge for the committee to discharge its responsibilities effectively; and
- 4.1.8.4 how to ensure that committee members would have adequate time available to discharge their duties effectively.
- 4.1.9 In addition, Jersey Banks whose preferred resolution strategy is bail-in, or involves the use of a comparable tool in their home jurisdiction, should consider how they would ensure that:
 - 4.1.9.1 decisions are escalated to and taken at the appropriate level in resolution including, as relevant, to the JRA, other authorities, and a Special Manager (or similar agent appointed by the home resolution authority);
 - 4.1.9.2 decision-making is expedited in resolution where necessary depending on the urgency of the situation at hand⁵;
 - 4.1.9.3 ownership, authority and accountability for specific decisions in resolution are clear; and
 - 4.1.9.4 relevant individuals, boards, committees and, as relevant, the JRA, other authorities and a Special Manager (or similar agent) will receive the information they need to effectively discharge their decision-making and oversight responsibilities in resolution.
- 4.1.10 In particular, Jersey Banks should consider how these arrangements would apply in cases where they differ from their business-as-usual arrangements.
- 4.1.11 For a Jersey Branch, the extent that additional committees are necessary in a resolution event will depend on the size of the Jersey Branch, the volume of Jersey Critical Functions it performs and the structure of its existing governance arrangements. We would expect that at least one local committee would be given responsibilities relevant to local resolution related activities including but not limited to:
 - 4.1.11.1 Coordination with entity and/or group level resolution governance structures;
 - 4.1.11.2 Oversight of local communications and stakeholder management;
 - 4.1.11.3 Identification and escalation of issues that may impact the success of the resolution; and
 - 4.1.11.4 Coordination of other local resolution activities.

Dispute Resolution

- 4.1.12 Jersey Banks should ensure that dispute-resolution measures will be available in resolution to address and resolve potential conflicts between the Jersey Bank's decision-making bodies. This includes, but is not limited to, the boards of the Jersey Bank and its subsidiaries (including, where relevant, parent banks / head office, overseas subsidiaries, and non-bank subsidiaries)

⁵ Expedited processes should appropriately balance the need for rapid decision making with the need for relevant challenge and oversight. Decisions should be appropriately recorded, even when made on an expedited basis.

- 4.1.13 JIBs whose preferred resolution strategy is bail-in should consider the role a Special Manager may be given to adjudicate on conflicts in resolution. Such JIBs should also consider where and how applicable legal or regulatory requirements may prevent or delay the JIB acting upon a decision taken by the JRA or Special Manager. JIBs should notify the JRA of where these risks may arise to inform what mitigating actions could be taken in resolution.

Supporting a Special Manager

- 4.1.14 JIBs whose preferred resolution strategy is bail-in should consider how they would rapidly familiarise a Special Manager with the JIB so that they are able to carry out their role effectively. Such JIBs should consider how they would identify a team of staff to be responsible for supporting a Special Manager in carrying out their role. This could include, but is not limited to, staff to support administrative matters, technology and data access, liaison with other areas of the JIB, communications, and understanding of the JIB's preferred resolution strategy.

4.2 Guidance in identifying a member of senior management responsible for resolution related activities

- 4.2.1 Jersey Banks should identify an appropriate experienced member of senior management (an accountable / responsible person) to manage and co-ordinate resolution related activities during business-as-usual as well as in the lead up to and after resolution. The JRA would ordinarily expect:
- 4.2.1.1 that the identified individual is resident in Jersey;
 - 4.2.1.2 in the case of JIBs that the individual is a member of the executive committee (or equivalent) and for Jersey Branches that they are a member of the most senior management committee; and
 - 4.2.1.3 that the individual leads or oversees the Jersey Bank's engagement with the JRA.
- 4.2.2 In the case of a Jersey Branch, the identified individual's responsibilities would relate to local resolution related activities and the individual would coordinate with colleagues at a group and/or legal entity level in this respect.
- 4.2.3 Jersey Banks should notify the JRA, in writing and on a timely basis, of any changes in the identified individual (the responsible/ accountable person).

4.3 Guidance in relation to management in resolution

- 4.3.1 Jersey Banks should be able to ensure that key job roles would be suitably staffed and remunerated in resolution. They should have regard to the potential extent of turnover in a resolution scenario,⁶ the need to replace management deemed responsible for the Jersey Bank's failure, and the need for the Jersey Banks's staff to carry out a large number of business-as-usual and resolution-specific actions to support orderly resolution.

⁶ This includes the run-up to resolution, during the resolution and any post-stabilisation restructuring.

Identification of key job roles which support resolution activities

- 4.3.2 Jersey Banks should identify in business-as-usual the job roles that are likely to be key in resolution. For the purposes of this Guidance, key job roles are those roles where a vacancy in resolution may present an obstacle to the effectiveness of resolution and any subsequent restructuring. A role would generally be deemed key where it meets both of the following criteria:
- 4.3.2.1 **Criteria 1: Significance:** The performance of the role would have a material impact on how effectively the Jersey Bank would undertake the actions needed to support orderly resolution. These roles at the very least are likely to include senior management functions. This includes:
- › those actions needed in respect of the risks to resolvability identified in PS2023/01;
 - › business-as-usual activities that would be important to the continuity and restructuring outcome set out in that publication; and
 - › material decision-making or co-ordination in respect of one or more of these actions.
- 4.3.2.2 **Criteria 2: Non-substitutability:** It is reasonably uncertain that the individual in the role could be replaced⁷ at short notice, assuming that no planning had been undertaken prior to resolution. By way of example, this may occur where:
- › there is likely to be a very limited pool of suitably experienced individuals available to carry out the role;
 - › a role involves relationships with key external stakeholders (such as critical service providers) that would otherwise be difficult to maintain without prior planning; or
 - › a role requires specific expertise or institutional knowledge that may be otherwise unavailable to the Jersey Bank.
- 4.3.3 Jersey Banks should be able to provide an up-to-date list of key job roles at short notice during a resolution event. This list should include all roles that would be key given the particular circumstances of that resolution. To achieve this, Jersey Banks should consider the extent to which they would need to review their identified roles on an ongoing basis in business-as-usual, taking into account their size and the nature of their business.
- 4.3.4 Jersey Banks should also be able to rapidly compile and present relevant information on these roles as needed to inform the related actions that may need to be taken in resolution (e.g. dismissal, retention, replacement or changes to responsibilities or incentives). This includes, but is not limited to, information on key responsibilities, remuneration, notice periods, succession plans, and regulatory approvals (both Jersey and overseas), as well as the assessed risk and impact of a vacancy in the role.
- 4.3.5 In the case of Jersey Banks with extensive intra-group outsourcing, it is recognised that several key job roles will be outside of Jersey and that these may already have been identified by group led resolution preparations. However, that does not preclude the fact that there may be additional Jersey and non-Jersey based key roles that are specific to the Jersey Bank's activities (i.e. to support Jersey Critical Functions)⁸.

⁷ This could include replacement by an existing staff member, a new hire or a contractor.

⁸ The same applies to Jersey Branches with extensive intra-entity outsourcing (i.e. branch to branch).

Retention

- 4.3.6 Jersey Banks should consider how they would retain staff in key job roles in resolution, should retention be necessary. This includes measures that the Jersey Banks could take at short notice in a stress or resolution scenario to retain staff where needed.
- 4.3.7 This may involve seeking to avoid, to the extent consistent with relevant legal and regulatory requirements, including any terms (such as release clauses) in relevant employment contracts whereby the bank's entry into resolution would enable the employee to leave the role at shorter notice than would be the case in business-as-usual.

Succession

- 4.3.8 Jersey Banks should be able to ensure rapid handover of key job roles to individuals appointed throughout the resolution process. In doing so, Jersey Banks should ensure that an individual is able to carry out the role effectively as soon as reasonably possible after their appointment.
- 4.3.9 Jersey Banks should have adequate processes in place for preparing robust and up-to-date succession plans for key job roles during pre-resolution contingency planning. These plans should seek to ensure that one or more individual(s) with adequate skills and knowledge would be available to perform a given key job role if the incumbent were to leave or be removed in resolution. Jersey Banks may leverage succession planning carried out in business-as-usual for this purpose.
- 4.3.10 Jersey Banks should also consider how key job roles could be performed should the role become vacant before a suitable internal or external replacement could be appointed in a resolution event. This may include use of wider group resources, contractors or other external resources.

Responsibilities and incentives

- 4.3.11 Jersey Banks should consider the extent to which they would need to develop reward structures for use in resolution, taking into account the size and nature of their business.
- 4.3.12 Jersey Banks should consider how they could amend the incentives applicable to key job roles at short notice in a resolution event. This should facilitate the alignment of the individual's incentives with objectives relating to delivery of the chosen resolution strategy.

Regulatory Approvals

- 4.3.13 Jersey Banks should identify what regulatory approvals would be needed for any changes to management personnel, management responsibilities, and remuneration structures in resolution. Jersey Banks should be able to make timely and complete applications for these approvals, including in urgent situations. This could include approvals needed in Jersey and overseas.

4.4 Guidance relating to local resolution playbooks

- 4.4.1 JIBs should describe operational aspects of the resolution strategy in playbooks. The JRA expects the playbooks to cover the following:
 - 4.4.1.1 Identification and description of relevant governance arrangements for the bail-in execution, including an indication of responsibilities, reporting lines, roles of committees and the communication set-up; and
 - 4.4.1.2 A description of Management Information Systems (MIS) that generate the required information to support resolution.
- 4.4.2 Where applicable these should align to and compliment equivalent playbooks in place at a group level. In certain cases, a JIB may be sufficiently material to be specifically captured by group playbooks. In such cases, a separate local playbook may not be necessary. However, addendums may be needed to ensure Jersey specific aspects are covered. Where group playbooks are used to meet requirements, the JRA may request sight of the group playbook to validate capabilities are in place and to assist the JRA in understanding the steps that would take place in a resolution event.
- 4.4.3 Dry-runs and playbooks should be used to refine governance processes and the actions to be taken by the board and/or by the management body before, during and after the resolution event. The frequency and extent of dry-runs will vary depending on the size and complexity of the JIB.
- 4.4.4 The playbook should be well structured and easy to understand. It should act as a practical tool for the JIB and the JRA to use during a resolution.
- 4.4.5 The playbook should be validated by the senior management of the JIB.
- 4.4.6 The playbook is a living document and should be reviewed and, if necessary updated, at least annually taking into account the feedback from the JRA, lessons learnt from dry-runs, other guidance from the JRA, any material changes within the JIB, requirements of external stakeholders and legal changes.
- 4.4.7 Material changes compared to the previous version should be clearly indicated. The involved units, departments and committees in the JIB should be informed.

4.5 Guidance in respect of quality assurance and internal audit

- 4.5.1 Jersey Banks should establish a quality assurance process to ensure the completeness and accuracy of information sent to the JRA for resolution planning purposes. Resolution relevant information should also be regularly reviewed by internal audit. Jersey Banks should:
- 4.5.1.1 establish a quality assurance process for resolution related information;
 - 4.5.1.2 have arrangements that ensure the completeness and accuracy of data;
 - 4.5.1.3 ensure that resolution-relevant information is regularly reviewed by internal audit (resolution planning activities should be included in the annual audit plan); and
 - 4.5.1.4 in the case of JIBs:
 - › ensure that the audit committee monitors the effectiveness of the JIB's internal quality controls, and receives and acts upon relevant audit reports; and
 - › ensure that the audit committee or another body periodically reviews these arrangements;
 - 4.5.1.5 In the case of Jersey Branches:
 - › The frequency and extent of quality assurance and internal audit activity will depend on the size of the Jersey Branch, the number of Jersey Critical Functions it performs and an assessment of associated risks to resolution.
- 4.5.2 For Jersey Banks that are part of internationally headquartered groups that have established resolution capabilities, it is acknowledged that much of the internal audit activities related to resolution will be coordinated at a group level. However, this does not preclude resolution related internal audits at a local level. Additionally, group led internal audits may capture activities of the Jersey Bank.

5 Guidance for Jersey banks not performing Critical Functions

- 5.1.1 The failure of a Jersey Bank that does not perform Critical Functions will have a lesser impact on the stability of the financial system in Jersey. However, any failure will have an impact which might affect other Jersey Banks and the Jersey financial system.
- 5.1.2 To enable the JRA to take appropriate steps to minimise the impact of failure, a Jersey Bank that does not perform Critical Functions should take reasonable steps to ensure that proper management and governance procedures are in place with key roles and responsibilities being identified, held by senior qualified staff members and well documented to ensure easy engagement with the appointed bank liquidator, the JRA, the JFSC, and other relevant agencies in the lead up to and during resolution and or restructuring.
- 5.1.3 The JRA would expect Jersey Banks that do not perform Critical Functions to identify an appropriate member of senior management to act as the primary contact for the JRA on matters relating to resolution planning. Changes to this role should be notified to the JRA on a timely basis.
- 5.1.4 Where a Jersey Bank may be subject to restructuring as a result of its group entering resolution, it should ensure management and governance plans are in place so that the JRA and other relevant Jersey Authorities are kept informed by the bank appointed senior member of management team of the likely impact of restructuring on its Jersey operations.
- 5.1.5 To help minimise the risks to financial stability, the Jersey Banks may wish to consider the guidance set out in Section 4 of this Guidance Note and apply it proportionally with the aim of:
 - 5.1.5.1 Having senior management who are responsible/accountable and can coordinate and oversee actions to support the Jersey Bank's operations during resolution or winding up.
 - 5.1.5.2 Identifying key roles and responsibilities which are crucial during a resolution event or insolvency proceedings, failure of which to identify those roles might cause challenges to the JRA or a liquidator during bank winding up proceedings.
- 5.1.6 The JRA would also expect Jersey Banks to ensure adequate governance arrangements are in place in respect of preparation, review and approval of both their simplified plans for winding up and the self-assessments required to be submitted to the JRA (as set out in paragraph 6.1.8 of PS2023/01).