

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**PROJET DE LOI**

Entitled

**THE BANK RESOLUTION (BAILIWICK OF GUERNSEY) LAW, 2025**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Projet de Loi entitled "The Bank Resolution (Bailiwick of Guernsey) Law, 2025", and to authorise the Bailiff to present a most humble petition to His Majesty praying for His Royal Sanction thereto.

**EXPLANATORY MEMORANDUM**

The Projet makes provision in the Bailiwick for the resolution of banks, "resolution" being a process whereby a bank of systemic importance which is failing is not necessarily wound up in liquidation proceedings but can have its shares, business or undertaking transferred to another entity with a view to prevention of failure and continuity of services. Resolution is a cross-jurisdictional process affecting all banks within the same group as the bank at risk and involves co-operation between the supervisory and resolution authorities in all relevant jurisdictions. Winding up under local liquidation procedures would still be available if that would produce a more favourable outcome for the resolution objectives (eg, the continuity of banking services, the stability of the financial system and the protection of client assets) than resolution.

The Projet makes provision -

- (a) in Part I, in respect of the establishment and functions of the Guernsey Bank Resolution Committee (the "BRC"). The BRC is a statutory corporation which will be the resolution authority for the Bailiwick, staffed and resourced by the Guernsey Financial Services Commission, but with operational independence,
- (b) in Part II, in respect of the application of this Projet to "banks",
- (c) in Part III, in respect of recovery planning and recovery plans,
- (d) in Part IV, in respect of resolution planning and resolution plans, resolvability assessment, minimum requirements for own funds and eligible liabilities ("MREL"), and co-operation, etc, with overseas resolution authorities,

- (e) in Part V, in respect of the establishment of the Guernsey Bank Resolution Fund (the "Fund"),
- (f) in Part VI, in respect of resolution, including early intervention, resolution objectives, resolution conditions, the general principles of resolution, relevant competition law, and special management,
- (g) in Part VII, in respect of the valuation of assets and liabilities, including pre-resolution, provisional, definitive and difference of treatment valuations,
- (h) in Part VIII, in respect of resolution tools (the sale of business tool, the bridge bank tool, the asset separation tool and the bail-in tool), the treatment of shareholders, the sequence of write down or conversion, business reorganisation plans, ancillary provisions and contractual recognition of bail-in,
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- (j) in Part X, in respect of the recognition of foreign resolution actions,
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- (q) in Schedules 1, 2 and 3 respectively, in respect of –

- (i) the BRC and its Director,
- (ii) the meaning of "holding company" and "subsidiary company",
- (iii) amendments to other enactments.

The Law will be brought into force on the day appointed by Ordinance of the States of Deliberation.

# PROJET DE LOI

ENTITLED

## **The Bank Resolution (Bailiwick of Guernsey) Law, 2025**

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# PROJET DE LOI

ENTITLED

## **The Bank Resolution (Bailiwick of Guernsey) Law, 2025**

**THE STATES**, in pursuance of their Resolution of the 7<sup>th</sup> February, 2025<sup>a</sup>, have approved the following provisions which, subject to the Sanction of His Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

### PART I

#### THE GUERNSEY BANK RESOLUTION COMMITTEE ("BRC")

##### Establishment of BRC.

1. (1) There is established a body to be called the Guernsey Bank Resolution Committee (the "**BRC**").

(2) The BRC is a body corporate with perpetual succession capable of suing and being sued in its own name.

(3) Schedule 1 has effect in respect of the BRC and the constitution and proceedings thereof.

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<sup>a</sup> Article XII of Billet d'État No. III of 2025.

### **Status of BRC.**

2. (1) The BRC is not a committee or agent of the States of Guernsey, and its members are not servants or agents of the States of Guernsey, and, except to the extent provided otherwise in this Law or any other enactment –

- (a) the BRC is not subject to any rule of law relating to committees of the States of Guernsey, and
- (b) the BRC does not have any right or privilege vested in committees of the States of Guernsey.

(2) The BRC may consult and co-operate with any committee of the States of Guernsey in relation to matters concerning its functions.

### **Functions of BRC.**

3. (1) The functions of the BRC are –

- (a) to act as the resolution authority for the Bailiwick,
- (b) to provide to the Commission or the Committee, at the request of the Commission or the Committee or of the BRC's own motion, reports, advice, assistance, information, schemes, recommendations and proposals in respect of -
  - (i) the BRC's functions and the performance thereof,
  - (ii) the operation of the provisions of -

- (A) this Law, and
- (B) any other enactment in respect of the recovery and resolution of banks, and
- (iii) any other matter arising from or relating to the provisions, purposes or subject matter of the provisions of –

- (A) this Law, and
- (B) any other enactment in respect of the recovery and resolution of banks

- (c) any other functions assigned to the BRC by or under the provisions of this Law or any other enactment.

(2) In exercising its functions, the BRC may take into account any matter which it considers appropriate but shall have regard to -

- (a) the reduction of the risk to the public of financial loss due to the financial unsoundness of a bank,
- (b) the protection and enhancement of the reputation and integrity of the Bailiwick in commercial and financial matters,
- (c) the best economic interests of the Bailiwick, and



- (d) the financial stability of the Bailiwick.

**Ancillary powers of BRC.**

4. (1) The BRC, having regard to the provisions of section 3, may do anything that appears to it to be conducive or incidental to, or necessary or expedient for the purposes of, the performance of its functions including, without limitation, power –

- (a) to require the production of and otherwise obtain such documents, accounts and information from such persons and within such periods and at such times and intervals as it thinks fit,
- (b) without prejudice to the provisions of paragraph (a), and in its absolute discretion, routinely to examine a bank, including power to require the bank to supply documents, accounts and information in a form and manner and at times or intervals specified by the BRC,
- (c) without prejudice to any other power of the BRC or Commission to give directions, to give a direction to the bank requiring it to take measures which, in the opinion of the BRC after consultation with the Commission, are required to address -

(A) impediments to the effective -

- exercise of the recovery and

resolution powers, or

- taking of resolution action, or

(B) the winding up of the bank, whether by virtue of a bank winding up order or otherwise,

(d) to prepare and, subject to any provision to the contrary in this Law or any other enactment, to publish information, reports, codes of practice, advice, guidance, recommendations and other documents, whether in respect of matters set out in section 3(1)(b) or otherwise,

(e) subject to the provisions of Part XIV (disclosure of information) -

(i) to seek, obtain, keep, provide, exchange, transmit and/or use documents and information relating to recovery and resolution carried on in or outside the Bailiwick, and

(ii) without prejudice to the provisions of subparagraph (i), to consult, co-operate and collaborate with overseas resolution authorities and overseas supervisory authorities,

(f) to appoint any person or body to advise it in relation to

the performance of any of its functions, and

- (g) to apply to the Royal Court for directions or for a determination under sections 7 and 136.

(2) For the purposes of performing its functions the BRC may, having regard to the provisions of section 3, and without prejudice to the provisions of subsection (1) –

- (a) acquire, lease, hold, use, encumber, dispose of, exchange, invest or otherwise deal with any movable or immovable property and any interest in it,
- (b) expend money, borrow money or otherwise incur indebtedness (by way of mortgage, overdraft or otherwise, and with or without security) and open, operate and close bank accounts,
- (c) enter into any contract, including any contract of purchase, sale, insurance, hire or bailment, or make any arrangement with any person, and
- (d) do anything that may be done by a company with unrestricted objects.

**Guidance to BRC.**

5. (1) The Commission may, after consulting the BRC, give to the BRC written guidance of a general character concerning the policies to be followed by the BRC in relation to the recovery and resolution of banks in the Bailiwick and the

manner in which any function of the BRC is to be carried out.

(2) It is the duty of the BRC, in carrying out any of its functions, to take into account any guidance given under subsection (1).

(3) Any guidance given under this section –

(a) may be given only in the public interest, and not to influence particular cases,

(b) must not prejudice the operational independence of the BRC by (for example) prescribing the specific manner in which the BRC should carry out its recovery or resolution functions, and

(c) must be published, although the guidance may come into effect as soon as it is given.

(4) For the avoidance of doubt, the BRC shall not be deemed to have acted unreasonably or beyond its powers in the performance of any of its functions by reason only of the fact that it has complied with its duty under subsection (2).

#### **Separation of functions of BRC and Commission.**

6. (1) The BRC and the Commission may issue and publish guidance, principles and/or policies about the performance of their respective functions and the governance of their respective organisations to ensure that the BRC and the Commission -

- (a) are operationally separate from and independent of each other in the performance and the manner of the performance of their respective functions, and
- (b) take account of the potential for, and use their best endeavours to avoid, conflicts of interest.

(2) The matters in respect of which guidance, principles and policies may make provision under subsection (1) include, without limitation –

- (a) the requesting, provision, receipt, retention, exchange and use of documents and information by the BRC and the Commission,
- (b) the provision, sharing, exchange, secondment and use of accommodation, officers, employees, external advisers, office systems and facilities, and electronic, financial and other resources by the BRC and the Commission,
- (c) corporate governance, including matters relating to –
  - (i) the systems and arrangements by and under which the BRC is directed and controlled,
  - (ii) the BRC's accountability, effectiveness, efficiency, and economy of operation, and
  - (iii) internal procedures, controls and reporting,

but not matters relating directly to the performance by the BRC or the Commission of their respective functions,

- (d) conflicts of interest, including those concerning members, officers, employees, external advisers and the organisations themselves,
- (e) the BRC's accounts and the audit thereof, accounting policies and accounting procedures,
- (f) the borrowing of money by the BRC and the investment of the BRC's funds,
- (g) the confidentiality and security of information, documents and data,
- (h) the review of, and reporting upon, matters set out in the preceding paragraphs, and
- (i) other operational and management matters for the purposes of carrying the provisions of this Law into effect and enabling the BRC and the Commission effectively to perform their respective functions.

(3) Guidance, principles and policies under subsection (1) –

- (a) are without prejudice to the operational separation and

independence required by the provisions of subsection (1), and

- (b) do not apply to the extent that express provision to the contrary is made by or under the provisions of this Law.

**Power to apply for directions.**

7. (1) The BRC may, if it believes that it would assist it in the proper and lawful performance of its functions, apply to the Royal Court for directions, or for a determination of any question of fact, law or procedure, in such manner, if any, as may be prescribed by Order of the Royal Court, and on such an application the Royal Court may make such order as it thinks fit.

(2) An order of the Royal Court under subsection (1) may contain such incidental, ancillary, consequential or supplementary provision, and may be made on such terms and conditions, as the Royal Court thinks fit.

(3) For the purposes of an application under this section, the Royal Court -

- (a) is constituted by the Bailiff sitting unaccompanied by the Jurats, and

- (b) may appoint one or more assessors to assist it.

(4) An appeal from an order of the Royal Court under this section lies, with leave of the Royal Court or the Court of Appeal, to the Court of Appeal on a question of law.

(5) Section 21 of the Court of Appeal (Guernsey) Law, 1961 ("powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under this section as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

**Annual reports.**

8. (1) The BRC must, as soon as reasonably practicable in each calendar year, submit a report to the Commission on the performance of its functions in the preceding year (an "**annual report**").

(2) The annual report may refer to any aspect of the BRC's functions and in particular may set out or refer to any guidance given to the BRC under section 5(1) during the preceding year.

(3) The Commission –

(a) shall, as soon as reasonably practicable after receipt of the BRC's annual report, lay it before the States, and

(b) may at the same time submit their own report to the States covering -

(i) the period of the BRC's annual report, and

(ii) the matters referred to in subsections (1) and (2).

**BRC's funds.**

9. The funds and resources of the BRC are –



- (a) any grant or loan paid to the BRC under section 10,
- (b) any money borrowed by the BRC in accordance with section 4, and
- (c) any other money or property, and any income and profits derived from such money or property, lawfully vested in the BRC by virtue of -
  - (i) the provisions of this Law or any other enactment, or
  - (ii) the performance of its functions.

**Grants and loans to BRC.**

10. The Commission may, on such terms and conditions (whether as to repayment, payment of interest or otherwise) as it thinks fit, make grants or loans from the funds of the Commission towards the costs and expenditure of the BRC, incurred or anticipated, in the performance of its functions or for the purpose of assisting the BRC to perform its functions.

**Investment of surplus funds.**

11. The BRC may, after consultation with the Commission, invest or lend any of its monies not immediately required by it in any investment or, as the case may be, by way of any loan.

**Exemption from income tax.**

12. The BRC's income is not subject to income tax under the provisions of the Income Tax Law.

**Financial and accounting provisions.**

13. (1) The BRC shall –

- (a) keep proper accounts and proper records in relation to those accounts, and
- (b) prepare in respect of each year, and submit to the Commission, a statement of account giving a true and fair view of the state of affairs of the BRC.

(2) The accounts of the BRC –

- (a) when the Commission so requires, shall be audited by auditors appointed by the Commission, and
- (b) shall be submitted, together with the auditors' report thereon, to the Commission.

**Power to issue directions.**

14. (1) The States may by Ordinance make such provision as they think fit for the purposes of this Law in respect of the giving by the BRC of such directions, requiring the person subject to the direction to do or not to do any thing, as the BRC thinks fit and as appear to the BRC to be necessary or desirable –

- (a) in the interests of the public or the reputation of the Bailiwick as a finance centre, or
- (b) for the purpose of achieving the resolution objectives or

enabling or assisting the BRC or the Commission to perform their respective functions under the provisions of this Law.

(2) An Ordinance under this section may, without limitation, make provision corresponding to that made by section 11 of the Banking Supervision Law.

**Provisions of this Part without prejudice to succeeding provisions.**

15. The provisions of this Part of this Law are in addition to and not in derogation from any other provision of this Law conferring functions on the BRC.

PART II  
APPLICATION OF LAW

**Application of Law to "banks".**

16. (1) The provisions of this Law apply to -
- (a) an institution which is a licensed institution within the meaning of the Banking Supervision (Bailiwick of Guernsey) Law, 2020<sup>b</sup> (the "**Banking Supervision Law**"), that is, an institution which holds or which is deemed to hold a banking licence under that Law (a "**licensed institution**"),
  - (b) a company registered in the Register of Companies within the meaning of section 496 of the Companies

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<sup>b</sup> Order in Council No. XXI of 2020; this enactment has been amended.

(Guernsey) Law, 2008<sup>c</sup> (a "**Guernsey company**") which is a holding company or subsidiary, or other member of the group, of a licensed institution,

- (c) a company the memorandum and articles of which are registered in the Register of Companies within the meaning of section 163(1) of the Companies (Alderney) Law, 1994<sup>d</sup> (an "**Alderney company**") which is a holding company or subsidiary, or other member of the group, of a licensed institution, and
- (d) a person of any other class or description specified for the purposes of this section by regulations of the States of Guernsey Policy and Resources Committee (the "**Committee**").

(2) An institution, holding company or subsidiary, or other member of the group, described in subsection (1)(a), (b) or (c) is referred to in this Law as a "**bank**".

(3) This section does not apply in relation to any person or class or description of person specified for the purposes of this section by regulations of the Committee.

(4) Regulations under subsection (3) may provide that any

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<sup>c</sup> Order in Council No. VIII of 2008; this enactment has been amended.

<sup>d</sup> Order in Council No. XXXIV of 1994; this enactment has been amended.

exemption is subject to such conditions or requirements as may be specified in the regulations.

(5) Where a stabilisation power is exercised in respect of a licensed institution, it does not cease to be a licensed institution for the purposes of this Law if, as a result of a resolution action, it no longer holds a banking licence under the Banking Supervision Law.

### PART III RECOVERY PLANNING

#### **Recovery plans.**

17. For the purposes of this Law a recovery plan is a plan setting out measures to be taken by a licensed institution for the restoration of its financial position in the event of a significant deterioration in its financial situation.

#### **Commission's powers in relation to recovery plans.**

18. (1) The Commission may by notice in writing require a licensed institution to –

- (a) prepare a recovery plan,
- (b) regularly update the recovery plan, and
- (c) submit the recovery plan and any update thereof to the Commission.

(2) Recovery plans –

- (a) shall be prepared, updated and submitted to the Commission in such form and manner, at such times or intervals and in respect of such periods, and
- (b) shall contain such information, and shall be accompanied by such documents,

as may be determined by the Commission.

(3) The Commission shall –

- (a) disclose any recovery plan and update thereof submitted to it by a licensed institution to the BRC, and
- (b) consider any representations made to it in respect of the recovery plan or update by the BRC.

(4) A licensed institution which contravenes any provision of a requirement imposed by or under the provisions of this section is guilty of an offence.

(5) This section is without prejudice to the provisions of section 11(4)(o) of the Banking Supervision Law and section 23(4)(t) of the Enforcement Powers Law (power of Commission to direct deposit of plans).

**Group recovery plans.**

19. (1) This section applies to a licensed institution carrying on deposit-taking business in the Bailiwick which is part of a group any member of which is situated outside the Bailiwick.

(2) The provisions of section 18 relating to the preparation, updating and submission to the Commission of recovery plans may be complied with by the licensed institution providing to the Commission -

- (a) relevant details of the group recovery plan, and
- (b) an explanation of how that plan relates to and affects the licensed institution and its business in the Bailiwick.

**Confidentiality of recovery plans.**

20. (1) Recovery plans are confidential and, for the avoidance of doubt, constitute information relating to the business, property or affairs of any person for the purposes of section 160(1)(a).

(2) The provisions of Part XIV shall apply accordingly.

**Rules, etc, regarding recovery plans.**

21. The Commission may, after consultation with the BRC, and without prejudice to the respective powers of the Commission and the BRC under the provisions of this Part, make and issue such regulations, rules, codes, guidance, principles, policies and instructions as it thinks fit in respect of -

- (a) recovery plans, the matters to be dealt with thereby and the preparation, updating, submission and content thereof,
- (b) the examination and review of recovery plans,
- (c) the transmission of recovery plans to overseas

resolution authorities and overseas supervisory authorities and the home resolution authority and home supervisory authority,

- (d) the actions that may be taken (including without limitation the making of directions) where recovery plans –
  - (i) are not presented or are deficient,
  - (ii) are non-compliant with the provisions of this Law, or
  - (iii) present impediments,
- (e) the manner in which, and the standards and criteria subject to which, the BRC and the Commission will perform their respective functions under the provisions of this Part, and
- (f) recovery planning, generally.

PART IV  
RESOLUTION PLANNING  
AND RESOLVABILITY ASSESSMENT, ETC

*Plans*

**Resolution plans.**



22. (1) The BRC may, in respect of a licensed institution, and after consulting -

- (a) the Commission,
- (b) the home resolution authority and home supervisory authority of the licensed institution, and
- (c) the relevant resolution authorities and relevant supervisory authorities of the licensed institution,

draw up a resolution plan for the licensed institution, and any company described in section 16(1)(b) or (c), in pursuit of the resolution objectives and in accordance with the general principles of resolution where one or more of the following conditions applies -

- (i) the licensed institution has been identified as a domestic systemically important bank,
- (ii) the licensed institution is part of a group any member of which is subject to resolution in its home jurisdiction, or
- (iii) the licensed institution has a branch or subsidiary outside the Bailiwick that has been identified as a domestic systemically important bank by a relevant resolution authority and/or a relevant supervisory authority.

(2) The resolution plan -

- (a) must outline the resolution actions which the BRC would be empowered to take if the licensed institution concerned were to meet the resolution conditions,
- (b) must set out the options for applying the resolution tools and the resolution powers to the licensed institution concerned,
- (c) must take into consideration relevant scenarios, including that the event of a bank failure may be peculiar to the licensed institution concerned or may occur at a time of broader financial instability or system-wide events,
- (d) must include procedures for informing and consulting employee representatives throughout the resolution process, where appropriate,
- (e) must not assume access to or receipt of extraordinary public financial support,
- (f) must contain all such information as may be specified in regulations, rules, codes, guidance, principles, policies and instructions under section 28.

(3) A summary of the key elements of the resolution plan must be shared with the licensed institution concerned.

(4) The content of a resolution plan must be proportionate to the systemic importance of the licensed institution concerned or the group to which the licensed institution belongs.

(5) The BRC may require a licensed institution (directly or through the Commission) to cooperate, assist and provide all such information and documents as may be required for the purposes of drawing up, implementing and updating the resolution plan for the licensed institution or the group to which the licensed institution belongs, including, without limitation, all such information as may be specified in regulations, rules, codes, guidance, principles, policies and instructions under section 28.

(6) A licensed institution which contravenes any provision of a requirement imposed under subsection (5) is guilty of an offence.

**Resolution plans - liaison with overseas resolution authorities, etc.**

23. (1) The BRC must discuss any resolution plan -

- (a) which has been prepared by a licensed institution's home resolution authority or any of its relevant resolution authorities, and
- (b) which relates to the licensed institution or to the group or any member of the group of which the licensed institution is part,

with that authority and seek details of how the plan impacts the licensed institution and its business in the Bailiwick.

(2) Where a licensed institution is not incorporated in the Bailiwick, the resolution plan may focus primarily on the assistance that the BRC will need to provide to the licensed institution's home resolution authority and relevant resolution authorities.

(3) Subject to the provisions of Part XIV (disclosure of information), the BRC shall provide relevant information regarding the resolution plan for a licensed institution to -

- (a) the home resolution authority and home supervisory authority of the licensed institution, and
- (b) the relevant resolution authorities and relevant supervisory authorities of the licensed institution.

(4) The BRC shall, so far as reasonably practicable, communicate to a licensed institution's home resolution authority or any of its relevant resolution authorities any decision to deviate from that authority's resolution plan for the licensed institution or the group or any member of the group of which the licensed institution is part.

**Minimum authorised share capital or other instruments.**

24. (1) The BRC may, after consultation with the Commission, and for the purpose set out in subsection (2), by notice in writing require a [bank incorporated in the Bailiwick](#) to maintain at all times a sufficient amount, specified in the notice, of

-

- (a) authorised share capital, or

(b) other Common Equity Tier 1 instruments.

(2) The purpose of the requirement is to ensure that, in the event of the BRC exercising a write down or conversion power in respect of the bank, the bank is not prevented from issuing sufficient new shares to ensure that the conversion of liabilities into shares can be carried out effectively.

(3) The BRC's assessment of whether to impose a requirement under subsection (1) and, if so, to what extent, must be carried out in conjunction with the development of the resolution plan in respect of the bank under the provisions of section 22.

(4) A bank which contravenes any provision of a requirement imposed under subsection (1) is guilty of an offence.

**Resolution plans and actions - impact on other jurisdictions.**

25. (1) Subsection (2) applies where the BRC –

(a) is required under section 22 to draw up a resolution plan for a licensed institution which includes within its scope branches of, or other bodies in the same group as, the licensed institution which are operating or incorporated in jurisdictions other than the Bailiwick ("**the affected jurisdictions**"), or

(b) is taking a resolution action in respect of a licensed institution which affects any such branches or other bodies.

(2) The BRC must, in drawing up the resolution plan or in taking the resolution action, so far as reasonably practicable, take into account -

- (a) the economic situation in the affected jurisdictions. and
- (b) the potential impact of the resolution plan or resolution action on the affected jurisdictions.

(3) The BRC must also provide information regarding the resolution plan to the licensed institution's home resolution authority and relevant resolution authorities.

(4) The information provided under subsection (3) must include all information that is relevant to the licensed institution or, as the case may be, to the branch of, or other body in the same group as, the licensed institution.

**Review of resolution plans by BRC.**

26. The BRC must review and, where appropriate, update a resolution plan for a licensed institution -

- (a) at least annually, and
- (b) whenever there are any material changes to the licensed institution's -
  - (i) legal or organisational structure,
  - (ii) business, or

(iii) financial position,

which could have a material effect on the effectiveness of the resolution plan or which otherwise necessitate a revision of the resolution plan.

**Confidentiality of resolution plans.**

27. (1) Resolution plans are confidential and, for the avoidance of doubt, constitute information relating to the business, property or affairs of any person for the purposes of section 160(1)(a).

(2) The provisions of Part XIV shall apply accordingly

**Rules, etc, regarding resolution plans.**

28. The BRC may, after consultation with the Commission, and without prejudice to the respective powers of the BRC and the Commission under the provisions of this Part, make and issue such regulations, rules, codes, guidance, principles, policies and instructions as it thinks fit in respect of -

- (a) resolution plans and the preparation, updating, submission and content thereof,
- (b) the information to be provided by licensed institutions for the purposes of resolution plans,
- (c) the manner in which, and the standards and criteria subject to which, the BRC and the Commission will perform their respective functions under the provisions

of this Part, and

- (d) resolution and resolution planning, generally.

*Resolvability assessment*

**Duty of BRC to assess resolvability.**

29. (1) In drawing up a resolution plan for a licensed institution under section 22, the BRC must, subject to subsection (2)(b), carry out an assessment (a "**resolvability assessment**") to determine the extent to which the licensed institution is resolvable.

(2) A resolvability assessment under subsection (1) –

- (a) shall be carried out in pursuit of the resolution objectives and in accordance with the general principles of resolution,
- (b) may be simplified, or may be dispensed with altogether, where the licensed institution concerned is subject to a resolvability assessment in its home jurisdiction or relevant jurisdiction, and
- (c) must not assume access to or receipt of extraordinary public financial support.

(3) Where a licensed institution is a group entity, a simplified resolvability assessment referred to in subsection (2)(b) shall –



- (a) take into account the proposed group-wide resolution plan, if any, and
- (b) consider the resolvability of the elements of the group of which the licensed institution is part which are relevant to the functions of the BRC.

(4) A licensed institution shall, for the purposes of a resolvability assessment, be deemed to be resolvable if it is feasible and credible for the BRC to resolve it by applying stabilisation tools and resolution powers to it while avoiding to the maximum extent possible any significant adverse effect on the financial system in the Bailiwick and elsewhere, including in circumstances of broader financial instability or system-wide events, and with a view to ensuring the continuity of critical functions carried out by the licensed institution.

**Process in respect of resolvability assessment.**

30. (1) A resolvability assessment under section 29(1) must –

- (a) be carried out in consultation with relevant resolution authorities and home resolution authorities in other jurisdictions in which the licensed institution or the group of which it is part operates, and
- (b) identify impediments that, in the BRC's opinion, are material to resolvability.

(2) Any impediments identified under subsection (1)(b) must be notified by the BRC to the licensed institution and the relevant resolution authorities in other jurisdictions in which the licensed institution or the group of which it is part

operates.

(3) Following a notification under subsection (2), a licensed institution must propose to the BRC possible measures to address or remove the impediments identified in the notification.

**Alternative measures.**

31. (1) Where in the BRC's assessment the measures proposed by a licensed institution under section 30(3) do not effectively address or remove the impediments in question, the BRC must, in consultation with the Commission -

- (a) require the licensed institution to take alternative measures that may achieve that objective, and
- (b) notify the licensed institution, in writing, of those measures, and such notification may –
  - (i) include a plan to ensure compliance with those measures, or
  - (ii) require the licensed institution within such period as may be specified to propose a plan to ensure such compliance.

(2) The BRC must, in identifying alternative measures, demonstrate to the licensed institution –

- (a) how the measures proposed by the licensed institution would not adequately have addressed or removed the

impediments to resolvability, and

(b) how the alternative measures are necessary and proportionate.

(3) A licensed institution which contravenes any provision of a requirement imposed under subsection (1) is guilty of an offence.

**BRC's discretion in respect of alternative measures.**

32. (1) The BRC's power to require a licensed institution to take alternative measures under section 31(1) is limited to what is necessary in the public interest solely to improve its resolvability.

(2) In conducting resolvability assessments, the BRC must conform with and pursue the resolution objectives set out in section 42 and the general principles of resolution set out in section 47.

(3) In conducting resolvability assessments which include within their scope branches or subsidiaries in other jurisdictions, the BRC must, insofar as is possible, specifically take into account the potential impact of the alternative measures in such other jurisdictions.

**Rules, etc, regarding resolvability assessments.**

33. The BRC may, after consultation with the Commission, and without prejudice to the respective powers of the BRC and the Commission under the provisions of this Part, make and issue such regulations, rules, codes, guidance, principles, policies and instructions as it thinks fit in respect of -

- (a) resolvability assessments and the process, matters to be assessed, and alternative measures that may be applied in respect thereof,
- (b) the matters to be considered in determining the extent to which a licensed institution is resolvable,
- (c) the identification and notification of -
  - (i) impediments to resolvability, and
  - (ii) the measures to address those impediments,and the assessment of those impediments and measures,
- (d) the requirements that may be made of banks by the BRC and Commission,
- (e) the manner in which, and the standards and criteria subject to which, the BRC and the Commission will perform their respective functions under the provisions of this Part, and
- (f) resolvability assessment generally.

*Minimum requirements for own funds and eligible liabilities*  
(*"MREL"*)

**MREL.**

34. (1) The BRC may, after consultation with the Commission, establish a minimum requirement for own funds and eligible liabilities ("MREL") in respect of each [bank incorporated in the Bailiwick](#) for which a resolution plan has been drawn up.

(2) The MREL must be expressed as a percentage of the total liabilities and own funds of the bank; and the BRC may require that that percentage shall be wholly or partially composed of -

- (a) own funds, or
- (b) a specific type of liabilities.

(3) A bank must at all times meet the MREL established in respect of it.

(4) A bank which contravenes the provisions of subsection (3) is guilty of an offence.

*Co-operation, etc with overseas resolution authorities*

**Joint decisions with overseas resolution authorities.**

35. (1) The BRC must endeavour to reach joint decisions with the home resolution authority and other relevant resolution authorities on the assessment and adoption of group resolution plans.

(2) Where individual resolution plans have been prepared in respect of a specific entity or business within the Bailiwick, agreement must be sought

with the home resolution authority as to the scope of respective resolution plans with a view to avoiding duplication, conflict and inconsistency.

**Framework cooperation agreements.**

36. The BRC may, in consultation with the Commission, develop and enter into binding and non-binding framework cooperation agreements with overseas resolution authorities, whether with respect to general approaches to resolution or in relation to specific banking groups and their proposed resolution plans, or otherwise for the purposes of the performance of the BRC's functions.

PART V

THE GUERNSEY BANK RESOLUTION FUND

**Establishment of Fund.**

37. (1) There is established a fund to be known as the Guernsey Bank Resolution Fund ("**the Fund**") for the purpose of ensuring -

- (a) the effective taking by the BRC of resolution action (including making a recognition order),
- (b) the effective exercise by the BRC of the resolution powers, and
- (c) the effective application by the BRC of the resolution tools.

(2) The States may by Ordinance make such provision as they think fit in respect of the Fund including, without limitation, provision specifying or otherwise making provision in respect of -

- (a) the control, management and administration of the Fund,
- (b) the contributors to the Fund, which may include licensed institutions and other persons or entities,
- (c) the amounts, method of calculation and payment of contributions to the Fund,
- (d) the other payments and classes and descriptions of payments that can be made to the Fund, including the sources and means of acquisition of such payments,
- (e) the payments and classes and descriptions of payments that can be made out of the Fund,
- (f) the events, occasions, dates, times or intervals upon or at which, or periods in respect of which, contributions and other payments to the Fund may be levied or must be paid,
- (g) the enforcement of liabilities to pay contributions or make payments to the Fund,
- (h) the purposes for which the Fund may or may not be used and the uses to which it may or may not be put (and this includes, without limitation, provision amending subsection (1)),

- (i) the conditions, restrictions, limitations, requirements or obligations subject to which –
  - (i) payments from the Fund,
  - (ii) claims for such payments, and
  - (iii) claims against the BRC in respect of such payments,may be made,
- (j) the restriction of shareholder or creditor rights of redress arising from the BRC taking resolution action (including making a recognition order), exercising resolution powers or applying resolution tools in specified circumstances,
- (k) the recovery of monies paid or payable from the Fund, whether from the bank in resolution, the members of the group of which the bank in resolution is a part, or otherwise, in respect of -
  - (i) any action taken by the BRC in order to consider whether to take resolution action (including making a recognition order), exercise resolution powers or apply resolution tools, or



- (ii) the taking of resolution action (including making a recognition order), the exercise of resolution powers and the application of resolution tools,

in respect of the bank,

- (l) the investment of the assets of the Fund,
- (m) the preparation, audit and publication of accounts of the Fund, and
- (n) the persons or authorities that must be consulted about the making of payments from the Fund or other specified matters.

**Restriction of shareholder or creditor right of redress.**

38. Where -

- (a) any shareholder or creditor has a right of redress or otherwise arising from or in respect of –
  - (i) the taking by the BRC of resolution action (including making a recognition order),
  - (ii) the exercise by the BRC of resolution powers, or
  - (iii) the application by the BRC of resolution tools, and

(b) the monies in the Fund have been exhausted to the extent of -

(i) monies recovered from the bank in resolution, the members of the group of which the bank in resolution is a part, or otherwise, and

(ii) contributions raised from banks other than the bank in resolution,

the right referred to in paragraph (a) is exercisable only against the bank in resolution and the BRC is not liable in respect of that right.

## PART VI RESOLUTION

### *Early intervention*

#### **Early intervention measures.**

39. (1) The BRC, after consultation with the Commission, may take any of the early intervention measures specified in subsection (4) where satisfied that a bank infringes or is likely in the near future to infringe -

(a) any of the capital requirements imposed on the bank by the Commission or otherwise by or under the provisions of the Banking Supervision Law,

(b) any minimum requirement for own funds and eligible

liabilities established under section 34,

- (c) any requirement for a minimum amount of authorised share capital or other Common Equity Tier 1 instruments to be maintained under section 24, or
- (d) the requirement that, having regard to the applicable minimum criteria for licensing specified in Schedule 2 to the Banking Supervision Law, it is a fit and proper person to hold a banking licence.

(2) The infringement or likely infringement referred to in subsection (1) may, without limitation, be due to what the BRC, after consultation with the Commission, considers to be a rapidly deteriorating financial condition, and the BRC may, after consultation with the Commission, make rules prescribing or otherwise in respect of the events, circumstances or other matters that are to be regarded as constituting or being indicative of a rapidly deteriorating financial condition.

(3) Where the BRC or the Commission is satisfied that a bank infringes or is likely in the near future to infringe any of the requirements set out in subsection (1), it shall immediately inform the Commission or the BRC, as the case may be.

(4) The early intervention measures referred to in subsection (1) are the powers hereby conferred on the BRC to -

- (a) require the management of the bank to -

- (i) implement one or more of the arrangements or measures set out in its recovery plan, or
- (ii) where the circumstances that led to the early intervention are different from the assumptions in the recovery plan, update its recovery plan and implement one or more of the arrangements or measures set out in the updated recovery plan,

within a specified timeframe and in order to ensure that the conditions for early intervention no longer apply,

- (b) require the management of the bank to -
  - (i) examine the situation,
  - (ii) identify measures to overcome any problems identified, and
  - (iii) draw up an action programme to overcome those problems and a timeframe for its implementation,
- (c) require the management of the bank to convene a meeting of shareholders of the bank or, if the management fails to comply with that requirement, convene directly such a meeting and, in either case -

- (i) set the agenda for the meeting, and
  - (ii) require certain decisions to be considered for adoption by the shareholders,
- (d) require one or more members of the management of the bank to be removed or replaced if those persons are deemed unfit to perform their duties by the BRC, after consultation with the Commission,
- (e) require the management of the bank to draw up a plan for negotiation on restructuring of debt with some or all of its creditors according to the recovery plan, where applicable,
- (f) require changes to the bank's strategy,
- (g) require changes to the legal or operational structures of the bank,
- (h) acquire, including by means of on-site inspections if necessary, and provide to the Commission, all information and documents necessary in order to -
  - (i) update the resolution plan,
  - (ii) prepare for the possible resolution of the bank, and

- (iii) prepare for a pre-resolution valuation to be conducted in accordance with section 55, or
- (i) require the bank to contact potential purchasers in order to prepare for the resolution of the bank, subject to the procedural requirements relating to the sale of business tool.

(5) In relation to each of the early intervention measures set out in subsection (4), the BRC, after consultation with the Commission, must set an appropriate deadline for completion to enable it to evaluate the effectiveness of the measure.

**Resolution without early intervention.**

40. The BRC may take resolution action whether or not it has first used any of the early intervention measures specified in section 39; and the BRC's powers under section 39 are in addition to and not in derogation from the provisions of this section.

*Resolution objectives*

**BRC's responsibilities during resolution.**

41. The BRC must, when applying the resolution tools and exercising the resolution powers in respect of a bank -

- (a) have regard to the resolution objectives specified in section 42, and
- (b) choose the resolution tools and resolution powers that best achieve the resolution objectives that are relevant in

the circumstances of the case.

**Resolution objectives.**

42. (1) The resolution objectives are –

- (a) to ensure that a bank can be resolved swiftly and with minimal risk to the financial stability of the Bailiwick,
- (b) to ensure the continuity of banking services in the Bailiwick and the provision of critical functions in the Bailiwick,
- (c) to protect and enhance the stability of the financial system in the Bailiwick and public confidence therein, including by preventing contagion and maintaining market discipline,
- (d) to protect and enhance public confidence in the Bailiwick's banking system,
- (e) to protect public funds by minimising reliance on extraordinary public financial support,
- (f) to protect depositors, and
- (g) to protect client assets.

(2) In pursuing the resolution objectives, the BRC shall use reasonable endeavours to minimise the cost of resolution and avoid destruction of

value unless reasonable to achieve the resolution objectives.

*Resolution conditions*

**Conditions for taking resolution action.**

43. (1) The BRC may take resolution action in respect of a bank only if satisfied that the following conditions (the "**resolution conditions**") are met -

- (a) the bank is failing or likely to fail,
- (b) having regard to timing and other relevant circumstances, it is not reasonably likely that any action (other than the exercise of the resolution powers) will be taken by or in respect of the bank that will prevent the failure or likely failure of the bank within a reasonable timeframe,
- (c) the taking of resolution action is in the public interest, and
- (d) one or more of the following conditions applies -
  - (i) the bank has been identified as a domestic systemically important bank,
  - (ii) the bank is part of a group any member of which is subject to resolution in its home jurisdiction, or



- (iii) the bank has a branch or subsidiary outside the Bailiwick that has been identified as a domestic systemically important bank by a relevant resolution authority and/or a relevant supervisory authority,

but this subsection is subject to the provisions of section 46 in respect of entities which are part of a group.

(2) The taking of resolution action shall be considered to be in the public interest for the purposes of subsection (1)(c) if –

- (a) it is necessary for the achievement of, and is proportionate to, one or more of the resolution objectives, and
- (b) the winding up the bank would not meet those resolution objectives to the same extent.

(3) The prior adoption of an early intervention measure in respect of a bank shall not be taken as indicative that the resolution conditions are met.

**Deeming bank to be "failing or likely to fail".**

**44.** (1) For the purposes of this Law, a bank is deemed to be failing or likely to fail in one or more of the following circumstances -

- (a) the bank has failed to satisfy the Commission that the applicable minimum criteria for licensing specified in Schedule 2 to the Banking Supervision Law continue to

be fulfilled in relation to it, including, without limitation, because the bank has incurred or is likely to incur losses that will deplete all or a significant amount of its own funds,

- (b) the value of the assets of the bank, determined in accordance with the pre-resolution valuation of the bank, is less than the value of its liabilities as so determined,
- (c) the bank is unable to pay its debts as they fall due,
- (d) one or more of paragraphs (a) to (c) are likely, in the near future, to apply to the bank, or
- (e) extraordinary public financial support is required in respect of the bank, except in the circumstances described in subsection (2).

(2) The circumstances referred to in subsection (1)(e) are that, in order to remedy a serious disturbance in the economy of the Bailiwick and preserve financial stability, the extraordinary public financial support is provided temporarily to a solvent bank and takes any of the following forms -

- (a) a States guarantee to back liquidity facilities,
- (b) a States guarantee of newly issued liabilities, or
- (c) an injection of own funds or purchase of capital

instruments at prices and on terms that do not confer an advantage upon the bank, where -

- (i) none of the circumstances referred to in subsection (1)(a), (b) or (c) is present, and
- (ii) the write down or conversion power has not been exercised at the time when the extraordinary public financial support is granted.

**Winding up to be considered before stabilisation tools.**

45. (1) The BRC must always consider the winding up of a failing bank through relevant insolvency proceedings before it applies any of the stabilisation tools.

(2) However, if the BRC –

- (a) regards the use of a stabilisation tool in respect of a particular bank or group of banks as being in the public interest, and
- (b) is satisfied that the winding up the bank would not meet the resolution objectives to the same extent,

the BRC may use the stabilisation tool instead of pursuing winding up.

**Resolution of entity within group.**

46. Notwithstanding the provisions of section 43(1), where a bank ("B") is

a group entity, the BRC may take resolution action in respect of B if satisfied that -

- (a) although B does not in isolation meet the resolution conditions, the resolution conditions are met in relation to a group entity in B's group (whether or not the other group entities in the group also meet the resolution conditions), and
- (b) the failure or likely failure of the group entity that meets the resolution conditions would have adverse consequences for B which would cause B to meet the resolution conditions in the future.

*General principles of resolution*

**General principles of resolution.**

47. (1) The BRC must, when applying resolution tools or exercising resolution powers, take appropriate measures to ensure that resolution action is taken in accordance with the following general principles (the "**general principles of resolution**") -

- (a) the shareholders of a bank in resolution shall bear first losses,
- (b) the creditors of a bank in resolution shall bear losses after the shareholders, in accordance with the ordinary priority of their claims under relevant insolvency proceedings, except as otherwise expressly provided for by the provisions of this Law,

- (c) the management of the bank in resolution shall be retained, except in those cases where the BRC considers that the replacement of the management of the bank, in whole or in part, is appropriate in the circumstances or necessary for the achievement of the resolution objectives,
- (d) the management of the bank in resolution shall provide all necessary assistance for the achievement of the resolution objectives,
- (e) persons are liable, to the extent provided for by the law of the Bailiwick (civil, criminal and administrative), for their acts, omissions, conduct and defaults in respect of the failure of the bank,
- (f) except to the extent that express provision to the contrary is made by or under the provisions of this Law, creditors of the same class shall be treated in an equitable manner,
- (g) unless it is in the public interest, no creditor shall incur greater losses than would have been incurred had the bank been wound up under relevant insolvency proceedings,
- (h) covered deposits shall be fully protected,

- (i) any resolution action taken shall be in accordance with the resolution safeguards, and
- (j) the costs of the resolution of a bank shall be minimised.

(2) Except to the extent that express provision to the contrary is made by or under the provisions of this Law, the resolution tools must be applied before any public sector injection of capital or equivalent extraordinary public financial support is provided to a failing bank.

(3) Neither the BRC nor any other person is required to finance resolution arrangements from the general revenues of the States.

**Qualified duty to follow resolution plan.**

48. (1) When applying a resolution tool or exercising a resolution power in respect of a bank, the BRC must take into account and take reasonable steps to follow the measures provided for in the bank's resolution plan unless, in the BRC's assessment in the circumstances of the case, the resolution objectives would be achieved more effectively by taking resolution action not provided for in the resolution plan.

(2) Where –

- (a) the BRC decides to apply a resolution tool or exercise a resolution power in respect of a bank, and
- (b) the taking of that resolution action would result in loss being borne by creditors or in creditors' claims being converted,

the BRC must exercise the write down or conversion power immediately before, or contemporaneously with, the taking of the resolution action.

**Power to apply resolution tools individually or in combination.**

49. (1) The BRC may apply resolution tools individually or in any combination, except that it may only apply the asset separation tool in combination with another resolution tool.

(2) Where only the sale of business tool and the bridge bank tool are used in combination to transfer only part of the assets, rights or liabilities of the bank in resolution, the residual bank from which those assets, rights or liabilities are transferred shall be wound up in accordance with the provisions of Part XII.

(3) The winding up of a residual bank under subsection (2) shall be carried out within a reasonable timeframe having regard, if relevant, to the need for the residual bank to provide services –

- (a) in order to enable the recipient of the transferred assets, rights or liabilities to carry out the activities or services acquired by virtue of that transfer, and
- (b) for any other purpose for which the continuation of the residual bank is necessary to achieve the resolution objectives or comply with the general principles of resolution.

**Recovery of reasonable expenses by BRC.**

50. The BRC may recover from a bank in resolution any reasonable

expenses properly incurred and paid by the BRC in connection with the application of a resolution tool or the exercise of a resolution power, in one or more of the following ways -

- (a) as a deduction from any consideration paid by a recipient of transferred shares, assets, rights or liabilities to the bank in resolution or, as the case may be, to the owners of the shares,
- (b) from the bank in resolution, as a preferred creditor, to the extent provided for by the Preferred Debts (Guernsey) Law, 1983, or
- (c) from any proceeds generated as a result of the termination of the operation of the bridge bank or the asset management vehicle, as a preferred creditor.

**Alternative financing sources.**

51. (1) In the extraordinary situation of a systemic crisis, the BRC may, when the condition specified in subsection (2) is met, seek funding from alternative financing sources through the use of stabilisation tools.

(2) The condition referred to in subsection (1) is that a satisfactory contribution to loss absorption and recapitalisation has been made by -

- (a) the shareholders,
- (b) the holders of relevant capital instruments, and



(c) the holders of other eligible liabilities,

through write down, conversion, or otherwise.

(3) A contribution referred to in subsection (2) is a "**satisfactory contribution**" only if it is equal to an amount of not less than 8% of the total liabilities including own funds of the bank in resolution, measured at the time of resolution action in accordance with the pre-resolution valuation.

(4) In this section "**systemic crisis**" means a disruption in the financial system with the potential to have serious negative consequences for the Bailiwick's internal market and real economy.

(5) The Committee may by regulation reduce or increase the percentage of total liabilities referred to in subsection (3).

**Duty to carry out ownership assessment.**

52. (1) Where -

- (a) a requirement has arisen to notify the Commission of a change in the level of a person's ownership of a body or entity,
- (b) the change in the level of ownership is by virtue of the taking of resolution action, and
- (c) the taking of the resolution action would result in the acquisition of –

- (i) a qualifying holding, or
- (ii) a holding which crosses an applicable threshold,

the Commission must carry out an assessment in respect of the notification referred to in paragraph (a).

(2) For the purposes of this section a person is considered to acquire –

- (a) a qualifying holding, or
- (b) a holding which crosses an applicable threshold,

if that person, by reason of the acquisition –

- (i) becomes the holder of a supervised role, or
- (ii) becomes entitled to exercise, or control the exercise of, an additional controller holding,

in each case within the meaning of the Banking Supervision Law.

(3) The assessment under subsection (1) must be carried out in a timely manner that neither -

- (a) delays the taking of the resolution action, nor
- (b) prevents –

- (i) the resolution action from achieving the relevant resolution objectives, or
- (ii) the taking of other resolution action.

(4) Where the Commission has not completed an assessment under subsection (1) or given any relevant approval of a transfer or conversion of shares by the date when the resolution action is made effective by the BRC, the following provisions apply -

- (a) the transfer or conversion has immediate legal effect,
- (b) during the assessment period and any divestment period, an acquirer's voting rights attached to the shares concerned shall be suspended and vested solely in the BRC, which has –
  - (i) no obligation to exercise any of the voting rights, and
  - (ii) no liability for exercising or refraining from exercising any of those rights,
- (c) during the assessment period and any divestment period, the penalties, powers and proceedings for contravening the provisions in respect of acquisitions or disposals of holdings under the provisions of the Banking Supervision Law, the Enforcement Powers

Law and any other enactment shall not apply to the transfer or conversion,

- (d) promptly, upon completion of the assessment by the Commission, the Commission must notify the BRC and the acquirer in writing of whether the Commission approves or (on grounds referred to in the Banking Supervision Law, the Enforcement Powers Law or any other enactment) opposes the transfer of shares to the acquirer or, as the case may be, the acquisition of shares by the acquirer as a result of conversion,
- (e) if the Commission approves a transfer of shares to the acquirer or the acquisition of shares by the acquirer as a result of conversion, then the voting rights attached to the shares shall be deemed to be fully vested in the acquirer immediately upon receipt by the BRC and the acquirer of written notice of approval from the Commission, and
- (f) if the Commission opposes the transfer of shares to the acquirer or the acquisition of shares by the acquirer as a result of conversion, then -
  - (i) the provisions of paragraph (b) as to the voting rights attached to the shares remain in full force and effect, and
  - (ii) the BRC may require the acquirer to divest the

shares within a divestment period determined by the BRC having taken into account prevailing market conditions.

*Competition law*

**Duty to have regard to relevant competition law.**

53. The BRC shall, in performing its functions under the provisions of this Law, have regard to and comply with the provisions of the Competition (Guernsey) Ordinance, 2012, except –

- (a) in circumstances where it is necessary to derogate from the provisions of that Ordinance in order to achieve the resolution objectives (and those circumstances include, without limitation, situations where the resolution objectives would not be met if additional delay would be caused by having regard to, and complying with, that Ordinance), or
- (b) to the extent that express provision to the contrary is made by or under the provisions of this Law.

*Special management*

**Appointment of special manager.**

54. (1) The BRC may, if it considers it necessary to do so for the purposes of achieving the resolution objectives, appoint a special manager to replace or oversee the management of a bank in resolution.

(2) A special manager appointed under subsection (1) must have the qualifications, ability and knowledge necessary to carry out his or her functions under the provisions of and for the purposes of this Law.

(3) The term of appointment of a special manager shall be a period not exceeding one year, and the BRC may, in exceptional circumstances, renew the appointment for further succeeding periods in each case not exceeding one year if the BRC determines that the conditions for appointment of a special manager continue to be met.

(4) The BRC shall, in such manner as it considers appropriate, publish notice of the appointment of a special manager.

(5) A special manager shall have all the powers of an administrator appointed under section 374 of the Companies (G) Law and an administration manager appointed under section 81 of the Enforcement Powers Law except that –

- (a) the exercise of those powers shall be under the general supervision of the BRC, and
- (b) the BRC may set limits to the action of a special manager or require that specified acts of the special manager be subject to the BRC's or Commission's prior consent.

(6) A special manager has a duty to take all measures necessary to promote the resolution objectives and to implement resolution actions in accordance with the directions of the BRC.

(7) The duty specified in subsection (6) may, where necessary,

override any other duty placed upon a director by the regulatory Laws, the Companies (G) Law, the Companies (A) Law or otherwise by the law of the Bailiwick or the bank's constitutional documents in so far as they are inconsistent.

(8) The measures referred to in subsection (6) may include, without limitation –

- (a) an increase of the bank's capital,
- (b) the reorganisation of the ownership structure of the bank,
- (c) the takeover of the bank by another bank that is financially and organisationally sound by applying a resolution tool.

(9) In appointing a special manager to a bank that is a group entity, the BRC shall consider whether it is appropriate to appoint the same special manager as is appointed to another entity in the bank's group.

(10) A special manager has no liability to the bank in resolution or its shareholders or creditors or other third parties in respect of anything done or omitted to be done in the discharge or purported discharge of the special manager's functions under the provisions of this Law unless the thing was done or omitted to be done in bad faith.

(11) The States may by Ordinance amend this section.

PART VII  
VALUATION

*Pre-resolution valuation*

**Pre-resolution valuation of assets and liabilities.**

55. (1) Before taking resolution action or exercising a write down or conversion power in respect of a bank, the BRC must –

- (a) cause a pre-resolution valuation of the assets and liabilities of the bank to be carried out, and for that purpose appoint or arrange for the appointment of an independent valuer, or
- (b) rely on a pre-resolution valuation carried out by the home resolution authority or relevant resolution authority of the bank.

(2) This section is subject to the provisions of section 58 (provisional valuation).

**Objective and purposes of pre-resolution valuation.**

56. (1) The objective of a pre-resolution valuation is to assess the value of the assets and liabilities of a bank that meets the resolution conditions.

(2) The purposes of a pre-resolution valuation are -

- (a) to inform the determination of whether the resolution



conditions or the conditions for the write down or conversion power are met,

- (b) if the resolution conditions are met, to inform the decision on which resolution tool should be applied,
- (c) where the write down or conversion power is to be applied, to inform the decision on the extent of the cancellation or dilution of shares, and the extent of the write down or conversion,
- (d) where the bail-in tool is to be applied, to inform the decision on the extent of the write down or conversion of eligible liabilities,
- (e) where the bridge bank tool or asset separation tool is to be applied, to inform the decision on the shares, assets, rights or liabilities to be transferred and the decision on the value of any consideration to be paid to the bank in resolution or, as the case may be, to the owners of the shares,
- (f) where the sale of business tool is to be applied, to inform the decision on the shares, assets, rights or liabilities to be transferred and to inform the BRC's understanding of what constitutes commercial terms for the purpose of the application of the tool, and
- (g) in all cases, to ensure that any losses on the assets of the

bank are fully recognised at the moment the resolution tool is applied or the write down or conversion power is exercised.

**Duties in course of pre-resolution valuation.**

57. (1) In carrying out a pre-resolution valuation, the valuer must –
- (a) make prudent assumptions, including as to rates of default and severity of losses,
  - (b) disregard any potential future provision of extraordinary public financial support, and
  - (c) take into account the fact that, if any resolution tool is applied -
    - (i) the BRC and the Fund may recover any reasonable expenses properly incurred from the bank in resolution in accordance with the general principles of resolution, and
    - (ii) the BRC and the Fund may charge interest or fees in respect of any loans or guarantees provided to the bank in resolution.

(2) A pre-resolution valuation must be supplemented by the following information as appearing in the accounting books and records of the bank -

- (a) a balance sheet of the bank as at the date of the

valuation,

- (b) a report on the financial position of the bank,
  - (c) an analysis and estimate of the accounting value of the assets and liabilities of the bank,
  - (d) an analysis and estimate of the market value of the assets and liabilities of the bank where required to inform a decision relating to the bridge bank tool, asset separation tool or sale of business tool,
  - (e) a list of outstanding liabilities of the bank (including any off balance sheet liabilities), with the creditors subdivided into classes according to the priority their claims would have under relevant insolvency proceedings,
  - (f) an estimate of the amount that each class of creditors and shareholders might be expected to receive if the bank were to be wound up under relevant insolvency proceedings, and
  - (g) an estimate of the amount that would be payable out of the banking deposit compensation scheme if the bank were to be wound up under relevant insolvency proceedings.
- (3) The pre-resolution valuation must also be carried out in

accordance with any standards set or adopted under section 67.

#### *Provisional valuation*

#### **Power to carry out provisional valuation.**

58. (1) Where the BRC considers that the urgency of the case makes it appropriate for resolution action to be taken or for a write down or conversion power to be exercised in respect of a bank before a pre-resolution valuation can be carried out by an independent valuer appointed under section 55(1)(a), the BRC may cause a valuation (a "**provisional valuation**") of the assets and liabilities of the bank to be carried out in accordance with any standards set or adopted under section 67.

(2) Where a provisional valuation is carried out –

- (a) it is a valid basis on which a decision to exercise a resolution power may be taken, including a decision to use a write down or conversion power or other resolution tool,
- (b) it must include a buffer for additional losses, with appropriate justification.

#### **Objective and purposes of provisional valuation.**

59. (1) The objective and purposes of a provisional valuation are the same as those of a pre-resolution valuation set out in section 56.

(2) So far as reasonably practicable in the circumstances, a provisional valuation shall be carried out in accordance with the provisions of, and shall meet the requirements specified in, section 57 in respect of a pre-resolution

valuation.

### *Definitive valuation*

#### **Definitive valuation by independent valuer.**

60. (1) Where the BRC has caused a provisional valuation to be carried out in accordance with section 58(1), it must appoint or arrange for the appointment of an independent valuer to carry out a valuation (a "**definitive valuation**") of the assets and liabilities of the bank as soon as is reasonably practicable and in accordance with any standards set or adopted under section 67.

(2) Sections 56 and 57 apply to a definitive valuation, so far as reasonably practicable in the circumstances, as they apply to a pre-resolution valuation.

(3) A definitive valuation may be carried out -

- (a) separately from, or simultaneously with, the difference of treatment valuation under section 63, and
- (b) by the same independent valuer who carries out the difference of treatment valuation,

but the definitive valuation and the difference of treatment valuation shall be distinct from each other.

#### **Purposes and effect of definitive valuation.**

61. (1) The purposes of a definitive valuation are -

- (a) to ensure the full extent of any losses on the assets of the bank is recognised in the accounting records of the bank, and
- (b) to inform a decision of the BRC as to whether -
  - (i) additional consideration should be paid by a purchaser, bridge bank or asset management vehicle for any shares, assets, rights or liabilities transferred under the sale of business tool, bridge bank tool or asset separation tool, or
  - (ii) to increase or reinstate any liability which has been reduced or cancelled by a resolution instrument.

(2) Where a definitive valuation produces a higher valuation of the net asset value of a bank in resolution than the provisional valuation, the BRC may –

- (a) instruct a purchaser, bridge bank or asset management vehicle to pay additional consideration for any shares, assets, rights or liabilities transferred under the sale of business tool, bridge bank tool or asset separation tool, or
- (b) modify any liability of the bank in resolution which has been reduced, deferred or cancelled pursuant to the write down or conversion power or a resolution instrument so as to increase or reinstate that liability.

- (3) The power under subsection (2) -
- (a) may not be exercised so as to increase the value of the liability of the bank in resolution beyond the value it would have had if the resolution instrument which reduced, cancelled or deferred it had not been made, and
  - (b) shall be exercised by the issue by the BRC of a mandatory reduction instrument or resolution instrument (whether or not that instrument contains any other provision authorised by this subsection or subsection (2)).

**Participant not automatically ineligible to be independent valuer.**

62. A person who participates in any manner in a provisional valuation of a bank shall not, by reason only of that participation, and regardless of the capacity in which the person participated, be deemed to be ineligible for appointment as an independent valuer for the purpose of carrying out a definitive valuation of that bank.

*Difference of treatment valuation*

**BRC must arrange for difference of treatment valuation.**

63. (1) For the purpose of assessing whether shareholders and creditors would have received better treatment if a bank in resolution had been wound up under relevant insolvency proceedings, the BRC must appoint or arrange for the appointment of an independent valuer to carry out a valuation (a "**difference of treatment valuation**") as soon as is reasonably practicable after the application of

resolution action and in accordance with any standards set or adopted under section 67.

(2) A difference of treatment valuation shall be distinct from any pre-resolution valuation, provisional valuation or definitive valuation.

**Purposes of difference of treatment valuation.**

64. (1) A difference of treatment valuation shall determine -

(a) the treatment that –

(i) shareholders and creditors, and

(ii) for the purposes of the BDCS Ordinance, the Board, qualifying claimants and other participants, within the meaning of that Ordinance,

would have received if relevant insolvency proceedings in respect of the bank in resolution had commenced at the time when the decision was taken to stabilise the bank,

(b) the actual treatment that –

(i) shareholders and creditors, and

(ii) for the purposes of the BDCS Ordinance, the Board, qualifying claimants and other



participants, within the meaning of that Ordinance,

have received, and

- (c) whether there is any difference between the treatments referred to in paragraphs (a) and (b).

(2) A difference of treatment valuation shall -

- (a) assume that relevant insolvency proceedings in respect of the bank in resolution would have commenced on the date on which the decision was taken to stabilise it,
- (b) assume that the bank in resolution, if relevant insolvency proceedings had been commenced in respect of it on the date referred to in paragraph (a), would have been liquidated in full on that date,
- (c) assume that the stabilisation action had not been effected, and
- (d) disregard any provision of extraordinary public financial support to the bank in resolution.

(3) A difference of treatment valuation shall be carried out in accordance with any standards set or adopted under section 67.

*General provisions relating to valuers and valuation*

**Valuer to be independent from public authorities.**

65. (1) The "independence" of a valuer, in the context of the carrying out of a valuation under the provisions of this Law, includes, without limitation, independence from any public authority.

(2) The Committee may, by regulation, make further provision as to the meaning of "independence" for the purposes of this Law, including provision amending subsection (1).

**Powers of independent valuer.**

66. (1) Subject to the resolution safeguards, an independent valuer may do anything necessary or desirable for the purposes of, or in connection with, the performance of the independent valuer's functions under the provisions of this Law.

(2) The BRC may confer on an independent valuer such incidental and ancillary powers as the BRC thinks necessary or desirable for the purposes of, or in connection with, the performance of the independent valuer's functions under the provisions of this Law.

**Standards for valuations.**

67. The BRC may, after consultation with the Commission, by rules, set or adopt standards for the purpose of a valuation, and such rules may -

- (a) set technical standards in respect of valuations generally, or
- (b) make provision specific to particular classes or descriptions of valuations,

and a valuation shall be carried out in accordance with the standards so set or adopted,

**Eligibility criteria for independent valuer.**

68. The Committee may, by regulation, specify the eligibility criteria for the appointment of a person as an independent valuer for the purposes of section 57 (pre-resolution valuations), 62 (definitive valuations) or 66 (difference of treatment valuations).

PART VIII  
RESOLUTION TOOLS

*Sake of business tool*

**Nature and purpose of sale of business tool.**

69. (1) The BRC may, by means of the sale of business tool, effect the sale of all or part of the business of a bank that meets the resolution conditions to one or more purchasers (not being bridge banks) by making –

- (a) one or more share transfer orders for the transfer of all or any of the shares of the bank, or
- (b) one or more property transfer instruments for the transfer of all or any of the assets, rights or liabilities of the bank.

(2) When applying the sale of business tool to a bank in resolution, the BRC may exercise the transfer power on one or more occasions in order to make supplemental transfers of shares issued by the bank or, as the case may be, assets,

rights or liabilities of the bank.

(3) Transfers made under the sale of business tool are subject to the resolution safeguards.

**Use of tool without shareholders' consent.**

70. (1) Subject to the resolution safeguards, the BRC may apply the sale of business tool to a bank in resolution –

- (a) without the consent of the shareholders of the bank or any third party other than the purchaser, and
- (b) without complying with any procedural requirements imposed by the Companies (G) Law, the Companies (A) Law or otherwise by the law of the Bailiwick or the constitutional documents of the bank, other than procedural requirements specified by or under the provisions of this Law,

but the BRC must immediately notify the Commission and any other interested supervisory authority or resolution authority of its non-compliance with any procedural requirements under paragraph (b).

(2) The BRC must take all reasonable steps to secure that a transfer pursuant to the sale of business tool is made on commercial terms -

- (a) on the basis of the pre-resolution valuation or provisional valuation, as the case may be, and

(b) having regard to the circumstances.

(3) Such reasonable steps include making arrangements for the marketing of the bank in resolution or part of its business in an open, transparent and non-discriminatory process, while aiming to maximise the sale price as far as possible.

**Application of net proceeds of consideration.**

71. Subject to the provisions of section 50 (recovery of reasonable expenses from bank in resolution), the net proceeds of consideration paid by the purchaser on a transfer made under the sale of business tool under section 69 shall be applied for the benefit of -

- (a) the owners of the shares, where the sale of business tool has been effected by transferring shares issued by the bank in resolution from the holders of those shares to the purchaser, or
- (b) the bank in resolution, where the sale of business tool has been effected by transferring some or all of the assets, rights or liabilities of the bank in resolution to the purchaser, including circumstances where the bank in resolution is then subject to bank winding up under the provisions of Part XII.

**Power of BRC to transfer assets, etc, back.**

72. (1) Following the application of the sale of business tool, and subject to the resolution safeguards, the BRC may, with the consent of the purchaser, exercise the transfer powers in order to transfer –

- (a) the assets, rights or liabilities transferred to the purchaser back to the bank in resolution, or
- (b) the shares transferred to the purchaser back to their original owners.

(2) The bank in resolution or, as the case may be, the original owners shall take back the assets, rights or liabilities, or the shares.

**Purchaser to acquire deposit-taking business.**

73. (1) The purchaser shall acquire the deposit-taking business of the bank in resolution under the sale of business tool as a continuation of the deposit-taking business being carried on prior to the transfer to the purchaser and may continue to carry on the deposit-taking business of the bank in resolution subject to the provisions of this section.

(2) Where the transfer is effected by way of a transfer of shares in the bank in resolution, the bank in resolution, following the transfer, may continue to exercise any of the rights and shall continue to be subject to all of the obligations in respect of the assets, rights and liabilities of the bank in resolution that it was entitled to exercise or to which it was subject prior to the transfer.

(3) Where the transfer is effected by way of a transfer of assets, rights and liabilities of the bank in resolution, the purchaser, following the transfer, may exercise any of the rights and shall be subject to all of the obligations in respect of the assets, rights and liabilities transferred that the bank in resolution was entitled to exercise or to which it was subject prior to the transfer.

(4) The rights referred to in subsections (2) and (3) include rights of

membership of and participation in payment, clearing and settlement systems, securities exchanges and the banking deposit compensation scheme, which may be exercised provided that the bank in resolution or the purchaser, as the case may be, meets the criteria for membership of or participation in such systems, schemes and arrangements.

(5) Where the bank in resolution or the purchaser does not meet the criteria for membership of or participation in a payment, clearing or settlement system, a securities exchange or the banking deposit compensation scheme, the rights referred to in subsections (2), (3) and (4) may nevertheless be exercised for such period of time as may be specified by the BRC after consultation with the Commission, not exceeding 24 months immediately following the date of the transfer, renewable on application by the bank in resolution or the purchaser to the BRC.

(6) Notwithstanding the preceding provisions of this section, the purchaser, where not already licensed under the Banking Supervision Law to carry on deposit-taking business –

- (a) must apply for a banking licence within a period of 2 months (or such other period as the BRC after consultation with the Commission may direct) immediately following the date of the transfer, and
- (b) may not continue to act in accordance with the provisions of this section unless granted a banking licence within a period of 6 months immediately following the date of the transfer.

**Shareholder and creditor rights over assets and liabilities transferred.**

74. Without prejudice to the resolution safeguards, shareholders and creditors of a bank in resolution and other third parties whose assets, rights or liabilities are not transferred under the sale of business tool do not have any rights over or in relation to the assets, rights or liabilities transferred.

**Marketing of assets, rights, liabilities and shares.**

75. (1) Subject to the provisions of sections 76 and 77, when applying the sale of business tool to a bank –

- (a) the BRC must market, or make arrangements for the marketing of, the assets, rights, liabilities or shares of the bank that the BRC intends to transfer, and
- (b) pools of assets, rights, liabilities or shares may be marketed separately.

(2) Marketing under subsection (1) shall be carried out in accordance with the following principles –

- (a) it shall be as transparent as possible,
- (b) it shall not materially misrepresent the assets, rights, liabilities or shares of the bank in resolution, having regard to the circumstances and in particular the need to maintain financial stability,
- (c) it shall not unduly favour or discriminate between potential purchasers,



- (d) it shall be free from conflicts of interest,
- (e) it shall not confer any unfair advantage on a potential purchaser,
- (f) it shall take account of the need to effect rapid resolution action, and
- (g) it shall aim at maximising, as far as possible, the sale price for the assets, rights, liabilities or shares involved.

(3) The principles in subsection (2) do not, subject to paragraph (c) of that subsection, prevent the BRC from soliciting particular potential purchasers.

**Delay of disclosure to public of information.**

76. On the application of the sale of business tool to a bank in resolution -

- (a) any disclosure to the public of information which would ordinarily be required as a matter of law in relation to the sale of the bank may be delayed for the time necessary to plan and structure the resolution of the bank, and
- (b) any disclosure to the public of the marketing of the bank which would ordinarily be required as a matter of law may be delayed where all the following conditions are met -
  - (i) immediate disclosure is likely to prejudice the

legitimate interests of the bank in resolution,

- (ii) delay of disclosure is not likely to mislead the public,
- (iii) delay of disclosure is in the public interest, and
- (iv) the disclosure of the marketing information entails a risk of undermining the financial stability of the bank in resolution and the financial system.

**BRC may apply sale of business tool without marketing bank.**

77. The BRC may apply the sale of business tool to a bank without complying with the requirement to market the assets, rights, liabilities or shares of the bank under section 75(1)(a) where the BRC determines that compliance with the requirement to market the bank would be likely to undermine one or more of the resolution objectives and, in particular, if the BRC considers that -

- (a) there is a material threat to the financial stability of the Bailiwick arising from or aggravated by the failure or likely failure of the bank in resolution, and
- (b) compliance with that requirement would be likely to undermine the effectiveness of the sale of business tool in addressing that threat or achieving the resolution objectives.

**Residual bank to be wound up.**

78. Where the sale of business tool has been used to transfer the systemically important services or viable business of a bank to a purchaser, the residual bank shall be wound up under relevant insolvency proceedings within an appropriate timeframe, determined having regard to any need for the residual bank to provide services or support to enable the purchaser to carry on the activities or services acquired by virtue of the transfer.

*Bridge bank tool*

**Nature and requirements of bridge bank tool.**

79. (1) The bridge bank tool consists of the transfer of all or part of the business of a bank that meets the resolution conditions to a bridge bank within the meaning of subsection (2).

(2) A "**bridge bank**" is a company or other legal person which -

- (a) is wholly or partially owned by the BRC, the Commission or one or more other public authorities,
- (b) is controlled by the BRC, and
- (c) is created for the purposes of receiving a transfer of the business of the bank in resolution by virtue of the use of transfer powers under the bridge bank tool, with a view to maintaining access to critical functions and, in due course, selling the bank or its business.

(3) The expression "**business**", in this section, includes shares, assets, rights and liabilities.

**Procedure for transfer of business of bank.**

80. (1) The BRC may apply the bridge bank tool to a bank that meets the resolution conditions by making –

- (a) one or more share transfer orders effecting the transfer of all or any of the shares of the bank in resolution to a bridge bank, or
- (b) one or more property transfer instruments effecting the transfer of all or any of the assets, rights or liabilities of the bank in resolution to a bridge bank.

(2) Subject to the resolution safeguards, the BRC may apply the bridge bank tool to a bank that meets the resolution conditions –

- (a) without the consent of the shareholders of the bank in resolution or any third party other than the bridge bank, and
- (b) without complying with any procedural requirements imposed by the Companies (G) Law, the Companies (A) Law or otherwise by the law of the Bailiwick or the constitutional documents of the bank, other than procedural requirements specified by or under the provisions of this Law,

but the BRC must immediately notify the Commission and any other interested supervisory authority or resolution authority of its non-compliance with any

procedural requirements under paragraph (b).

(3) The application of the bail-in tool for the purpose of converting to equity or reducing the principal amount of claims or debt instruments that are transferred to a bridge bank with a view to providing capital for the bridge bank shall not interfere with the ability of the BRC to control the bridge bank

**Bridge bank to be viable going concern.**

81. (1) The bridge bank must be operated as a viable going concern with a view to its being put on the market when conditions are appropriate or wound up if not viable.

(2) Accordingly, when applying the bridge bank tool, the BRC must ensure that the total value of liabilities transferred to the bridge bank does not exceed the total value of the rights and assets transferred from the bank in resolution or provided by other sources.

**Use of consideration by bridge bank.**

82. (1) Subject to the provisions of section 50 (recovery of reasonable expenses from bank in resolution), any consideration paid by the bridge bank shall be applied for the benefit of –

- (a) the owners of the shares, where the transfer to the bridge bank has been effected by transferring shares issued by the bank in resolution from the holders of those shares to the bridge bank, or
- (b) the bank in resolution, where the transfer to the bridge bank has been effected by transferring some or all of the

rights, assets or liabilities of the bank in resolution to the bridge bank.

(2) When applying the bridge bank tool to a bank in resolution, the BRC may exercise the transfer powers conferred by section 80(1) on one or more occasions in order to make supplemental transfers of shares issued by the bank or, as the case may be, assets, rights or liabilities of the bank.

**Powers of BRC to transfer assets, etc, back.**

83. (1) Following the application of the bridge bank tool, the BRC may, subject to the provisions of subsection (2) –

(a) transfer –

(i) assets, rights or liabilities transferred to the bridge bank back to the bank in resolution, or

(ii) shares transferred to the bridge bank back to their original owners,

and the bank in resolution or, as the case may be, the original owners shall take back the assets, rights or liabilities, or the shares, or

(b) transfer assets, rights or liabilities, or shares, from the bridge bank to a third party.

(2) The BRC may, subject to complying with any other conditions in the relevant property transfer instrument or share transfer orders, transfer assets,

rights or liabilities, or shares, back from the bridge bank under subsection (1) in any of the following circumstances –

(a) where the possibility that the specific assets, rights or liabilities, or shares, will be transferred back is stated expressly in the transfer instrument, or

(b) where the specific assets, rights or liabilities, or shares, do not in fact fall within the classes of, or meet the conditions for transfer of, assets, rights or liabilities, or shares, specified in the transfer instrument.

(3) A transfer following the application of the bridge bank tool between –

(a) the bank in resolution and the bridge bank, or

(b) the original owners of shares and the bridge bank,

is subject to the resolution safeguards.

**Bridge bank to acquire deposit-taking business.**

84. (1) The bridge bank shall acquire the deposit-taking business of the bank in resolution under the bridge bank tool as a continuation of the deposit-taking business being carried on prior to the transfer to the bridge bank and may continue to carry on the deposit-taking business of the bank in resolution subject to the provisions of this section.

(2) Where the transfer is effected by way of a transfer of shares in

the bank in resolution, the bank in resolution, following the transfer, may continue to exercise any of the rights and shall continue to be subject to all of the obligations in respect of the assets, rights and liabilities of the bank in resolution that it was entitled to exercise or to which it was subject prior to the transfer.

(3) Where the transfer is effected by way of a transfer of assets, rights and liabilities of the bank in resolution, the bridge bank, following the transfer, may exercise any of the rights and shall be subject to all of the obligations in respect of the assets, rights and liabilities transferred that the bank in resolution was entitled to exercise or to which it was subject prior to the transfer.

(4) The rights referred to in subsections (2) and (3) include rights of membership of and participation in payment, clearing and settlement systems, securities exchanges and the banking deposit compensation scheme, which may be exercised provided that the bank in resolution or the bridge bank, as the case may be, meets the criteria for membership of or participation in such systems, schemes and arrangements.

(5) Where the bank in resolution or the bridge bank does not meet the criteria for membership of or participation in a payment, clearing or settlement system, a securities exchange or the banking deposit compensation scheme, the rights referred to in subsections (2), (3) and (4) may nevertheless be exercised for such period of time as may be specified by the BRC after consultation with the Commission, not exceeding 24 months immediately following the date of the transfer, renewable on application by the bank in resolution or the bridge bank to the BRC.

**Shareholder and creditor rights over assets and liabilities transferred to bridge bank.**

85. (1) Without prejudice to the resolution safeguards, shareholders or



creditors of the bank in resolution and other third parties whose assets, rights or liabilities are not transferred to the bridge bank under the bridge bank tool do not have any rights over or in relation to the assets, rights or liabilities transferred to the bridge bank or its management.

(2) Neither a bridge bank nor its management have any liability to the bank in resolution or its shareholders or creditors or other third parties described in subsection (1) in respect of anything done or omitted to be done in the discharge or purported discharge of their respective functions under the provisions of this Law unless the thing was done or omitted to be done in bad faith.

**Requirements for operation of bridge bank.**

86. (1) The BRC must ensure that the operation of a bridge bank ("B") complies with the following conditions –

- (a) the contents of B's constitutional documents are approved by the BRC,
- (b) subject to B's ownership structure, the BRC appoints or approves B's management body,
- (c) the BRC –
  - (i) approves the remuneration of the members of B's management body, and
  - (ii) determines the appropriate responsibilities to be entrusted to them,

- (d) the BRC's approves B's strategy and risk profile,
- (e) B holds –
  - (i) a banking licence under the Banking Supervision Law authorising it to carry on deposit-taking business, and
  - (ii) any licence or authorisation required under the provisions of the other regulatory Laws in respect of any other services or activities in which B acquires the right to engage by virtue of a transfer under the bridge bank tool, and
- (f) B complies with the provisions of the Banking Supervision Law and the other regulatory Laws.

(2) Notwithstanding the provisions of subsection (1)(e) and (f), and where necessary in the opinion of the BRC, after consultation with the Commission, to meet the resolution objectives, the bridge bank may be established, and permitted by the Commission, to carry on the deposit-taking business and other services or activities in which it has acquired the right to engage by virtue of the transfer under the bridge bank tool for a period not exceeding 6 months without complying with the provisions of subsection (1)(e) and (f).

(3) The BRC may, on one or more occasions, request the Commission to permit the bridge bank to carry on the deposit-taking business and other services or activities referred to in subsection (2) beyond the period referred to in subsection (2) without complying with the provisions of subsection (1)(e) and (f).

(4) If the Commission decides to grant permission under subsection (3), it shall indicate the additional period for which the provisions of subsection (1)(e) and (f) are waived.

**Access to critical functions, etc.**

87. (1) Notwithstanding the provisions of section 53 and the Competition (Guernsey) Ordinance, 2012, the management of a bridge bank shall operate the bridge bank with a view to maintaining access to critical functions and selling the bridge bank, or its assets, rights or liabilities, to one or more private sector purchasers when conditions are appropriate and within the time limit set out in section 88(2) or any extension granted under section 89(1), as the case may be.

(2) The BRC must determine that a bridge bank is no longer a bridge bank in any of the following cases, whichever occurs first –

- (a) the bridge bank merges with another body or entity,
- (b) the bridge bank ceases to meet the requirements of a bridge bank set out in section 79(2),
- (c) the sale of all or substantially all of the bridge bank's assets, rights and liabilities to a third party,
- (d) the bridge bank's assets are completely wound down and its liabilities are completely discharged, or
- (e) the expiry of the time limit set out in section 88(2) or any extension granted under section 89(1), as the case may

be.

**Marketing and termination of bridge bank, etc.**

88. (1) Where the BRC seeks to sell the bridge bank or its assets, rights or liabilities –

(a) the BRC must market the bridge bank or its assets, rights or liabilities openly and transparently,

(b) the BRC must not, in the course of the sale –

(i) materially misrepresent the bridge bank or its assets, rights or liabilities, or

(ii) unduly favour or discriminate between potential purchasers, and

(c) the sale must be made on commercial terms, having regard to the circumstances.

(2) Where none of the outcomes referred to in paragraphs (a), (b), (c) and (d) of section 87(2) applies, the BRC must, subject to the provisions of section 89, terminate the operation of the bridge bank as soon as possible and, in any event, two years after the date on which the last transfer from a bank in resolution was made to the bridge bank pursuant to the bridge bank tool.

**Extension of period for termination of bridge bank.**

89. (1) The BRC may extend the time limit for terminating the operation of a bridge bank set out in section 88(2) for one or more additional one year

periods where such an extension –

- (a) supports an outcome referred to in paragraph (a), (b), (c) or (d) of section 87(2), or
- (b) is necessary to ensure the continuity of essential banking or financial services.

(2) A decision of the BRC to extend the time limit for terminating the operation of a bridge bank must be reasoned and must contain a detailed assessment of the situation, including the market conditions and outlook, that justifies the extension.

**Duty to wind up bridge bank.**

90. (1) Where the operations of a bridge bank have been terminated as a result of –

- (a) the sale of all or substantially all of its assets, rights or liabilities, or
- (b) the expiry of the time limit set out in section 88(2) or any extension granted under section 89(1), as the case may be,

the bridge bank must be wound up in accordance with the provisions of Part XII.

(2) Subject to the provisions of section 50 (recovery of reasonable expenses from bank in resolution), any proceeds generated as a result of the termination of the operations of the bridge bank shall be applied for the benefit of the

shareholders of the bridge bank.

*Asset separation tool*

**Nature and permitted use.**

91. (1) The asset separation tool –

- (a) is the mechanism for effecting a transfer by the BRC of assets, rights or liabilities of a bank in resolution or bridge bank to an asset management vehicle, and
- (b) may be applied only in combination with another stabilisation tool.

(2) An "**asset management vehicle**" means a company or other legal person which meets the following requirements –

- (a) it is wholly or partially owned by one or more public authorities (which may include, without limitation, the BRC),
- (b) it is controlled by the BRC, and
- (c) it has been created for the purposes of receiving some or all of the assets, rights and liabilities of one or more banks in resolution, bridge banks, or both.

**Asset management vehicle – management of assets and operations.**

92. (1) An asset management vehicle must manage the assets, rights

and liabilities transferred to it with a view to maximising their value through eventual sale or orderly liquidation.

(2) The BRC must ensure that the operation of an asset management vehicle ("V") complies with the following conditions –

- (a) the contents of V's constitutional documents are approved by the BRC,
- (b) subject to V's ownership structure, the BRC appoints or approves V's management body,
- (c) the BRC –
  - (i) approves the remuneration of the members of V's management body, and
  - (ii) determines the appropriate responsibilities to be entrusted to them, and
- (d) the BRC's approves V's strategy and risk profile.

**Restrictions on use of tool.**

93. (1) The BRC may only apply the asset separation tool if –

- (a) the situation of the particular market for the assets, rights and liabilities of a bank in resolution is of such a nature that the liquidation of those assets under relevant insolvency proceedings could have an adverse effect on

one or more financial markets,

- (b) a transfer of assets, rights and liabilities to an asset management vehicle is necessary to ensure the proper functioning of the bank in resolution or bridge bank, or
- (c) such a transfer is necessary to maximise liquidation proceeds.

(2) Subject to the provisions of section 50 (recovery of reasonable expenses from bank in resolution), the BRC must ensure that any consideration paid by the asset management vehicle in respect of the assets, rights or liabilities acquired directly from the bank in resolution is applied for the benefit of the bank in resolution.

(3) The consideration referred to in subsection (2) may be paid in the form of debt issued by the asset management vehicle.

**BRC's power to transfer assets, rights and liabilities.**

94. (1) The BRC may apply the asset separation tool by making one or more property transfer instruments effecting the transfer of all or any of the assets, rights and liabilities of –

- (a) a bank in resolution, or
- (b) a bridge bank to which assets, rights and liabilities have been transferred under the bridge bank tool,

to an asset management vehicle.



(2) Where assets, rights or liabilities are transferred to an asset management vehicle pursuant to the asset separation tool, the BRC may make one or more supplementary property transfer instruments transferring any of those assets, rights or liabilities to one or more other asset management vehicles.

(3) Subject to the resolution safeguards, the BRC may apply the asset separation tool to a bank in resolution –

- (a) without the consent of the shareholders of the bank or any third party, and
- (b) without complying with any procedural requirements imposed by the Companies (G) Law, the Companies (A) Law or otherwise by the law of the Bailiwick or the constitutional documents of the bank, other than procedural requirements specified by or under the provisions of this Law,

but the BRC must immediately notify the Commission and any other interested supervisory authority or resolution authority of its non-compliance with any procedural requirements under paragraph (b).

(4) Where a bridge bank tool has been applied to a bank in resolution, an asset management vehicle may, subsequently to the application of the bridge bank tool, acquire assets, rights or liabilities from the bridge bank.

**Transfers back from asset management vehicle.**

95. (1) The BRC may –

- (a) transfer assets, rights or liabilities from a bank in resolution to one or more asset management vehicles on more than one occasion, and
- (b) subject to the provisions of subsection (3), transfer assets, rights or liabilities back from one or more asset management vehicles to the bank in resolution.

(2) Where the BRC transfers assets, rights or liabilities back to the bank in resolution under subsection (1), the bank in resolution shall take back the assets, rights or liabilities.

(3) The BRC may, within any period and subject to complying with any other conditions in the relevant property transfer instrument, transfer assets, rights or liabilities back from an asset management vehicle to the bank in resolution in either of the following circumstances –

- (a) where the possibility that the specific assets, rights or liabilities will be transferred back is stated expressly in the property transfer instrument by which the transfer was made, or
- (b) where the specific assets, rights or liabilities do not in fact fall within the classes of, or meet the conditions for transfer of, assets, rights or liabilities specified in the property transfer instrument by which the transfer was made.

**Transfers subject to resolution safeguards.**

96. (1) A transfer between a bank in resolution and an asset management vehicle is subject to the safeguards in respect of partial transfers of assets, rights or liabilities specified in the resolution safeguards.

(2) Without prejudice to the resolution safeguards, shareholders or creditors of the bank in resolution and other third parties whose assets, rights or liabilities are not transferred to the asset management vehicle do not have any rights over or in relation to the assets, rights or liabilities transferred to the asset management vehicle or its management.

(3) Neither an asset management vehicle nor its management have any liability to the bank in resolution or its shareholders or creditors or other third parties described in subsection (2) in respect of anything done or omitted to be done in the discharge or purported discharge of their respective functions under the provisions of this Law unless the thing was done or omitted to be done in bad faith.

*Bail-in tool*

**Application of bail-in tool.**

97. (1) The BRC may apply the bail-in tool to meet the resolution objectives, in accordance with the general principles of resolution, for any of the following purposes -

(a) to recapitalise a bank that meets the resolution conditions to the extent sufficient -

(i) to restore the bank's ability to fulfil, and to satisfy the Commission that it fulfils, the applicable minimum criteria for licensing

specified in Schedule 2 to the Banking Supervision Law,

(ii) to enable the bank to continue to carry on -

(A) the deposit-taking business for which it holds a banking licence under the provisions of the Banking Supervision Law, and

(B) any other services or activities in respect of which it holds a licence or authorisation under the provisions of the other regulatory Laws, and

(iii) to sustain sufficient market confidence in the bank, or

(b) to exercise the BRC's write down or conversion powers to convert to equity or to reduce the principal amount of relevant capital instruments, other eligible liabilities, claims or debt instruments that are transferred -

(i) to a bridge bank with a view to providing capital for the bridge bank, or

(ii) under the sale of business tool or the asset separation tool.

(2) The BRC may, in order to apply the bail-in tool to a bank under subsection (1), make one or more resolution instruments.

**Other provisions re application of tool.**

98. (1) The BRC may apply the bail-in tool for the purposes referred to in section 97(1)(a) only if there is a reasonable prospect that the application of the bail-in tool together with other relevant measures will, in addition to achieving the relevant resolution objectives, restore the bank to financial soundness and long-term viability.

(2) However, where there is no such reasonable prospect, the BRC may apply the bail-in tool, together with the sale of business tool, bridge bank tool or asset separation tool, for the purposes referred to in section 97(1)(b).

(3) The BRC may apply the bail-in tool to a bank under section 97(1) -

- (a) while respecting, in each case, the legal form of the bank concerned, or
- (b) while changing the legal form of the bank if the BRC is of the view that changing the legal form of the bank is necessary to achieve the resolution objectives.

**Liabilities excluded from scope of tool.**

99. (1) The bail-in tool may be applied to any liabilities of a bank other than liabilities excluded under the provisions of subsection (2).

(2) The Authority must not exercise the write down or conversion

power in relation to any of the following liabilities -

- (a) covered deposits,
- (b) secured liabilities including covered bonds and liabilities in the form of financial instruments used for hedging purposes which form an integral part of the cover pool and which under the law of the Bailiwick are secured in a way similar to covered bonds,
- (c) liabilities that arise by virtue of the holding by the bank of client assets, including client assets held on behalf of an authorised or registered collective investment scheme (within the meaning of the Protection of Investors (Bailiwick of Guernsey) Law, 2020), where the client is protected under the law of the Bailiwick,
- (d) liabilities that arise by virtue of a fiduciary relationship between the bank (as fiduciary) and another person (as beneficiary) where the beneficiary is protected under the law of the Bailiwick,
- (e) liabilities to a credit institution (being a bank or a body or entity carrying on deposit-taking business, whether or not incorporated, or carrying on business, in the Bailiwick), excluding bodies or entities that are part of the same group, with an original maturity of less than 7 days,

- (f) liabilities with a remaining maturity of less than 7 days, owed to –
  - (i) payment and securities settlement systems or their participants and arising from participation in any such system, or
  - (ii) central counterparties,
- (g) liabilities to any of the following –
  - (i) an employee, in relation to accrued salary, pension benefits or other fixed remuneration, except for the variable component of remuneration that is not regulated by a collective bargaining agreement,
  - (ii) a commercial or trade creditor arising from the provision to the bank in resolution of goods and services that are critical to the daily functioning of its operations, including information technology services, utilities and the rental, servicing and upkeep of premises, or
  - (iii) the Director of the Revenue Service in respect of income tax and social insurance contributions deducted by an employer and constituting preferred debts under section 1(1)(b)(iii) and (iv) of the Preferred Debts (Guernsey) Law, 1983, or

- (h) liabilities to fees or levies under the provisions of the BDCS Ordinance.

(3) Subsection (2) applies regardless of whether the liabilities listed therein are governed by the law of the Bailiwick or by the law of another jurisdiction.

**BRC's power to exclude certain liabilities.**

100. (1) In exceptional circumstances, where the bail-in tool is applied, the BRC may exclude or partially exclude certain liabilities from the application of the write down or conversion powers where -

- (a) it is not possible to bail-in that liability within a reasonable time notwithstanding the good faith efforts of the BRC,
- (b) the exclusion is necessary and proportionate to achieve the continuity of critical functions and core business lines in a manner that maintains the ability of the bank in resolution to continue key operations, services and transactions,
- (c) the exclusion is necessary and proportionate to avoid giving rise to widespread contagion, in particular as regards eligible deposits which would severely disrupt the functioning of financial markets, including financial market infrastructures, in a manner that could cause serious economic disturbance, or



- (d) the application of the bail-in tool to those liabilities would cause a destruction in value such that the losses borne by other creditors would be higher than if those liabilities were excluded from bail-in.

(2) Where the BRC decides to exclude or partially exclude an eligible liability or class of eligible liabilities under subsection (1), the BRC may, to take account of such exclusions, increase the level of write down or conversion applied to other eligible liabilities, but only if the level of write down or conversion applied to other eligible liabilities complies with the general principle of resolution set out in section 47(1)(g).

**Contributions from Fund to bank in resolution.**

**101.** (1) Where the BRC decides to exclude or partially exclude an eligible liability or class of eligible liabilities under section 100(1) and the losses that would have been borne by those liabilities have not been passed on fully to other creditors, the BRC may, subject to subsections (2) and (3), make a contribution from the Fund to the bank in resolution.

- (2) The contribution from the Fund may be made only -
  - (a) to cover any losses which have not been absorbed by eligible liabilities and restore the net asset value of the bank in resolution to zero in accordance with the provisions of section 102(2)(a), or
  - (b) to purchase shares in the bank in resolution in order to recapitalise the bank in accordance with the provisions of 102(2)(b).

(3) The Authority may make a contribution from the Fund under subsections (1) and (2) only where -

- (a) a contribution to loss absorption and recapitalisation equal to an amount not less than 8% of the total liabilities including own funds of the bank in resolution, measured by the pre-resolution valuation, has been made by the shareholders, the holders of relevant capital instruments and other eligible liabilities through write down, conversion or otherwise, and
- (b) the contribution from the Fund does not exceed 5% of the total liabilities including own funds of the bank in resolution, measured by the pre-resolution valuation or provisional valuation, as the case may be.

(4) In extraordinary circumstances, where the bail-in tool is applied, the BRC may seek further funding from alternative financing sources.

(5) The Committee may by regulation reduce or increase the percentages of total liabilities referred to in subsection (3).

**Factors for due consideration by BRC.**

102. (1) When exercising its discretion under section 100(1) to exclude or partially exclude any liabilities from the application of the write down or conversion powers, the BRC must give due consideration to -

- (a) the principle that losses must be borne first by

shareholders and next, in general, by creditors of the bank in resolution in order of preference,

- (b) the level of loss absorbing capacity that would remain in the bank in resolution if the liability or class of liabilities were excluded, and
- (c) the need to maintain adequate resources for resolution financing,

and any such exclusion may be applied to exclude a liability from write down or conversion completely or to a limited extent.

(2) In applying the bail-in tool, the Authority must assess, on the basis of the pre-resolution valuation, the aggregate of -

- (a) where relevant, the amount by which eligible liabilities must be written down in order to ensure that the net asset value of the bank in resolution is equal to zero, and
- (b) where relevant, the amount by which eligible liabilities must be converted into shares or other types of capital instruments in order to restore the Common Equity Tier 1 capital ratio of –
  - (i) the bank in resolution, or
  - (ii) the bridge bank.

**Authority by which eligible liabilities to be written down.**

103. (1) The assessment referred to in section 102(2) shall establish the amount by which eligible liabilities need to be written down or converted in order -

- (a) to restore the Common Equity Tier 1 capital ratio of the bank in resolution or, where applicable, establish the ratio of the bridge bank, taking into account any contribution of capital by the Fund pursuant to the provisions of section 37 or any Ordinance thereunder,
- (b) to sustain sufficient market confidence in the bank in resolution or, as the case may be, the bridge bank, and
- (c) to enable the bank in resolution or, as the case may be, the bridge bank, for at least one year, to continue to fulfil, and to satisfy the Commission that it fulfils, the applicable minimum criteria for licensing specified in Schedule 2 to the Banking Supervision Law.

(2) Where the BRC intends to apply the asset separation tool together with the bail-in tool to a bank in resolution, the amount by which eligible liabilities need to be reduced shall take into account a prudent estimate of the capital needs of the asset management vehicle, as appropriate.

(3) Where -

- (a) capital has been written down in accordance with the write down or conversion power,

- (b) the bail-in tool has been applied, and
- (c) the level of write down based on the pre-resolution valuation is found to exceed requirements when assessed against the definitive valuation,

a write up mechanism may be applied to reimburse creditors and then shareholders to the extent necessary.

*Treatment of shareholders*

**Actions to be taken in respect of shareholders.**

**104.** (1) When applying the bail-in tool or exercising the write down or conversion power, the BRC must take, in respect of shareholders of the bank in resolution, one or both of the following actions -

- (a) cancel existing shares or transfer them to bailed in creditors, or
- (b) provided that, in accordance with the pre-resolution valuation (or provisional valuation, if applicable), the bank in resolution has a positive net value, dilute existing shareholdings as a result of the conversion into shares using the write down or conversion power of -
  - (i) relevant capital instruments, or
  - (ii) eligible liabilities,

issued by the bank in resolution.

(2) The BRC must take the actions referred to in subsection (1) in respect of shareholders where the shares in question were issued or conferred in either of the following circumstances -

- (a) pursuant to the conversion of debt instruments into shares in accordance with the contractual terms of the original debt on the occurrence of an event that preceded or occurred at the same time as the assessment by the BRC that the bank met the resolution conditions, or
- (b) pursuant to the conversion of relevant capital instruments to Common Equity Tier 1 instruments under the write down or conversion power.

(3) When considering which action to take in accordance with subsection (1), the BRC must have regard to -

- (a) the pre-resolution valuation (or provisional valuation, if applicable),
- (b) the amount by which the BRC has assessed that Common Equity Tier 1 items shall be reduced and relevant capital instruments shall be written down or converted pursuant to the write down or conversion power, and

- (c) the aggregate amount assessed by the BRC pursuant to section 102(2).

*Sequence of write down or conversion*

**Requirements when exercising write down or conversion power.**

**105.** The BRC must, in exercising the write down or conversion power when applying the bail-in tool, subject to any exclusion set out in sections 99(2) and 100(1), ensure that the following requirements are met -

- (a) the BRC must reduce the Common Equity Tier 1 items in accordance with section 104(3)(b) and (c),
- (b) if the total reduction pursuant to paragraph (a) is less than the sum of the amounts referred to in section 104(3)(b) and (c), the BRC must reduce the principal amount of Additional Tier 1 instruments to the extent required and to the extent of their capacity,
- (c) if the total reduction pursuant to paragraphs (a) and (b) is less than the sum of the amounts referred to in section 104(3)(b) and (c), the BRC must reduce the principal amount of Tier 2 instruments to the extent required and to the extent of their capacity,
- (d) if the total reduction of shares and relevant capital instruments pursuant to paragraphs (a), (b) and (c) is less than the sum of the amounts referred to in section 104(3)(b) and (c), the BRC must reduce to the extent

required the principal amount of subordinated debt that is not Additional Tier 1 or Tier 2 capital in accordance with the priority of claims that would apply if the bank were to be wound up under relevant insolvency proceedings, in conjunction with the write down pursuant to paragraphs (a), (b) and (c) to produce the sum of the amounts referred to in section 104(3)(b) and (c), and

- (e) if the total reduction of shares, relevant capital instruments and eligible liabilities pursuant to paragraphs (a) to (d) is less than the sum of the amounts referred to in section 104(3)(b) and (c), the BRC must reduce to the extent required the principal amount of, or outstanding amount payable in respect of, the rest of the eligible liabilities in accordance with the priority of claims that would apply if the bank were to be wound up under relevant insolvency proceedings, pursuant to the bail-in tool, in conjunction with the write down pursuant to paragraphs (a) to (d) to produce the sum of the amounts referred to in section 104(3)(b) and (c).

**BRC's duty to allocate losses equally.**

**106.** (1) When applying the write down or conversion power, the BRC must allocate the losses represented by the sum of the amounts referred to in section 104(3)(b) and (c) equally between shares and eligible liabilities of the same rank by reducing the principal amount of, or outstanding amount payable in respect of, those shares and eligible liabilities to the same extent pro rata to their value, except where a different allocation of losses amongst liabilities of the same rank is allowed in the



circumstances specified in section 100(1).

(2) Subsection (1) does not prevent liabilities which have been excluded from bail-in in accordance with sections 99(2) and 100(1) from receiving more favourable treatment than eligible liabilities which are of the same rank in relevant insolvency proceedings.

**BRC's duty to convert or reduce principal amount.**

107. (1) Before applying the write down or conversion power in accordance with the requirements of section 105, the BRC must convert or reduce the principal amount on instruments referred to in paragraphs (b), (c) and (d) of section 105 when those instruments have not been fully converted and contain the following terms -

- (a) terms that provide for the principal amount of the instrument to be reduced on the occurrence of any event that refers to the financial situation, solvency or levels of own funds of the bank, or
- (b) terms that provide for the conversion of the instrument to shares on the occurrence of any such event.

(2) Where the principal amount of an instrument has been reduced, but not to zero, in accordance with terms of the kind referred to in subsection (1)(a), before the application of the bail-in tool under section 105, the BRC must apply the write down or conversion power to the residual amount of that principal amount in accordance with the requirements of section 105.

**Restrictions on converting classes of liabilities.**

108. (1) In deciding on whether liabilities are to be written down or converted into equity, the BRC must not convert one class of liabilities, while a class of liabilities that is subordinated to that class remains substantially unconverted into equity or not written down, unless otherwise permitted under the provisions of sections 99 and 100(1).

(2) The BRC may exercise the write down or conversion power in relation to a liability arising from a derivative contract only upon or after closing out that derivative contract.

(3) The BRC may terminate and close out any derivative contract upon a bank's entry into resolution for the purpose of the bank's entry into resolution.

(4) However, where a derivative contract has been excluded from the application of the bail-in tool pursuant to the provisions of section 100(1), the BRC is not obliged to terminate or close out the derivative contract.

(5) Where a derivative contract is subject to a netting arrangement, the BRC must determine the value of the liability for the purposes of the pre-resolution valuation (or provisional valuation, if applicable) on a net basis in accordance with the terms of the netting arrangement.

**Determining value of liabilities from derivative contracts.**

109. The BRC must determine the value of liabilities arising from derivative contracts in accordance with -

- (a) appropriate methodologies for determining the value of classes of derivative contracts, including contracts that are subject to netting arrangements,

- (b) principles for establishing the relevant point in time at which the value of a derivative position shall be established, and
- (c) appropriate methodologies for comparing the destruction in value that would arise from the close out and bail-in of derivative contracts with the amount of losses that would be borne by derivative contracts in bail-in.

**BRC's power to apply different conversion rate.**

**110.** When the write down or conversion power is used, the BRC may apply a different conversion rate to different classes of capital instruments and liabilities in accordance with one or both of the following principles -

- (a) the conversion rate shall represent appropriate compensation to the affected creditor for any loss incurred by virtue of the exercise of the write down or conversion power, or
- (b) when different conversion rates are applied, the conversion rate applicable to liabilities that rank higher under the provisions of this Law shall be higher than the conversion rate applicable to subordinated liabilities.

*Business reorganisation plans*

**Requirements regarding business reorganisation plan.**

111. (1) Where the bail-in tool has been used, the BRC must ensure that the management of the bank –

- (a) draws up a business reorganisation plan, and
- (b) implements that plan in accordance with the following provisions of this Law.

(2) The implementation of a business reorganisation plan may include the appointment by the BRC, pursuant to its power to take control over a bank in resolution under section 128, of persons for the purpose of drawing up and implementing the business reorganisation plan.

(3) Within a period of one month after the application of the bail-in tool to a bank, the management of the bank must draw up and submit to the BRC a business reorganisation plan setting out measures to restore the long term viability of the bank within a reasonable timescale, on the basis of realistic assumptions as to the economic and financial market conditions under which the bank will operate.

(4) Where a group resolution has been carried out, including cases where a foreign resolution recognition order has been made, a group level business reorganisation plan may be accepted by the BRC.

(5) In exceptional circumstances, and if it is necessary for achieving the resolution objectives, the BRC may extend the period of one month specified in subsection (3).

**Minimum contents of business reorganisation plan.**

112. (1) A business reorganisation plan must contain at least the

following –

- (a) a detailed diagnosis of the factors and problems that caused the bank to fail or to be likely to fail and the circumstances that led to its difficulties,
  - (b) a description of the measures aiming to restore the long term viability of the bank that are to be adopted, and
  - (c) a timescale for the implementation of those measures.
- (2) Measures aiming to restore the long term viability of the bank may include -
  - (a) the reorganisation of the activities of the bank,
  - (b) changes to the operational systems and infrastructure within the bank,
  - (c) the withdrawal from loss-making activities,
  - (d) the restructuring of existing activities that can be made competitive, and
  - (e) the sale of assets or business lines.

**BRC to assess likely effectiveness of plan.**

113. (1) Within a period of one month from the submission of the business reorganisation plan, the BRC must assess the likelihood that the plan, if

implemented, will restore the long term viability of the bank.

- (2) If the BRC, after consultation with the Commission –
  - (a) is satisfied that the business reorganisation plan would restore the long term viability of the bank, the BRC must approve the plan,
  - (b) is not satisfied that the plan, or any amended plan submitted to the BRC under section 114(1), would restore the long term viability of the bank, the BRC must notify the management of the bank of its concerns and require the amendment of the plan, or the amended plan, in a manner that will address those concerns.

**Management's duty to submit amended plan to BRC.**

**114.** (1) Within a period of two weeks from receiving notification under section 113(2)(b) that the BRC is not satisfied that the business reorganisation plan, or any amended such plan, would restore the long term viability of the bank, the management of the bank must submit an amended plan to the BRC.

(2) The BRC must assess the amended plan and, after consultation with the Commission, notify the management of the bank, within a period of one week, as to whether the BRC is satisfied that the plan addresses the concerns notified or whether further amendment is required.

- (3) The management of the bank must –
  - (a) implement the business reorganisation plan, and

- (b) unless the BRC determines otherwise, submit a report to the BRC at least every 6 months on the progress of the implementation of the plan.

(4) The business reorganisation plan shall be further amended following its initial implementation if the BRC, after consultation with the Commission, is of the view that changes to the plan are required to achieve the long term viability of the bank; and the management of the bank must submit the amended plan to the BRC for approval.

*Ancillary provisions relating to bail-in*

**Immediate effect of write down or conversion.**

115. (1) Where the BRC exercises the write down or conversion power, the write down or conversion takes effect and is immediately binding on the bank in resolution and its affected creditors and shareholders.

(2) The BRC may complete or require the completion of all administrative and procedural tasks necessary to give effect to the write down or conversion power, including -

- (a) the amendment of all relevant registers,
- (b) the delisting or removal from trading of shares or debt instruments,
- (c) the listing or admission to trading of new shares, and

- (d) the relisting or readmission of any debt instruments which have been written down, without the requirement for a prospectus if a prospectus would in normal circumstances be required.

(3) Where the BRC reduces to zero the principal amount of, or outstanding amount payable in respect of, a liability by means of the write down or conversion power, that liability and any obligations or claims arising in relation to it that are not accrued at the time when the power is exercised are discharged for all purposes, and are not provable in any subsequent proceedings in relation to the bank in resolution or any successor entity in any subsequent winding up.

**Effect of reduction of principal or outstanding amount.**

**116.** (1) Where the BRC reduces in part, but not in full, the principal amount of, or outstanding amount payable in respect of, a liability by means of the write down or conversion power -

- (a) the liability is discharged to the extent of the amount reduced, and
- (b) the relevant instrument or agreement that created the original liability continues to apply in relation to the residual principal amount of, or outstanding amount payable in respect of, the liability, subject to any modification of the amount of interest payable to reflect the reduction of the principal amount, and any further modification of the terms that the BRC might make by means of the write down or conversion power.



(2) Procedural impediments to the conversion of liabilities to shares by virtue of their instruments of incorporation or the law of the Bailiwick (apart from this Law), including pre-emption rights for shareholders or requirements for the consent of shareholders to an increase in capital, do not prevent the use of the stabilisation tools, and in particular the write down or conversion power.

*Contractual recognition of bail-in*

**Recognition of subjection to write down or conversion power.**

**117.** (1) A bank *incorporated in the Bailiwick* shall, subject to subsection (2), include a contractual term in its contractual documents by which the creditor or party to an agreement creating an eligible liability -

- (a) recognises that that liability may be subject to the write down or conversion power, and
- (b) agrees to be bound by -
  - (i) any reduction of the principal or outstanding amount due, or
  - (ii) any conversion or cancellation,

effected by the exercise of that power by the BRC.

- (2) However, subsection (1) applies only if the eligible liability -
- (a) is not excluded from the exercise of the write down or conversion power under section 99(2) or 100(1) (but this

paragraph is subject to subsection (3)),

- (b) is not a covered deposit,
- (c) is governed by the law of a jurisdiction other than the Bailiwick, and
- (d) is issued or entered into –
  - (i) on or after the date, if any, prescribed for the purposes of this section by regulations of the Committee, or
  - (ii) before that date, if the bank, on or after that date, has the ability to amend the contractual documents to include such a contractual term.

(3) Subsection (2)(a) does not apply where the BRC determines that the liability referred to in subsection (1) can be subject to write down or conversion powers by the resolution authority of another jurisdiction pursuant to the law of that other jurisdiction or pursuant to a binding agreement concluded with that other jurisdiction.

(4) The BRC may specify contractual terms which the bank shall include in its contractual documents in relation to other liabilities.

(5) If –

- (a) a bank fails to include a contractual term in its

contractual documents in relation to a liability in accordance with the requirements imposed by or under this section, or

- (b) the BRC fails to require a bank to include such a contractual term in its contractual documents,

that failure does not prevent the BRC from exercising the write down or conversion power in relation to that liability.

(6) A bank which contravenes any provision of a requirement imposed by or under this section is guilty of an offence.

(7) The BRC may waive any provision of a requirement imposed by or under this section in respect of a bank.

## PART IX

### GENERAL RESOLUTION POWERS

#### **Write down or conversion power.**

118. (1) The BRC may write down or convert relevant capital instruments or other eligible liabilities of a bank in resolution into shares of that bank.

(2) The write down or conversion power enables the BRC, without limitation –

- (a) to reduce (including to zero) the principal amount of, or outstanding amount due in respect of, eligible liabilities of a bank in resolution,

- (b) to cancel debt instruments issued by a bank in resolution except for secured liabilities,
- (c) to reduce (including to zero) the nominal amount of shares of a bank in resolution and to cancel those shares, or
- (d) to require a bank in resolution to issue new shares or other capital instruments, including preference shares and contingent convertible instruments.

**Mandatory reduction instrument.**

119. (1) The write down or conversion power must be exercised by the BRC creating a mandatory reduction instrument.

(2) The write down or conversion power may only be exercised after carrying out a pre-resolution valuation (or a provisional valuation, if applicable).

(3) The pre-resolution valuation (or provisional valuation, as the case may be) must form the basis of the calculation of the write down to be applied to the relevant capital instruments and other eligible liabilities in order to absorb losses and the level of conversion to be applied to the relevant capital instruments and other eligible liabilities in order to recapitalise the bank.

(4) The BRC may exercise the write down or conversion power -

- (a) independently of resolution action, or

- (b) in combination with resolution action, where the resolution conditions are met.

**Application to relevant capital instruments.**

120. The BRC may exercise the write down or conversion power in accordance with the provisions of this Law without delay in relation to relevant capital instruments issued by a bank in resolution, when one or more of the following circumstances apply –

- (a) the determination has been made that the resolution conditions have been met, before any resolution action is taken,
- (b) the BRC determines that, unless the write down or conversion power is exercised in relation to the relevant capital instruments, the bank would no longer be viable (in accordance with section 43(2)),
- (c) in the case of relevant capital instruments issued by a bank that is a subsidiary, and where those capital instruments are recognised for the purposes of meeting any minimum requirements for own funds and eligible liabilities under section 34, the BRC determines that, unless the write down or conversion power is exercised, the bank's group would no longer be viable (in accordance with section 43(2)), or
- (d) in the case of relevant capital instruments issued by a bank that is a parent, and where those capital

instruments are recognised for the purposes of meeting any minimum requirements for own funds and eligible liabilities under section 34, the BRC determines that, unless the write down or conversion power is exercised, the bank's group would no longer be viable (in accordance with section 43(2)).

**Priority of claims under relevant insolvency proceedings.**

121. In performing its functions under sections 119(4) and 120, the BRC must exercise the write down or conversion power in accordance with the priority of claims that would apply if the bank in resolution were to be wound up under relevant insolvency proceedings, subject to the production of the following results –

- (a) Common Equity Tier 1 items are reduced first in proportion to the losses and to the extent of their capacity and the BRC takes one or both of the actions specified in section 104(1) in respect of the holders of Common Equity Tier 1 instruments,
- (b) the principal amount of Additional Tier 1 instruments is written down or converted into Common Equity Tier 1 instruments or both, to the extent required to achieve the resolution objectives or to the extent of the capacity of the relevant capital instruments, whichever is lower, and
- (c) the principal amount of Tier 2 instruments is written down or converted into Common Equity Tier 1 instruments or both, to the extent required to achieve

the resolution objectives or to the extent of the capacity of the relevant capital instruments, whichever is lower.

**Effect of writing down of principal amount.**

**122.** (1) Where the principal amount of a relevant capital instrument is written down -

- (a) the reduction of that principal amount is permanent, subject to any write up in accordance with section 103(3),
- (b) no liability to the holder of the relevant capital instrument remains under or in connection with that amount of the instrument which has been written down, except for any liability already accrued and any liability for damages that may arise as a result of an appeal against the exercise of the write down or conversion power (but this does not prevent the provision of Common Equity Tier 1 instruments to a holder of relevant capital instruments in accordance with subsections (2) and (3)), and
- (c) no compensation shall be paid to any holder of the relevant capital instruments other than in accordance with subsections (2) and (3).

(2) In order to effect a conversion of relevant capital instruments under section 121(b), the BRC, after consultation with the Commission, may require a bank to issue Common Equity Tier 1 instruments to the holders of the relevant capital

instruments.

(3) The relevant capital instruments may be converted only where the following conditions are met -

- (a) the Common Equity Tier 1 instruments are issued by the bank with the agreement of the BRC, after consultation with the Commission,
- (b) the Common Equity Tier 1 instruments are issued prior to any issuance of shares by the bank for the purposes of provision of own funds by a public authority,
- (c) the Common Equity Tier 1 instruments are awarded and transferred without delay, following the exercise of the write down or conversion power, and
- (d) the conversion rate that determines the number of Common Equity Tier 1 instruments that are provided in respect of each relevant capital instrument complies with the principles set out in section 108(1).

*Default event provisions*

**Disregarded factors regarding default event provisions.**

123. (1) The following shall be disregarded in determining whether a default event provision applies -

- (a) a crisis management measure, crisis prevention



measure or recognised foreign resolution action taken in relation to a bank in resolution or any member of the bank in resolution's group, and

- (b) the occurrence of any event directly linked to the application of any such measure or action,

provided that the substantive obligations under the contract or other agreement providing the default event provision, including payment and delivery obligations and the provision of collateral, continue to be performed.

- (2) Subsection (1) applies where a contract or other agreement –

- (a) is entered into by a bank or a foreign bank,
- (b) is entered into by a subsidiary undertaking of a bank or foreign bank, whose obligations are guaranteed by another group entity in the same group as the bank or foreign bank, or
- (c) is entered into by another group entity in the same group as the bank or foreign bank,

and the substantive obligations provided for in the contract or agreement (including payment and delivery obligations and provision of collateral) continue to be performed.

- (3) A "**default event provision**" means a provision of a contract or other agreement -

- (a) that has the effect that if a specified event or situation arises -
  - (i) the agreement is terminated, modified, replaced or suspended,
  - (ii) rights or duties under the agreement are terminated, modified, replaced or suspended,
  - (iii) a right accrues to terminate, modify, replace or suspend the agreement,
  - (iv) a right accrues to terminate, modify, replace or suspend rights or duties under the agreement,
  - (v) a set-off or netting right accrues under the agreement,
  - (vi) a sum becomes payable or ceases to be payable,
  - (vii) delivery of anything becomes due or ceases to be due,
  - (viii) a right to claim a payment or delivery accrues, changes or lapses,
  - (ix) any other right accrues, changes or lapses, or

- (x) an interest is created, changes or lapses,
- (b) that has the effect that a provision of the contract or agreement -
  - (i) takes effect only if a specified event occurs or does not occur,
  - (ii) takes effect only if a specified situation arises or does not arise,
  - (iii) has effect only for so long as a specified event does not occur,
  - (iv) has effect only while a specified situation lasts,
  - (v) applies differently if a specified event occurs,
  - (vi) applies differently if a specified situation occurs,  
or
  - (vii) applies differently while a specified situation lasts,

and "**specified**", in relation to a contract, other agreement, resolution instrument or share transfer order means specified in the contract, other agreement, resolution instrument or share transfer order.

**Resolution instruments and share transfer orders.**

**124.** (1) A resolution instrument or share transfer order may make provision for subsection (2) or (3) to apply in circumstances where section 123(1) would not apply.

(2) If this subsection applies, the resolution instrument or share transfer order shall be disregarded in determining whether a default event provision applies.

(3) If this subsection applies, the resolution instrument or share transfer order shall be disregarded in determining whether a default event provision applies except to the extent that the resolution instrument or share transfer order provides otherwise.

(4) A reference in subsection (1), (2) or (3) to a resolution instrument or share transfer order is a reference to -

- (a) the making of the resolution instrument or share transfer order,
- (b) anything to be done under the resolution instrument or share transfer order or is to be, or may be, done under the resolution instrument or share transfer order, and
- (c) any action taken or decision made under the provisions of this Law or any other enactment in so far as it resulted in, or was connected to, the making of the resolution instrument or share transfer order.

(5) A provision in a resolution instrument or share transfer order

under subsection (4) may apply subsection (2) or (3) -

- (a) generally or only for specified purposes, cases or circumstances, or
- (b) differently for different purposes, cases or circumstances.

(6) A thing is not done under a resolution instrument or a share transfer order for the purposes of subsection (4)(b) merely by virtue of being done -

- (a) under a contract or other agreement,
- (b) in exercise of rights, or
- (c) in fulfilment of obligations,

which have been affected by the resolution instrument or share transfer order.

*International considerations and obligations*

**Potential impact of resolution action on group.**

125. Where the bank is a group entity, the BRC must, without prejudice to the application of the resolution objectives in the Bailiwick -

- (a) take into account the potential impact of any resolution action in all jurisdictions in which the bank or other members of the same group operate, and

(b) subject to the provisions of section 126(1) -

(i) apply the resolution tools, and

(ii) exercise the resolution powers.

in a way that -

(A) minimises the impact on other group entities and on the group as a whole, and

(B) minimises the adverse effects on financial stability elsewhere, and in particular in the jurisdictions where the group operates.

**International obligations notice.**

**126.** (1) The BRC must not do or omit to do anything in the performance or purported performance of its functions if His Majesty's Procureur, the Commission or the Committee serves a notice on the BRC (an "**international obligations notice**") stating that the act or omission in question would contravene or be likely to contravene an international obligation of the United Kingdom or the Bailiwick.

(2) An international obligations notice may be served on the BRC by His Majesty's Procureur, the Commission or the Committee –

(a) of their own respective motions, or

(b) at the request of the BRC –

- (i) where the BRC believes that it is at risk of doing or omitting to do something which may contravene an international obligation, or
- (ii) for the purpose of ascertaining whether an act or omission would contravene an international obligation.

(3) An international obligations notice –

- (a) shall be in writing,
- (b) shall state whether His Majesty's Procureur, the Commission or the Committee (as the case may be) believes or does not believe that the act or omission in question would contravene the relevant international obligation, and the reasons for that belief,
- (c) shall specify anything that the BRC must or must not do in order to ensure that the relevant international obligation is not contravened, and
- (d) may be withdrawn, generally, partially or conditionally.

(4) On receipt of an international obligations notice, the BRC must consider the alternative courses of action that would achieve the objectives in question but avoid any objections on which the international obligations notice is based.

(5) Nothing in this section requires any person or body to give advice or an opinion on a technical area which is outside the competence, jurisdiction or technical expertise of that person or body.

(6) In this section an "act" includes a course of action and an "international obligation" means an international obligation of the United Kingdom or the Bailiwick.

#### *Assessment process*

#### **Timely assessment of new shareholders, etc.**

127. (1) In order to –

- (a) enable the BRC to apply a stabilisation tool promptly and effectively, and
- (b) protect financial stability,

any requisite assessment of new shareholders of a bank or transferees of a bank's assets, rights and liabilities must be carried out in a timely manner that does not delay the application of the stabilisation tool.

(2) The Commission must ensure that an application for a banking licence is considered, in conjunction with a transfer or conversion pursuant to a stabilisation tool, in a timely manner.

(3) The provisions of this section are in addition to and not in derogation from any other provision of this Law, the regulatory Laws or any other enactment or rule of law relating to the functions of the BRC or Commission or the



performance thereof and the matters which they must or may respectively take into account.

*Other general resolution powers*

**Power of BRC to apply resolution tools.**

128. (1) The BRC has all the powers necessary to apply the resolution tools to banks which meet the resolution conditions.

(2) In particular, the BRC has the following resolution powers, which it may exercise individually or in any combination, for the purpose of enabling the BRC to achieve the resolution objectives -

- (a) the power to require any person to provide any information required by the BRC to enable it to decide upon and prepare a resolution action, including updates and supplements of information provided in the resolution plans and including requiring information to be provided through on-site inspections,
- (b) the power to take control of a bank in resolution and exercise all rights and powers of the shareholders, other owners and management of the bank, including control over the bank so as to -
  - (i) operate and conduct the activities and services of the bank with all the rights and powers of its shareholders and management, and

- (ii) manage and dispose of the assets and property of the bank,

whether directly by the BRC or indirectly by persons appointed by the BRC,

- (c) the power to take resolution actions without taking control over the bank in resolution, having regard to the resolution objectives and the general principles of resolution and the specific circumstances of the bank,
- (d) the power to transfer to another person or entity, with the consent of that person or entity, shares issued by a bank in resolution,
- (e) the power to transfer to another person or entity, with the consent of that person or entity, rights, assets or liabilities of a bank in resolution,
- (f) the write down or conversion power in respect of a bank in resolution,
- (g) the power -
  - (i) to amend or alter the maturity of debt instruments and other eligible liabilities issued by a bank in resolution, or
  - (ii) to amend -

(A) the amount of interest payable under such debt instruments and other eligible liabilities, or

(B) the date on which the interest becomes payable, including by suspending payment for a temporary period,

except for secured liabilities referred to in section 99(2),

(h) the power to close out and terminate financial contracts or derivative contracts for the purposes of applying section 108,

(i) the power to remove or replace the management of a bank in resolution,

(j) subject to the protection of security arrangements, the power to provide for a transfer to take effect free from any liability or encumbrance affecting the financial instruments, rights, assets or liabilities transferred (and for these purposes any right of compensation in accordance with the resolution safeguards shall not be considered to be a liability or encumbrance),

(k) the power to remove rights to acquire further shares,

(l) the power to request that a relevant supervisory

authority or relevant regulatory authority discontinue or suspend the admission to trading on a regulated market of financial instruments relating to a bank in resolution,

- (m) the power to provide that a recipient of transferred shares, assets, rights or liabilities under the sale of business tool or bridge bank tool is to be treated as if it were the bank in resolution for the purposes of any rights or obligations of, or actions taken by, the bank in resolution, including, subject to the provisions relating to the application of the sale of business tool and the bridge bank tool, any rights or obligations relating to participation in market infrastructure,
- (n) the power to require the bank in resolution or the recipient of transferred shares, assets, rights or liabilities to provide the other with information and assistance,
- (o) the power to cancel or modify the terms of a contract to which the bank in resolution is a party or substitute a recipient of transferred shares, assets, rights or liabilities as a party,
- (p) the power to provide for continuity arrangements necessary to ensure that the resolution action is effective and that, where relevant, the business transferred may be operated by the recipient of transferred shares, assets, rights or liabilities, including, in particular -

- (i) the continuity of contracts entered into by the bank in resolution so that the recipient -
    - (A) assumes the rights and liabilities of the bank in resolution relating to any share, other financial instrument, right, asset or liability that has been transferred, and
    - (B) is substituted for the bank in resolution, expressly or implicitly, in all relevant contractual documents, and
  - (ii) the substitution of the recipient for the bank in resolution in any legal proceedings (criminal or otherwise) relating to any share, other financial instrument, right, asset or liability that has been transferred,
- (q) the power to require a bank in resolution or any of its group entities to provide any operational services or facilities (but not financial support) that are necessary to enable the recipient of transferred shares, assets, rights or liabilities to operate the transferred business effectively, including cases where the provider of such services or facilities has entered into relevant insolvency proceedings,
- (r) the power to suspend any payment or delivery

obligations pursuant to any contract to which a bank in resolution is party from the time of publication of a notice under section 137 expressly referencing such suspension until midnight in the Bailiwick at the end of the business day following the day of that publication, provided that -

- (i) where a payment or delivery obligation would have been due during the suspension period, the payment or delivery obligation shall be due immediately upon expiry of the suspension period,
- (ii) where a payment or delivery obligation has been suspended, the payment and delivery obligations of the counterparty under the contract shall also be suspended for the same period of time,
- (iii) any suspension under this provision does not apply to –
  - (A) eligible deposits, or
  - (B) payment and delivery obligations owed to payment and security settlement systems, central counterparties and central banks, and

- (iv) when exercising the power under this paragraph, the BRC must -
  - (A) have regard to the impact that the exercise of the power might have on the orderly functioning of financial markets, and
  - (B) carefully assess the appropriateness of extending the suspension to eligible deposits,
- (s) the power to restrict secured creditors of a bank in resolution from enforcing their security in relation to any assets of the bank from the time of publication of a notice under section 137 expressly referencing such restriction until midnight in the Bailiwick at the end of the business day following the day of that publication, provided that -
  - (i) the BRC may not exercise the power under this paragraph in relation to any security held by payment and securities settlement systems, central counterparties and central banks over assets pledged or provided by way of margin or collateral by the bank in resolution,
  - (ii) where section 135 applies, the BRC must ensure that any restrictions imposed pursuant to the

power under this paragraph are consistent for all group entities in the same group as the bank in resolution in relation to which a resolution action is taken, and

- (iii) where exercising the power under this paragraph, the BRC must have regard to the impact the exercise of the power might have on the orderly functioning of financial markets, and
- (t) the power to require the Commission to assess the purchaser or transferee of a bank's shares, assets, rights or liabilities in a timely manner and if necessary by way of derogation from any applicable time limits.

**Requirements for provision of services and facilities under section 128.**

**129.** (1) The services and facilities provided in accordance with section 128(2)(q) must be provided on the following terms -

- (a) where the services and facilities were provided under an agreement to the bank in resolution immediately before the resolution action was taken, and for the duration of that agreement, on the same terms, or
  - (b) where there is no agreement for provision of the services and facilities or where the agreement has expired, on reasonable terms.
- (2) The exercise of the resolution powers set out in section 128 is



without prejudice to -

- (a) the right of an employee of the bank in resolution to terminate a contract of employment, or
- (b) subject to sections 123(1) and 128(2)(r) and (s), any right of a party to a contract to exercise rights under the contract.

(3) The rights referred to in subsection (2)(b) include without limitation the right to terminate, where entitled to do so in accordance with the terms of the contract, by virtue of an act or omission of -

- (a) the bank in resolution, prior to the relevant transfer, or
- (b) the recipient of transferred shares, assets, rights or liabilities, after the relevant transfer.

(4) The following requirements do not apply to the application of a resolution tool -

- (a) subject to any requirements set out in the provisions of this Law to seek the approval of another public authority in the Bailiwick, any requirement to obtain approval or consent from any person, either public or private, including the shareholders or creditors of the bank in resolution, and
- (b) prior to the application of a resolution tool, and except

as otherwise provided by the provisions of this Law, any procedural requirement to notify any person, including any requirement to publish any notice or prospectus or to file or register any document with any other authority.

(5) Without prejudice to the generality of subsection (4), the BRC may exercise the resolution powers –

(a) irrespective of any restriction on, or requirement to obtain consent for, the transfer of the shares, other financial instruments, rights, assets or liabilities in question that would otherwise apply, and

(b) without –

(i) the approval of a third party in advance of a transfer,

(ii) complying with any applicable equitable or mandatory bid rule,

(iii) the consent of shareholders.

*Resolution safeguards:*

*creditor protection and "no creditor worse off" principle*

**Treatment of shareholders, etc, in partial transfers; and application of bail-in tool.**

130. (1) In the application of one or more of the resolution tools, and

subject to the provisions of subsection (2), where the BRC transfers only part of the shares, assets, rights or liabilities of the bank in resolution, the shareholders and creditors whose claims have not been transferred shall receive in satisfaction of their claims at least as much as they would have received if the bank in resolution had been wound up under relevant insolvency proceedings at the time when the decision was made to take resolution action in respect of the bank.

(2) Where the BRC applies the bail-in tool, the shareholders and creditors whose claims have been written down or converted to equity shall not incur greater losses than they would have incurred if the bank in resolution had been wound up under relevant insolvency proceedings as soon as reasonably practicable following the decision to take resolution action in respect of the bank.

**Shareholders and creditors worse off – claims from Fund.**

131. If the difference of treatment valuation carried out in accordance with section 63 determines that any shareholder or creditor would have incurred greater losses than it would have incurred in a winding up under relevant insolvency proceedings contrary to the general principle of resolution set out in section 47(1)(g), the shareholder or creditor may make a claim for the payment of the difference as compensation from the Fund.

*Resolution safeguards:  
partial transfers*

**Application of protections under section 133.**

132. Where the BRC -

- (a) transfers some but not all of the assets, rights or liabilities of a bank in resolution to another person or

entity or, in the application of a resolution tool, from a bridge bank or asset management vehicle to another person or entity, or

- (b) exercises the power under section 128(2)(o) to cancel or modify the terms of a contract to which the bank in resolution is a party or substitute a recipient of transferred assets, rights or liabilities as a party,

then the arrangements specified in section 133 and the counterparties of such arrangements are protected.

**Protected arrangements.**

133. (1) The arrangements protected under section 132 are -

- (a) security arrangements,
- (b) title transfer financial collateral arrangements,
- (c) set off arrangements,
- (d) netting arrangements,
- (e) covered bonds, and
- (f) structured finance arrangements.

(2) The provisions of subsection (1) apply irrespective of the number of parties involved in the arrangements or whether the arrangements -

- (a) are created by contract, trust or other means, or arise automatically by operation of law, or
- (b) arise under or are governed in whole or in part by the law of another jurisdiction.

**Restrictions on transfer.**

134. (1) In order to protect –

- (a) title transfer financial collateral arrangements referred to in section 133(1)(b),
- (b) set off arrangements referred to in section 133(1)(c), and
- (c) netting arrangements referred to in section 133(1)(d).

the actions specified in subsection (2) are prohibited.

(2) The actions are -

- (a) the transfer of some, but not all, of the rights and liabilities that are protected under any such arrangements between the bank in resolution and another person, and
- (b) the modification or termination of rights and liabilities that are protected under any such arrangements through the exercise of ancillary powers.

(3) In order to protect liabilities secured under security arrangements referred to in section 133(1)(a), the following actions are prohibited -

- (a) the transfer of assets against which a liability is secured, unless that liability and the burden of the security are also transferred,
- (b) the transfer of a secured liability, unless the burden of the security is also transferred,
- (c) the transfer of the burden of the security, unless the secured liability is also transferred, and
- (d) the modification or termination of a security arrangement through the exercise of ancillary powers, if the effect of that modification or termination is that the liability ceases to be secured.

(4) In order to protect covered bonds and structured finance arrangements referred to in section 133(1)(e) and (f), the following actions are prohibited -

- (a) the transfer of some, but not all, of the assets, rights and liabilities which constitute or form part of a covered bond or structured finance arrangement, including such arrangements to which the bank in resolution is party, and

- (b) the termination or modification, through the exercise of ancillary powers, of assets, rights and liabilities which constitute or form part of a covered bond or structured finance arrangement, including such arrangements to which the bank in resolution is party.

(5) Notwithstanding subsections (1) to (4), where necessary to ensure sufficient funds are available for the payment of the covered deposits, the BRC may -

- (a) transfer covered deposits which are part of any of the arrangements referred to in those subsections without transferring other assets, rights or liabilities that are part of the same arrangements, or
- (b) transfer, modify or terminate those assets, rights and liabilities without transferring the covered deposits.

**Payment and settlement systems unaffected.**

135. The application of a resolution tool shall not prejudice the operation of payment, clearing and settlement systems where the BRC -

- (a) transfers some but not all of the assets, rights or liabilities of a bank in resolution to another entity, or
- (b) exercises its powers under section 128(2)(o) to cancel or amend the terms of a contract to which the bank in resolution is a party or to substitute a recipient of transferred assets, rights or liabilities as a party.

**References to Royal Court regarding use of resolution tools.**

136. (1) The BRC may, if it believes that it would assist it in the proper and lawful performance of its functions, apply to the Royal Court for directions concerning, or for the determination of any question arising in relation to, the application of a resolution tool, the exercise of a resolution power or the taking of a resolution action.

(2) An application of the BRC under subsection (1) shall be made in such manner, if any, as may be prescribed by Order of the Royal Court.

(3) On an application of the BRC under subsection (1) the Royal Court may make such order as it thinks fit.

(4) An order of the Royal Court under subsection (3) –

(a) may, without limitation, provide that the BRC may apply a resolution tool, exercise a resolution power or take a resolution action specified in the order, and

(b) may contain such incidental, ancillary, consequential or supplementary provision, and may be made on such terms and conditions, as the Royal Court thinks fit.

(5) The provisions of this section are in addition to and not in derogation from the provisions of section 7 (power to apply for directions), and the provisions of section 7(3), (4) and (5) have effect in relation to an application to, and order of, the Royal Court under this section as they have effect in relation to an application to, and order of, the Royal Court under section 7.



*Procedural requirements*

**Requirement for publication of resolution instrument, etc.**

137. (1) The BRC must, as soon as is reasonably practicable after the creation of a resolution instrument or share transfer order by which a resolution action is taken (including a recognition order), publish or procure the publication of -

- (a) a copy of the resolution instrument or share transfer order, or
- (b) a notice summarising the key terms of the resolution instrument or share transfer order and the effects of the resolution action, and in particular -
  - (i) the effects on retail customers, and
  - (ii) if applicable, the terms and period of suspension or restriction referred to in section 128(2)(r) or (s), as the case may be.

(2) The publication required under subsection (1) must be by the following means -

- (a) by sending it to –
  - (i) the bank in resolution,
  - (ii) the Commission,

- (iii) the Guernsey Banking Deposit Compensation Board, and
  - (iv) the Committee,
- (b) by publication on the websites of –
  - (i) the bank in resolution,
  - (ii) the BRC,
  - (iii) the Commission, and
  - (iv) the States of Guernsey, States of Alderney and Chief Pleas of Sark, and
- (c) by publication in -
  - (i) a newspaper regularly circulated in the Bailiwick or any part thereof,
  - (ii) La Gazette Officielle and the Alderney Official Gazette, and
  - (iii) any national or international newspaper or other publication which, in the opinion of the BRC, is likely to bring it to the attention of affected persons, and

- (d) if securities issued by the bank in resolution have been admitted to trading on a regulated market, by means of a service approved by the BRC to disseminate information for the purposes of this Law (a "**relevant regulatory information service**").

**Notification requirements.**

138. (1) The management of a bank shall without delay notify the BRC and the Commission where the management considers that the bank is failing or likely to fail.

(2) The BRC and the Commission must each inform the other of any notification received under subsection (1) and of any early intervention measures they have respectively required the bank to take to prevent its failure or likely failure.

(3) As soon as is reasonably practicable after taking a resolution action, and without prejudice to the provisions of section 137, the BRC must notify the bank in resolution and all other parties listed in section 139(2) of the fact, detailing the action taken.

**BRC to determine whether resolution conditions met.**

139. (1) On receiving a notification under section 138(1) or (2) that a bank is failing or likely to fail, the BRC must –

- (a) determine whether the resolution conditions are met in respect of the bank, and
- (b) record that determination, together with the reasons for

the determination and the actions the BRC intends to take as a result thereof.

(2) Where the BRC determines that the resolution conditions are met in relation to a bank, it must, as soon as is reasonably practicable, communicate that determination, together with the reasons for the determination and the actions the BRC intends to take as a result thereof, to -

- (a) the bank,
- (b) the Commission,
- (c) the Guernsey Banking Deposit Compensation Board,
- (d) the Committee,
- (e) the home resolution authorities and relevant resolution authorities in relation to the bank's group,
- (f) the home supervisory authorities and relevant supervisory authorities in relation to the bank's group,
- (g) the resolution authorities of any branches of the bank, if it is a bank incorporated in the Bailiwick,
- (h) the supervisory authorities of any branches of the bank, if it is a bank incorporated in the Bailiwick,
- (i) the central bank in the home jurisdiction and relevant

jurisdiction of the bank's group, and

- (j) the depositors guarantee system in the home jurisdiction and relevant jurisdiction of the bank's group.

## PART X

### RECOGNITION OF FOREIGN RESOLUTION ACTIONS

#### **Recognition orders.**

**140.** (1) Where the BRC is notified of a foreign resolution action in respect of a foreign bank, the BRC must, subject to the provisions of subsections (2) and (3), make an order (a "**recognition order**") which -

- (a) recognises the foreign resolution action,
- (b) refuses to recognise the foreign resolution action, or
- (c) recognises part of the foreign resolution action and refuses to recognise the remainder.

(2) The BRC must consult the Committee before making a recognition order under subsection (1).

(3) The BRC may refuse to recognise a foreign resolution action or part of it if the BRC is satisfied that one or more of the following conditions is met -

- (a) recognition would have an adverse effect on financial stability in the Bailiwick,

- (b) the taking of a resolution action by the BRC in relation to a branch located in the Bailiwick of a foreign bank is necessary to achieve one or more of the resolution objectives,
- (c) under the foreign resolution action, creditors (including, in particular, depositors) located or payable in the Bailiwick would not, by reason of being located in the Bailiwick, receive the same treatment, or have similar legal rights, as creditors (including depositors) located or payable in the foreign jurisdiction concerned,
- (d) recognition of, and taking action in support of, the foreign resolution action or the relevant part of it would have material fiscal implications for the Bailiwick, or
- (e) such recognition would be unlawful under section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000<sup>e</sup> (unlawful for public authority to act in way incompatible with Convention right).

**Legal effect of foreign resolution action.**

**141.** (1) Where a recognition order has been made by the BRC under the provisions of section 140(1) which recognises a foreign resolution action or any part of it, the foreign resolution action or that part of it produces the same legal effects in

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<sup>e</sup> Order in Council No. XIV of 2000; this enactment has been amended.

the Bailiwick as it would have produced had it been made under the law of the Bailiwick.

(2) For the purposes of supporting, or giving full effect to, a recognised foreign resolution action, the BRC may apply or exercise in relation to a foreign bank -

- (a) any one or more of the stabilisation tools, or
- (b) any one or more of the stabilisation powers,

that would be available to the BRC were the bank incorporated in the Bailiwick.

(3) Without prejudice to the generality of section 140, the BRC may make a recognition order that -

- (a) has effect in respect of a bank which is a Bailiwick subsidiary of a foreign bank, and
- (b) recognises a group resolution action, whether or not it carries out any resolution actions under this Law in respect of the entity in the Bailiwick.

**Permitted scope of recognition order.**

142. (1) A recognition order may -

- (a) include ancillary, incidental, supplementary, consequential or transitional provisions which may apply generally or in relation to specified purposes,

cases or circumstances, and

- (b) make different provisions for different purposes, cases or circumstances.

(2) As soon as is reasonably practicable after the creation of a recognition order, the BRC must comply with the requirements of section 137.

(3) Any decision of the BRC, including appropriate rationale for the decision -

- (a) not to recognise a foreign resolution action,
- (b) to recognise a foreign resolution action only in part, or
- (c) to take independent action to resolve a bank which is a subsidiary of a foreign bank,

must be communicated by the BRC clearly to the group concerned and to the resolution authority in –

- (i) the group's home jurisdiction, and
- (ii) if appropriate, the group's relevant jurisdiction.



PART XI  
POST RESOLUTION REPORT

**BRC to report to Committee.**

143. (1) The BRC must submit a report to the Committee on any resolution action taken in respect of a bank.

(2) A report under subsection (1) must be submitted to the Committee within a period of 12 months immediately following the conclusion of the resolution action and must include -

- (a) a summary of the financial information relating to the resolution of the bank, including the findings of each of the valuations carried out, outlining in particular the findings of the valuations in relation to the position of creditors, the general principle of resolution under section 47(1)(g) and the resolution safeguard under section 131,
- (b) an outline of the other information available to the BRC on the basis of which it made the decision to take resolution action,
- (c) if relevant, a review of the quality of the information referred to in paragraph (a) or (b),
- (d) an outline of relevant information which has subsequently come into the possession of the BRC, highlighting the extent to which that information has

changed from the information which formed the basis of its decision to take resolution action,

- (e) a review of the decision to take resolution action, including an assessment of the extent to which the information which has subsequently come into the possession of the BRC might have led the BRC to have made a different decision had that information been in its possession at the time that the decision was made,
- (f) an assessment of the effect of the resolution action and the extent to which that effect is consistent with the intended effect of the resolution action,
- (g) an assessment of lessons learned, including practical hurdles encountered and any fundamental deficiencies identified as a result of the resolution action, and
- (h) proposals, if any, for changes to address the lessons learned.

(3) In the case of every report produced under subsection (1) -

- (a) the BRC must, prior to the report's submission to the Committee, redact the report to the extent it considers, after consultation with the Commission, to be appropriate, and
- (b) the Committee shall, as soon as reasonably practicable

after receipt of the redacted report, lay it before the States.

PART XII  
BANK WINDING UP PROCEDURE

**Application of Companies Laws.**

**144.** The provisions of the Companies (G) Law and the Companies (A) Law relating to –

- (a) the compulsory winding up of companies,
- (b) the voluntary winding up of companies,
- (c) the administration of companies,
- (d) the striking off of companies, and
- (e) the powers and duties of liquidators and administrators,

have effect subject to –

- (i) the provisions of this Part, and
- (ii) such exceptions, adaptations and modifications as are necessary for the carrying into effect of the provisions of this Part.

**Compulsory winding up of banks.**

145. (1) This section applies to "**winding up applications**", that is to say, applications under –

- (a) section 408 of the Companies (G) Law or section 127 of the Companies (A) Law to the Royal Court or, as the case may be, to the Court of Alderney for the compulsory winding up of a Guernsey company or an Alderney company which in either case is a bank, or
- (b) section 408 of the Companies (G) Law, as it and the other provisions of Part XXIII of that Law have effect by virtue of Part XXIIIA of that Law, to the Royal Court for the compulsory winding up of a non-Guernsey company which is a bank.

(2) A winding up application may be made to the Royal Court or, as the case may be, to the Court of Alderney by virtue of the provisions of this subsection by the BRC on the grounds that it is desirable that the company should be wound up –

- (a) for the purpose of achieving the resolution objectives, or
- (b) otherwise for the protection of the public or of the reputation of the Bailiwick,

and for the avoidance of doubt the provisions of this subsection are without prejudice to the rights of any other person to make a winding up application otherwise than by virtue of the provisions of this subsection.

(3) A winding up application shall not be heard unless a copy of the application is served on –

- (a) the BRC (unless the BRC is the applicant),
- (b) the Commission (unless the Commission is the applicant), and
- (c) the Guernsey Banking Deposit Compensation Board,

not less than 14 days (or such longer period as the Royal Court or, as the case may be, the Court of Alderney may, in its absolute discretion, direct) before the day of the hearing of the application.

(4) At the hearing of a winding up application the BRC, the Commission and the Guernsey Banking Deposit Compensation Board may make representations to the Royal Court or, as the case may be, the Court of Alderney which the Court shall take into account in deciding whether or not, and in what manner, to exercise its powers.

(5) A winding up application shall not be granted –

- (a) in any case, if the BRC has objected to the making of the winding up order,

- (b) in cases where the bank in respect of which the application is made is in resolution, without the express consent of the BRC.

(6) On a winding up application the person appointed as liquidator must be approved by the BRC.

**Voluntary winding up of banks.**

146. Notwithstanding the provisions of Part XXII of the Companies (G) Law or Part XVII of the Companies (A) Law, a Guernsey company or, as the case may be, an Alderney company which in either case is a bank shall not be wound up voluntarily except with the express written consent of the BRC.

**Administration of banks.**

147. (1) This section applies to “**applications for an administration order**”, that is to say, applications under section 375 of the Companies (G) Law to the Royal Court for an administration order in respect of a Guernsey company which is a bank.

(2) An application for an administration order may be made to the Royal Court by virtue of the provisions of this subsection by the BRC on the grounds that it is desirable that an administration order should be made in respect of the company –

- (a) for the purpose of achieving the resolution objectives, or
- (b) otherwise for the protection of the public or of the reputation of the Bailiwick,

and for the avoidance of doubt the provisions of this subsection are without prejudice to the rights of any other person to make an application for an administration order otherwise than by virtue of the provisions of this subsection.

(3) An application for an administration order shall not be heard unless a copy of the application is served on –

- (a) the BRC (unless the BRC is the applicant),
- (b) the Commission (unless the Commission is the applicant), and
- (c) the Guernsey Banking Deposit Compensation Board,

not less than 14 days (or such longer period as the Royal Court may, in its absolute discretion, direct) before the day of the hearing of the application.

(4) At the hearing of an application for an administration order the BRC, the Commission and the Guernsey Banking Deposit Compensation Board may make representations to the Royal Court which the Royal Court shall take into account in deciding whether or not, and in what manner, to exercise its powers.

(5) An application for an administration order shall not be granted –

- (a) in any case, if the BRC has objected to the making of the administration order,
- (b) in cases where the bank in respect of which the

application is made is in resolution, without the express consent of the BRC.

(6) On an application for an administration order the person appointed as administrator must be approved by the BRC.

**Striking off of banks.**

148. Notwithstanding the provisions of Part XX of the Companies (G) Law or Part XVI of the Companies (A) Law, a Guernsey company or an Alderney company which in either case is a bank shall not be struck off the Register of Companies under the Companies (G) Law or the Companies (A) Law unless –

- (a) the Registrar has given the BRC and the Commission the opportunity to make representations showing cause to the contrary, and
- (b) the BRC has given express written confirmation that it has no objection to the striking off.

**Liquidator and administrator to co-operate with BRC, Commission and Board.**

149. In performing their functions in respect of a bank a liquidator and an administrator must take all reasonable steps to co-operate openly with the BRC, Commission and Guernsey Banking Deposit Compensation Board to enable or assist them in the performance of their functions.

**Duties of liquidator in bank winding up.**

150. (1) The duties of a liquidator in a bank winding up include –

- (a) to work with the BRC and the Guernsey Banking



Deposit Compensation Board to ensure that, as soon as is reasonably practicable, each depositor to whom the bank has a liability in respect of a qualifying deposit within the meaning of the BDCS Ordinance -

- (i) has the relevant account transferred to another bank, or
  - (ii) receives payment from (or on behalf of) the banking deposit compensation scheme or from the bank liquidator acting as the bank, if applicable, or from the deposit guarantee system of another jurisdiction in which the bank has a branch, as applicable,
- (b) in circumstances where part of the business of the bank has been sold to a private sector purchaser using the sale of business tool, or transferred to a bridge bank using the bridge bank tool -
- (i) to support the transferee by ensuring the provision of such services and facilities by the residual bank as are required to enable the transferee, in the opinion of the BRC, to operate the transferred business effectively, and
  - (ii) at the request of the BRC, and without prejudice to the generality of subparagraph (i), to enter into such agreements as the BRC considers

necessary for the purpose of the achievement of the resolution objectives including, without limitation, agreements for the residual bank to provide services, information or facilities to the transferee, and

- (c) to wind up the affairs of the bank so as to achieve the best results for the bank's creditors as a whole, having due regard to the priority afforded to depositors in accordance with the Preferred Debts (Guernsey) Law, 1983.

(2) In subsection 1(c), the expression "so as to achieve the best results for the bank's creditors as a whole" does not necessarily require the winding up to be done quickly for the benefit of its creditors.

**Powers of liquidator in bank winding up.**

151. In a bank winding up, the powers of a liquidator include -

- (a) the power to do anything necessary or expedient for the performance of the duties set out in section 150 and the achievement of the resolution objectives,
- (b) without prejudice to any other provision of this Law relating to the provision or disclosure of information, the power to comply with a request of the BRC or the Guernsey Banking Deposit Compensation Board for the provision of information and to provide any information to the BRC or the Guernsey Banking

Deposit Compensation Board which the bank liquidator thinks might be useful for the purpose of cooperating in pursuit of the resolution objectives, and

- (c) the power to support the transferee by continuing to supply such services, information and facilities as are required to enable the transferee, in the opinion of the BRC, to operate the transferred business effectively.

*Bank liquidation committee*

**Power to establish bank liquidation committee.**

152. The States may by Ordinance make such provision as they think fit in respect of the establishment and functions of a bank liquidation committee including, without limitation, provision specifying or otherwise making provision in respect of

–

- (a) the purposes of the bank liquidation committee, which shall include, without limitation –
  - (i) ensuring that a liquidator properly exercises the functions of liquidator in accordance with the bank winding up procedure, and
  - (ii) otherwise overseeing the bank winding up,
- (b) the membership and constitution of the bank liquidation committee,

- (c) the duties, powers and proceedings of the bank liquidation committee,
- (d) the duty or power of a bank liquidator to report, make notifications and provide information to, or seek authorisation or approval from, the bank liquidation committee,
- (e) the making and effect of recommendations and directions by the bank liquidation committee,
- (f) the matters the bank liquidation committee must consider or take into account in performing its functions,
- (g) the making of applications to the Royal Court –
  - (i) by the liquidation committee in respect of a bank winding up or by the liquidator, or
  - (ii) by any person aggrieved by any action or omission of the bank liquidation committee,

and the powers of the Royal Court upon such applications,

- (h) the disclosure and provision of information and documents by and to the bank liquidation committee,

- (i) the powers of the Royal Court, BRC and Commission in respect of the bank liquidation committee.

PART XIII  
APPEALS, ETC,  
& MAKING OF CODES AND GUIDANCE

*Representations, notice of decisions  
and appeals*

**Representations concerning proposed decisions of BRC or Commission.**

153. (1) Before the BRC or the Commission makes a decision in respect of which a right of appeal is conferred by section 156 the procedure prescribed in this section shall be followed.

(2) The BRC or the Commission, as the case may be, shall serve on the person by whom, in the opinion of the BRC or the Commission, the right of appeal would be exercisable if the BRC or the Commission were to make the proposed decision (the "**person concerned**") a notice in writing -

- (a) stating that the BRC or the Commission is proposing to make the decision,
- (b) stating the terms of and the grounds for the proposed decision,
- (c) setting out particulars of or accompanied by -
  - (i) any order, restriction, condition, obligation,

requirement, duty, direction or arrangement proposed to be imposed, renewed, varied or rescinded, or

(ii) any notice proposed to be served,

(d) stating that the person concerned (and, where appropriate, the person upon whom a copy of the notice is served under subsection (3)) may, within a period of 28 days (or such longer period as the BRC or, as the case may be, the Commission may specify in the notice or subsequently allow) beginning on the date of the notice, make written and/or oral representations to the BRC or the Commission in respect of the proposed decision in such manner as the BRC or the Commission may from time to time determine,

(e) containing or accompanied by, in accordance with the provisions of section 155(1), a statement of the reasons for the proposed decision (but subject to the provisions of section 155(2)), and

(f) giving particulars of the right of appeal which would be exercisable under section 156 if the BRC or the Commission were to make the proposed decision.

(3) Where -

(a) a ground for the proposed decision is that any of the

minimum criteria for licensing are not or have not been fulfilled, or may not be or may not have been fulfilled, in the case of any person, or

- (b) any proposed order, restriction, condition, obligation, requirement, duty, direction or arrangement requires the removal or replacement of any person as an officer, employee or auditor, or holder of a supervised role,

the BRC or the Commission, as the case may be, shall serve upon that person a copy of the notice mentioned in subsection (2) (which copy may omit any matter which does not relate to that person) together with particulars of the right of appeal which would be exercisable under section 156 if the BRC or the Commission were to make the proposed decision.

(4) The BRC or the Commission, as the case may be, shall consider any representations made in response to a notice served under this section before giving further consideration to the proposed decision.

(5) The BRC or the Commission, as the case may be, may also, in performing its functions under the provisions of this Law, and without limitation, have regard to -

- (a) any representations made in response to a notice served under this section, or
- (b) any failure or omission to make any such representations.

(6) The period of 28 days mentioned in subsection (2)(d) may be reduced in any case in which the BRC or the Commission, as the case may be, considers it necessary to do so in the interests of the resolution objectives, the protection of the public or the reputation of the Bailiwick as a finance centre; and if by reason of those interests the BRC or the Commission considers that the decision in question needs to be taken immediately as a matter of urgency then, with the prior written authority of not less than two members of the BRC or the Commission, the procedure prescribed in this section may be dispensed with altogether.

**Notice of decisions of BRC or Commission.**

**154.** (1) Where the BRC or the Commission (having taken into account, where appropriate, any representations made by the person concerned) makes a decision in respect of which a right of appeal is conferred by section 156, notice in writing of the decision –

- (a) shall be served by the BRC or the Commission, as the case may be, on the person concerned,
- (b) shall state the terms of and the grounds for the decision,
- (c) shall set out particulars of or be accompanied by –
  - (i) any order, restriction, condition, obligation, requirement, duty, direction or arrangement imposed, renewed, varied or rescinded, or
  - (ii) any notice to be served,
- (d) shall contain or be accompanied by, in accordance with



the provisions of section 155(1), a statement of the reasons for the decision (but subject to the provisions of section 155(2)), and

- (e) shall give particulars of the right of appeal conferred by section 156;

and "**the person concerned**" means the person by whom, in the opinion of the BRC or the Commission, as the case may be, the right of appeal is exercisable.

(2) Where –

- (a) a ground for a decision notice of which is required to be served under subsection (1) is that any of the minimum criteria for licensing are not or have not been fulfilled, or may not be or may not have been fulfilled, in the case of any person, or
- (b) an order, restriction, condition, obligation, requirement, duty, direction or arrangement requires the removal or replacement of any person as an officer, employee or auditor, or holder of a supervised role,

the BRC or the Commission, as the case may be, shall serve upon that person a copy of the notice mentioned in subsection (1) (which copy may omit any matter which does not relate to that person) together with particulars of the right of appeal conferred by section 156.

**Disclosure of reasons for decisions of BRC or Commission.**

155. (1) When the BRC or the Commission serves notice on a person -

- (a) under section 154(1) or (2) of a decision in respect of which a right of appeal is conferred by section 156, or
- (b) under section 153(2) or (3) stating that the BRC or the Commission is proposing to make such a decision,

the BRC or the Commission, as the case may be, shall, subject to the provisions of subsection (2), provide that person with a written statement of the reasons for the decision or proposed decision, as the case may be.

(2) Subsection (1) does not require the BRC or the Commission to specify any reason which would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to -

- (a) a criminal or regulatory investigation (whether in the Bailiwick or elsewhere),
- (b) co-operation or relations with investigatory, regulatory, resolution, supervisory or prosecuting authorities, whether in the Bailiwick or elsewhere, or
- (c) a third party (wherever situated).

(3) Where, pursuant to the provisions of subsection (2), the BRC or the Commission omits any matter from a statement of reasons, it shall inform the person to whom the statement was provided of the fact that there has been such an omission and give particulars of the right of appeal conferred by section 156.

**Appeals to Royal Court against decisions of BRC or Commission.**

156. (1) A person aggrieved by -

- (a) a decision of the BRC to take a crisis management measure or crisis prevention measure,
- (b) a decision of the BRC or the Commission to omit, pursuant to the provisions of section 155(2), any matter from a statement of reasons provided pursuant to section 155(1),
- (c) any other decision of the BRC or the Commission under the provisions of this Law, or
- (d) a decision of such class or description as the States may by Ordinance prescribe for the purposes of this section,

may appeal to the Royal Court against the decision.

(2) Where -

- (a) a ground for a decision described in subsection (1) is that any of the minimum criteria for licensing are not or have not been fulfilled, or may not be or may not have been fulfilled, in the case of any person, or
- (b) the effect of a decision described in subsection (1) is to require the removal or replacement of any person as an

officer, employee or auditor, or holder of a supervised role,

the person to whom the ground relates or whose removal or replacement is required may appeal to the Royal Court against the finding that there is a ground for the decision or, as the case may be, against the decision to require that person's removal or replacement.

- (3) The grounds of an appeal under this section are that -
  - (a) the decision was ultra vires or there was some other error of law,
  - (b) the decision was unreasonable,
  - (c) the decision was made in bad faith,
  - (d) there was a lack of proportionality, or
  - (e) there was a material error as to the facts or as to the procedure.
- (4) An appeal under this section shall be instituted –
  - (a) within a period of 28 days immediately following the date of the notice of the decision of the BRC or the Commission, and

- (b) by summons served on the Chair of the BRC or the Chairman of the Commission, as the case may be, stating the grounds and material facts on which the appellant relies.

(5) The BRC or the Commission, as the case may be, may, where an appeal under this section has been instituted, apply to the Royal Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution; and upon hearing the application the Royal Court may -

- (a) dismiss the appeal or dismiss the application (in either case upon such terms and conditions as the Royal Court may direct), or
- (b) make such other order as the Royal Court considers just,

and the provisions of this subsection are without prejudice to the inherent powers of the Royal Court or to the provisions of rule 52(3) of the Royal Court Civil Rules, 2007<sup>f</sup>.

(6) On an appeal under this section the Royal Court may -

- (a) set the decision of the BRC or the Commission aside and, if the Royal Court considers it appropriate to do so, remit the matter to the BRC or the Commission, as the case may be, with such directions as the Royal Court thinks fit, or

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<sup>f</sup> O.R.C. No. IV of 2007; this enactment has been amended.

(b) confirm the decision, in whole or in part.

(7) On an appeal under this section against a decision of the BRC or the Commission described in subsection (1)(c), or any other decision of a class or description specified for the purposes of this section by regulations of the Committee, but not a decision of the BRC described in subsection (1)(a), the Royal Court may, upon the application of the appellant, and on such terms and conditions as the Royal Court thinks just, suspend or modify the operation of the decision in question pending the determination of the appeal.

This subsection is without prejudice to section 153(6).

(8) Where the BRC makes a decision described in subsection (1)(a) to take a crisis management measure or crisis prevention measure, then, for the purposes of the right of appeal under this section or any other proceedings before the Royal Court or any other court in the Bailiwick, the decision -

(a) is immediately enforceable, and

(b) gives rise to a rebuttable presumption that a setting aside, suspension or modification of the decision or its operation or enforcement would be against the public interest.

(9) Where it is necessary to protect the interests of third parties acting in good faith who have acquired shares, assets, rights or liabilities of a bank in resolution by virtue the application of a resolution tool or the exercise of a resolution power by the BRC, the setting aside, suspension or modification of a decision of the BRC shall not affect any subsequent administrative acts or transactions which were

based on that decision and concluded by the BRC prior to the time of setting aside, suspension or modification.

(10) For the purposes of determining an appeal under this section against a decision of the BRC or the Commission described in subsection (1)(b) to omit, pursuant to the provisions of section 155(2), any matter from a statement of reasons, the Royal Court may examine the information the disclosure of which the BRC or the Commission, as the case may be, considers would be prejudicial; and, unless the Royal Court orders otherwise, the information shall not, pending the determination of the appeal or at any time thereafter, be disclosed to the appellant or any person representing the appellant.

**Appeals from Royal Court to Court of Appeal.**

157. (1) An appeal from a decision of the Royal Court made under the provisions of this Law (including a decision made on an appeal from the Court of Alderney or the Court of the Seneschal) lies, with leave of the Royal Court or Court of Appeal, to the Court of Appeal on a question of law.

(2) Section 21 of the Court of Appeal (Guernsey) Law, 1961<sup>g</sup> ("powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under subsection (1) as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

**Restriction on successive challenges.**

158. (1) The BRC or the Commission, as the case may be, shall not (unless, in the opinion of the BRC or the Commission, there are exceptional

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<sup>g</sup> Ordres en Conseil Vol. XVIII, p. 315; this enactment has been amended.

circumstances to justify doing so, the burden of proving which shall be on the applicant) proceed to consider an application by a person for the variation or revocation of an order or other decision to which this section applies where -

- (a) the application is a further application, that is to say, an application which relates to a person in respect of whom a previous application for the variation or revocation of that order or other decision has been received by the BRC or the Commission,
- (b) in the opinion of the BRC or the Commission, that further application discloses no significant change in any material circumstances concerning that person (the burden of proving that there has been such a significant change being on the applicant), and
- (c) either -
  - (i) an appeal under section 156 relating to a previous such application in respect of that person has been commenced but not yet determined, or
  - (ii) within the period of 12 months immediately preceding receipt of that further application -
    - (A) a previous such application in respect of that person has been determined by the BRC, or



- (B) an appeal under section 156 relating to a previous such application in respect of that person has been determined.

(2) The orders and other decisions to which this section applies are

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- (a) a decision described in section 156(1)(b) or (c),
- (b) an order or other decision of a class or description specified by regulations of the Committee.

*Making of codes and guidance*

**Codes of practice and guidance.**

**159.** (1) The BRC, after consultation with –

- (a) the Commission, and
- (b) such other persons as appear to the BRC to be appropriate,

may (without prejudice to any other power conferred by the provisions of this Law as to the making of codes or guidance) issue such codes of practice and/or such guidance as the BRC thinks necessary –

- (i) for the purpose of providing clarification or guidance as to the duties, requirements and

standards to be complied with and the procedures (whether as to identification, record-keeping, internal reporting, internal controls, corporate governance, training or otherwise) and best practices to be observed by -

(A) banks, or

(B) any other persons to whom the code or guidance applies,

(ii) generally for the purposes of providing clarification or guidance in respect of the provisions of or for the purposes of, or in connection with the administration, implementation or enforcement of, the provisions of this Law,

and without limitation a code of practice or guidance under this section may make provision in respect of any matter in respect of which rules may be made under the provisions of this Law.

(2) The BRC may, after consultation as mentioned in subsection (1), amend the whole or any part of a code of practice or guidance issued under this section and issue that amended code or guidance.

(3) Without prejudice to any other provision of this Law or any other enactment as to the consequences of any such contravention, a contravention by any person of a provision of a code of practice or guidance issued under this section

does not of itself render that person liable to any criminal proceedings; but –

- (a) the BRC and the Commission, in the performance of their respective functions, may take the provision of the code or guidance and the contravention thereof into account in determining whether and in what manner to perform those functions, and
- (b) in any legal proceedings (criminal or otherwise), whether or not under the provisions of or for the purposes of this Law, the provision of the code or guidance is admissible in evidence, and if the provision appears to the court or other tribunal before which the proceedings are being conducted to be relevant to any question arising in the proceedings then the provision may be taken into account in determining that question.

#### PART XIV

#### DISCLOSURE OF INFORMATION

##### **Restrictions on disclosure of information.**

**160.** (1) Subject to the provisions of section 161 –

- (a) no person who under the provisions of or for the purposes of this Law receives information relating to the business, property or affairs of any person,
- (b) no person who obtains any such information directly or indirectly from a person who has so received it,

shall disclose the information without the consent of the person to whom it relates and (if different) the person from whom it was so obtained.

(2) A person who discloses information in contravention of this section is guilty of an offence.

**Cases where disclosure is permitted.**

161. Section 160 does not preclude –

- (a) the disclosure of -
  - (i) information which at the time of disclosure is or has already been made available to the public from other sources, or
  - (ii) information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it,
- (b) the disclosure of information for the purpose of enabling or assisting -
  - (i) the BRC,
  - (ii) the Commission,
  - (iii) the Guernsey Banking Deposit Compensation

Board, or

- (iv) any body established by Ordinance under section 84 of the Insurance Business Law for the purposes of a scheme for the protection of depositors, investors, customers, clients or policyholders,

to perform its functions,

- (c) without prejudice to the generality of paragraph (b), the disclosure of information by the BRC or the Commission to the auditor of a bank or former bank if it appears to the BRC or the Commission, as the case may be, that the disclosure would enable or assist the BRC or the Commission to perform their respective functions or would otherwise be in the interest of the public or the reputation of the Bailiwick as a finance centre,
- (d) where, in order to enable or assist it to perform its functions, the BRC or the Commission considers it necessary to appoint or seek advice from a qualified person on any matter of law, accountancy or valuation or any other matter requiring the exercise of professional skill, the disclosure by the BRC or the Commission, as the case may be, to that person of such information as respectively appears to them to be necessary to ensure that that person is properly informed as to the matters in respect of which the

appointment is made or the advice is sought,

- (e) the disclosure by the BRC or the Commission of information in the interests of the public or the reputation of the Bailiwick as a finance centre,
- (f) the disclosure of information for the purpose of enabling or assisting a resolution authority or supervisory authority in a jurisdiction other than the Bailiwick to perform its functions,
- (g) the disclosure of information in compliance with, or for the purposes of enabling or assisting a person to comply with, any requirement imposed by or under the provisions of this Law or any other enactment,
- (h) the disclosure of information –
  - (i) for the purposes of the investigation, prevention or detection of crime, or
  - (ii) with a view to the instigation of or otherwise for the purposes of any criminal proceedings,

whether under the provisions of this Law or otherwise,

- (i) the disclosure of information in connection with any other proceedings, enforcement action or sanction (civil, criminal or administrative) arising out of or under the

provisions of this Law or otherwise under the law of the Bailiwick,

(j) the disclosure of information with a view to the instigation of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise of the professional duties of -

(i) an auditor of a bank or former bank, or

(ii) a person appointed to make a report under section 5(5)(a) of the Banking Supervision Law, section 7(1)(b) or 8 of the Enforcement Powers Law, section 3(3)(a) of the Protection of Investors Law, section 5(6)(a) of the Regulation of Fiduciaries Law, section 12(5)(a), 22(5)(a) or 33(5)(a) of the Lending, Credit and Finance Law, section 6(5)(a) or 36 of the Insurance Business Law or section 3(5)(a) or 23 of the Insurance Managers and Intermediaries Law, or

(iii) a person appointed as a skilled person pursuant to the provisions of section 29 of the Banking Supervision Law or the corresponding provisions of the other regulatory Laws,

(k) the disclosure by the BRC or the Commission to His Majesty's Procureur or an officer of police of -

- (i) information obtained under the provisions of section 28 or 29 of the Banking Supervision Law or sections 7 to 13 of the Enforcement Powers Law, or
  - (ii) information in the possession of the BRC or the Commission as to any suspected offence in relation to which the powers conferred by those sections are exercisable,
- (l) where information is disclosed to an officer of police under paragraph (k), the disclosure of that information by an officer of police for the purposes of an investigation or prosecution either in the Bailiwick or, with the prior consent of His Majesty's Procureur to such disclosure, elsewhere,
- (m) the disclosure of information to a person or entity responsible for a scheme for compensating depositors, investors, customers or clients (whether in the Bailiwick or elsewhere) -
- (i) if it appears to the BRC or the Commission that the disclosure would enable or assist –
    - (A) the recipient of the information, or
    - (B) the BRC or the Commission, as the case may be,



to perform its functions, and

- (ii) if the recipient has given to the BRC or the Commission, as the case may be, a written undertaking that the information will not be further disclosed without the prior consent of, respectively, the BRC or the Commission,
- (n) the disclosure of information by the BRC or the Commission for the purposes or in the circumstances described in -
- (i) section 21(2) of the Financial Services Commission Law,
  - (ii) section 49 of the Protection of Investors Law,
  - (iii) section 39 of the Regulation of Fiduciaries Law,
  - (iv) section 45 of the Banking Supervision Law,
  - (v) section 70 of the Lending, Credit and Finance Law,
  - (vi) section 80 of the Insurance Business Law,
  - (vii) section 57 of the Insurance Managers and Intermediaries Law, or

- (viii) section 20 of the Enforcement Powers Law, or
- (o) the disclosure of information for the purpose of enabling or assisting -
  - (i) the Registrar of Companies,
  - (ii) the Alderney Registrar,
  - (iii) the Legal Aid Administrator (the office of which was established under section 2 of the Legal Aid (Bailiwick of Guernsey) Law, 2003),
  - (iv) the Office of the Financial Services Ombudsman established by the Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014,
  - (v) the Principal Ombudsman appointed under section 4 of that Law,
  - (vi) the Registrar of Beneficial Ownership of Legal Persons (the office of which was established by section 1 of the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017),
  - (vii) the Registrar within the meaning of the Beneficial Ownership of Legal Persons (Alderney) Law, 2017),

- (viii) the Data Protection Authority established by Part XI of the Data Protection (Bailiwick of Guernsey) Law, 2017, or
- (ix) the Commissioner appointed by the Data Protection Authority under paragraph 5 of Schedule 6 to that Law,

to perform their respective functions.

**Information supplied to BRC or Commission by overseas authority.**

**162.** (1) This section applies, to the exclusion of section 160, to information relating to the business, property or affairs of any person provided to the BRC or the Commission for the purposes of their respective functions, whether under the provisions of this Law or otherwise, by a resolution authority or supervisory authority in a jurisdiction other than the Bailiwick.

(2) Information described in subsection (1) –

- (a) may only be used by the BRC or the Commission, as the case may be, for the purpose for which it was provided by the resolution authority or supervisory authority,
- (b) may only be disclosed by the BRC or the Commission, as the case may be, with the consent of, and for purposes or in circumstances approved by, that authority, and
- (c) may not be disclosed by the BRC or the Commission, as

the case may be, to the person to whom it relates except with the express approval of that authority.

(3) In requesting the consent of a resolution authority or supervisory authority for the purposes of subsection (2)(b), the BRC or the Commission, as the case may be, must provide that authority with -

(a) the name of any person to whom it proposes to disclose the information, and

(b) an accurate description of that person's functions.

(4) Where under this section the BRC or the Commission discloses information described in subsection (1), it may do so only in accordance with any conditions (whether as to the use and disclosure of the information or otherwise) subject to which the consent of the resolution authority or supervisory authority was given.

(5) For the avoidance of doubt, and without limitation, nothing in this section prevents the disclosure of information by the BRC or the Commission -

(a) for the purposes or in the circumstances described in section 161(h), or

(b) in accordance with the provisions of any of the appointed Laws in circumstances where they provide that the disclosure does not contravene any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or

otherwise.

(6) No person who -

(a) receives information described in subsection (1) from the BRC or the Commission, or

(b) obtains any such information directly or indirectly from a person who has so received it,

shall disclose the information except with, and in accordance with the conditions of, the consent of the BRC or, as the case may be, the Commission.

(7) A person who discloses information in contravention of subsection (6) is guilty of an offence.

**Royal Court to take BRC's and Commission's undertakings into account.**

**163.** The Royal Court or any division thereof must, before directing the BRC or the Commission (whether pursuant to the provisions of this Law or otherwise) to disclose to any person any information relating to the business, property or affairs of any person held, received or obtained by it under the provisions of or for the purposes of this Law or the regulatory Laws (whether pursuant to those provisions or otherwise) -

(a) take into account -

(i) any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise to

which the BRC or the Commission, as the case may be, is subject in respect of the information,

- (ii) any undertaking entered into by the BRC or the Commission, as the case may be, in relation to the use, disclosure, safekeeping and return of the information, and
  - (iii) any conditions (whether as to the use and disclosure of the information or otherwise) subject to which the information is held or was received or obtained, and
- (b) where the information has been supplied to the BRC or the Commission by a resolution authority or supervisory authority in a jurisdiction other than the Bailiwick -
- (i) give the BRC or the Commission, as the case may be, a reasonable opportunity to consult that authority with a view to obtaining its consent to the disclosure, and
  - (ii) where such consent is not forthcoming, or is given subject to conditions, take into account that authority's decision and the reasons for it.

## PART XV

### OFFENCES AND PENALTIES

**Penalties.**

**164.** (1) A person guilty of an offence under any provision of this Law is liable –

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding twice level 5 on the uniform scale, or to both,
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both.

(2) In relation to offences tried before the Court of Alderney or the Court of the Seneschal, and for the avoidance of doubt, the penalties stipulated by subsection (1)(a) are applicable notwithstanding the restrictions on the sentencing powers of those courts imposed by section 13 of the Government of Alderney Law, 2004<sup>h</sup> and section 11 of the Reform (Sark) Law, 2008<sup>i</sup>.

**Criminal liability of directors, etc.**

**165.** (1) Where an offence under the provisions of this Law is committed by a company or other legal person and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any of the following persons –

- (a) in the case of a company, any director, secretary or other

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<sup>h</sup> Order in Council No. III of 2005; this enactment has been amended.

<sup>i</sup> Order in Council No. V of 2008; this enactment has been amended.

similar officer thereof,

- (b) in the case of a limited partnership with legal personality, any general partner,
- (c) in the case of a limited liability partnership, any member,
- (d) in the case of a foundation, any foundation official, or
- (e) any person purporting to act in any capacity described in paragraph (a), (b), (c) or (d),

that person as well as the company or other legal person (as the case may be) is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a company or other legal person are managed by its members, subsection (1) applies to a member in connection with that member's functions of management as if that member were a director.

**Criminal proceedings against unincorporated bodies.**

166. (1) Where an offence under the provisions of this Law is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any of the following persons -

- (a) in the case of -
  - (i) a partnership (not being a limited partnership



with legal personality or a limited liability partnership), any partner thereof, but subject to the provisions of subparagraph (ii),

- (ii) a limited partnership without legal personality, any general partner thereof,
- (b) in the case of any other unincorporated body, any director of that body or other officer thereof who is bound to fulfil any duty of which the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or
- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

that person as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where an offence under the provisions of this Law is alleged to have been committed by an unincorporated body, proceedings for the offence shall, without prejudice to subsection (1), be brought in the name of that body and not in the name of any of its partners, officers or members.

(3) A fine imposed on an unincorporated body on its conviction of an offence under the provisions of this Law shall be paid from the funds of that body.

**Defence of due diligence.**

167. In any proceedings for an offence under the provisions of this Law it is

a defence for the accused to prove (for the avoidance of doubt, on a balance of probabilities) that the accused took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by the accused and by any person under the control of the accused.

**Jurisdiction.**

168. Without prejudice to any jurisdiction exercisable apart from this section, proceedings for an offence under the provisions this Law may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the Bailiwick.

PART XVI  
GENERAL PROVISIONS

*Miscellaneous*

**BRC and Commission to have regard to guidance under FSC Law and this Law, etc.**

169. (1) In performing their respective functions under the provisions of this Law -

- (a) the BRC and the Commission must (so far as relevant) -
  - (i) take into account any written guidance of a general character given to the BRC by the Commission under section 5(1) of this Law or, as the case may be, to the Commission by the Committee under section 7(1)(a) of the Financial Services Commission Law, and

- (ii) act in accordance with any written directions of a general character given to the Commission by the Committee under section 7(1)(b) of the Financial Services Commission Law,

concerning the policies to be followed by them respectively in relation to the performance of their functions in the Bailiwick and the manner in which their functions are to be performed,

- (b) the BRC and the Commission may take into account (so far as relevant) -

- (i) any guidance notes or international standards relating to bank resolution and deposit-taking business issued by a body recognised by the BRC or, as the case may be, by the Commission and identified in a code issued under the provisions of this Law or the regulatory Laws,

- (ii) the provisions of the Directive and any jurisprudence of the Court of Justice of the European Union and national courts (including courts of the United Kingdom, Bailiwick of Jersey and Isle of Man) in respect thereof or in respect of the relevant national implementing legislation,

- (iii) the provisions of any rules, codes, guidance,

principles, policies or instructions issued by them respectively under the provisions of this Law or the regulatory Laws,

- (iv) any matter to which they may respectively have regard under the provisions of this Law or the regulatory Laws when performing the function in question, and
  - (v) for the avoidance of doubt, any investigation, prosecution, proceedings, enforcement action, duty, obligation, liability, penalty, sanction (civil, criminal or administrative), injunction, order or other remedy undertaken, imposed or obtained under the provisions of or for the purposes of this Law or the regulatory Laws in respect of any bank, holder of a supervised role or other person or entity, and
- (c) the BRC and the Commission must have regard to the resolution objectives and the objectives of -
- (i) the protection of the public and the reputation of the Bailiwick as a finance centre, and
  - (ii) the reduction of risks to the financial system in the Bailiwick.

(2) The provisions of this section are in addition to and not in derogation from any other provision of this Law or any other enactment or rule of law relating to the functions of the BRC or the Commission or the performance thereof and the matters which they must or may take into account.

**Verification of information and execution of documents.**

170. (1) The BRC and the Commission may require that any information, statement or other document provided to each of them respectively in compliance or purported compliance with any obligation imposed by or under the provisions of this Law shall be verified in such manner as the BRC or, as the case may be, the Commission may reasonably specify.

(2) Without prejudice to any other enactment or rule of law relating to the form, execution and submission of documents, all returns and other documents required by or under the provisions of this Law to be submitted to the BRC or the Commission by a bank shall be signed by the chief executive and chief financial officer of the bank, or their alternates, unless the BRC or, as the case may be, the Commission directs otherwise (whether generally or in any particular case or class or description of case).

(3) Any information, statement or other document which is not verified in accordance with a requirement made under subsection (1) shall be deemed for the purposes of this Law not to have been provided in accordance with the obligation referred to in that subsection and the said obligation shall accordingly be deemed not to have been complied with.

(4) Any return or other document which is not signed in accordance with subsection (2) or a direction of the BRC or, as the case may be, the Commission thereunder shall be deemed for the purposes of this Law not to have been

submitted as required by or under the provisions of this Law, and that requirement shall accordingly be deemed not to have been complied with.

**Service of notices and documents.**

171. (1) Any document other than a summons to be given or served under the provisions of or for the purposes of this Law may be given to or served upon

—

(a) an individual ("A"), by being delivered to A, or by being left at, or sent by post to, A's usual or last known place of abode, or by being transmitted to A's relevant electronic address,

(b) a company or other legal person with a registered office in the Bailiwick, by being left at, or sent by post to, that office, or by being transmitted to its relevant electronic address,

(c) a company or other legal person without a registered office in the Bailiwick, by being left at, or sent by post to

-

(i) its principal or last known principal place of business in the Bailiwick, or

(ii) if there is no such place, its registered office or principal or last known principal place of business elsewhere,

or by being transmitted to its relevant electronic address,

- (d) an unincorporated body -
  - (i) by being given to or served on any partner (not being a limited partner in a limited partnership), member of the committee or other similar governing body, director or other similar officer thereof in accordance with paragraph (a), or
  - (ii) by being left at, or sent by post to -
    - (A) the body's principal or last known principal place of business in the Bailiwick, or
    - (B) if there is no such place, its principal or last known principal place of business elsewhere,

or by being transmitted to its relevant electronic address,

- (e) the Committee or any other committee of the States of Guernsey, by being left at, or sent by post to, its principal office in the Bailiwick, or by being transmitted to its electronic address,

(f) subject to the provisions of section 57 –

(i) the Commission or its Chairman, or

(ii) the BRC or its Chair,

by being left at, or sent by post to, the principal office in the Bailiwick of the Commission or, as the case may be, the BRC,

and in this section –

(i) **"by post"** means by special delivery, recorded or signed for delivery or ordinary letter post,

(ii) **"electronic address"** includes, without limitation, an e-mail address and telecommunications address,

(iii) **"relevant electronic address"** means an electronic address –

(A) with which, in the opinion of the BRC or the Commission, as the case may be, the person concerned has a personal, business or other connection, and

(B) a document transmitted to which is likely to come to the attention of the



person concerned,

(iv) **"transmitted"** means transmitted by electronic communication (that is to say, in electronic form and by electronic means), facsimile transmission or other similar means which produce or enable the production of a document containing the text of the communication, and

(v) **"summons"** includes any document compelling a person's attendance before the court.

(2) If under the provisions of or for the purposes of this Law a person notifies the BRC or the Commission of –

(a) an address for service within the Bailiwick, or

(b) an electronic address at which the service of documents may be effected on that person,

any document other than a summons to be given to or served upon that person by or on behalf of the BRC or the Commission, as the case may be, under those provisions or for those purposes may be given or served by being left at, or sent by post to, that address in the Bailiwick or (as the case may be) by being transmitted to that electronic address.

(3) If service of a document under the provisions of or for the purposes of this Law cannot, after reasonable enquiry, be effected in accordance with this section, the document may be served by being published on two occasions in La

Gazette Officielle.

(4) Subsections (1), (2) and (3) are without prejudice to any other lawful method of service.

(5) Notwithstanding the provisions of this section and of any other rule of law in relation to the service of documents, no document to be given to or served on –

- (a) the Committee or any other committee of the States of Guernsey,
- (b) the Commission or its Chairman, or
- (c) the BRC or its Chair,

under the provisions of or for the purposes of this Law shall be deemed to have been given or served until it is received.

(6) If a person upon whom a document is to be served under the provisions of or for the purposes of this Law is a minor or person under guardianship, the document shall be served on his or her guardian; and if there is no guardian, the Commission or, as the case may be, the BRC (or, with leave of the court, any other person) may apply to the appropriate Court for the appointment of a person to act as guardian under those provisions or for those purposes; and in this subsection the "**appropriate Court**" means –

- (a) the Court of Alderney, where the person in respect of whom the guardian is to be appointed is within the

jurisdiction of that Court,

(b) the Court of the Seneschal, where the person in respect of whom the guardian is to be appointed is within the jurisdiction of that Court,

(c) the Royal Court, in any other case.

(7) A document sent by post shall, unless the contrary is shown, be deemed for the purposes of this Law to have been received –

(a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting,

(b) in the case of a document sent elsewhere, on the seventh day after the day of posting,

excluding in each case any day which is not a business day.

(8) Service of any document sent by post shall be proved by showing the date of posting, the address thereon and the fact of prepayment.

(9) A document shall be deemed for the purposes of this Law to have been –

(a) addressed to the person concerned, and

(b) delivered to any person, or left at or transmitted to a

place or address,

if the person effecting service certifies that it was addressed, and delivered, left or transmitted (as the case may be), in accordance with the provisions of this section, and the document shall, unless the contrary is shown, be deemed for those purposes to have been received when it was delivered, left or transmitted (as the case may be).

**Documents to be submitted in electronic form and by electronic means.**

172. (1) Where a document is required or permitted to be submitted to the BRC or the Commission by or under the provisions of or for the purposes of this Law, and except to the extent that express provision to the contrary is made by or under the provisions of this Law, the document -

- (a) shall be in such electronic form, and shall be submitted by such electronic means and to such electronic address, as the BRC or, as the case may be, the Commission may require, whether in any particular case or class of cases or generally, or
- (b) shall be in such non-electronic form, and shall be submitted by such non-electronic means, as the Commission or, as the case may be, the BRC may in its absolute discretion require in any particular case or class of case.

(2) Where a document is required by or under the provisions of or for the purposes of this Law to be in such form as the BRC or the Commission may require, the BRC or, as the case may be, the Commission may, in its absolute discretion and without limitation, require the document to be in such electronic form or non-

electronic form as the BRC or, as the case may be, the Commission may require, whether in any particular case or class of cases or generally.

(3) This section applies, without limitation, to any, and to anything accompanying any, application, notice, return, validation, accounts, report, statement, consent, declaration, questionnaire, computation, plan or signature.

(4) This section is in addition to and not in derogation from the provisions of the Electronic Transactions (Guernsey) Law, 2000<sup>j</sup>, the Electronic Transactions (Alderney) Law, 2001<sup>k</sup> and the Electronic Transactions (Sark) Law, 2001<sup>l</sup>.

**Evidence.**

173. (1) In any proceedings, a certificate signed on behalf of the BRC or the Commission certifying –

- (a) that a particular person is or is not a bank or was or was not a bank at a particular time,
- (b) the date on which a particular person obtained or ceased to hold a banking licence or became or ceased to be a bank,
- (c) the terms of any conditions imposed in respect of a particular person's banking licence,

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<sup>j</sup> Order in Council No. VIII of 2000; this enactment has been amended.

<sup>k</sup> Order in Council No. XXVI of 2001; this enactment has been amended.

<sup>l</sup> Order in Council No. X of 2001; this enactment has been amended.

is admissible in evidence and is evidence of the matters stated therein.

(2) A certificate purporting to be signed as mentioned in subsection (1) shall be deemed to have been duly signed unless the contrary is shown.

*Liability of States, BRC, Commission, etc*

**Exclusion of liability.**

**174.** (1) No liability shall be incurred by –

- (a) the States of Guernsey, the States of Alderney or the Chief Pleas of Sark or by any of their respective committees,
- (b) the BRC,
- (c) the Commission,
- (d) His Majesty's Greffier, His Majesty's Sheriff, the Registrar of Companies, the Alderney Registrar, the Alderney Greffier or the Prévôt of Sark,
- (e) any member, officer, employee or servant of any of the aforesaid,
- (f) any person to whom the BRC or the Director thereof has, under paragraph 13 or 14 of Schedule 1, delegated any function,

- (g) any other person or entity specified by Ordinance of the States,

in respect of anything done or omitted to be done after the commencement of this Law in the discharge or purported discharge of any function conferred by or under the provisions of this Law unless the thing was done or omitted to be done in bad faith.

(2) Subsection (1) does not prevent an award of damages in respect of the act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000<sup>m</sup> (unlawful for public authority to act in way incompatible with Convention right).

- (3) The States may by Ordinance amend this section.

**BRC not to be treated as director of bank.**

175. The BRC shall not, by virtue of any of the provisions of this Law or the performance of its functions thereunder, be treated as or deemed to be a director (shadow or de facto) of a bank.

*Ordinances, regulations and rules, etc*

**Ordinances, regulations, rules, codes and guidance, etc - general.**

176. (1) The States may by Ordinance –

- (a) amend Part I (the BRC), Part XII (bank winding up

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<sup>m</sup> Order in Council No. XIV of 2000; this enactment has been amended.

procedure), Part XIII (appeals, etc) and sections 153 to 158 where it appears to the States to be necessary or expedient to do so for the purpose of -

- (i) enabling the Commission or the BRC more effectively to perform any of its functions,
  - (ii) protecting or enhancing the reputation as a finance centre or economic interests of the Bailiwick,
  - (iii) the achievement of the resolution objectives,
  - (vi) discharging any international obligation to which the Bailiwick is subject, or
  - (vii) assisting, in the interests of the public or otherwise, any overseas supervisory authority or overseas resolution authority, and
- (b) make such provision as they think fit –
- (i) for the purpose of carrying the provisions of this Law into effect,
  - (ii) in respect of anything in relation to which provision may be made under this Law by Ordinance of the States, and



- (iii) without prejudice to the provisions of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994<sup>n</sup>, for the purpose of the implementation (within the meaning of that Law) in the Bailiwick or any part thereof of the Directive.

(2) Any Ordinance, regulation, rule, code, guidance, principles, policies or instructions under the provisions of this Law –

- (a) may be amended or repealed by a subsequent Ordinance, regulation, rule or code, or by subsequent guidance, principles, policies or instructions, as the case may be, hereunder,
- (b) may contain such consequential, incidental, supplementary, savings, transitional and other ancillary provision as may appear to be necessary or expedient, including (without limitation), in the case of an Ordinance or regulation -
  - (i) provision as to the creation, trial (summarily or on indictment) and punishment of offences in respect of contraventions of the Ordinance or regulation and as to the creation of new duties, obligations, liabilities, remedies, penalties,

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<sup>n</sup> Order in Council No. III of 1994; this enactment has been amended.

sanctions and other consequences (but subject to the provisions of subsection (3)),

- (ii) provision amending, or applying exceptions, adaptations and modifications to, any of the provisions of this Law or any other enactment,
- (iii) provision repealing, replacing, amending, extending, adapting, modifying or disapplying any rule of customary or common law.

(3) The power conferred by subsection (2)(b)(i) and by any other provision of this Law to make provision as to the creation and punishment of offences does not include power –

- (a) to provide for offences to be triable only on indictment,
- (b) to authorise the imposition, on summary conviction of an offence, of a term of imprisonment or a fine exceeding the limits of jurisdiction for the time being imposed on the Magistrate's Court by section 9 of the Magistrate's Court (Guernsey) Law, 2008, or
- (c) to authorise the imposition, on conviction on indictment of any offence, of a term of imprisonment exceeding two years.

(4) The States may by Ordinance empower -

- (a) the BRC, the Commission or the Committee (or such other committee of the States of Guernsey, States of Alderney or Chief Pleas of Sark as may be specified by the Ordinance) to make regulations, and
- (b) the BRC, the Commission, any committee of the States of Guernsey, States of Alderney or Chief Pleas of Sark, and any other body (including, without limitation, any court in Guernsey, Alderney or Sark) or office holder, to make or issue rules, orders, rules of court, codes, guidance, principles, policies and instructions,

in respect of anything in relation to which provision may be made under this Law by Ordinance of the States, except (subject to the provisions of subsection (2)(b)) provision amending this Law.

(5) Any power conferred by the provisions of this Law to make any Ordinance, regulation, rule, code, guidance, principles, policies or instructions may be exercised –

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
- (b) so as to make, as respects the cases in relation to which it is exercised –
  - (i) the full provision to which the power extends, or any lesser provision (whether by way of

exception or otherwise),

- (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
- (iii) any such provision either unconditionally or subject to any prescribed conditions.

(6) The Committee (and any other committee of the States of Guernsey) shall, before recommending the States to agree to make an Ordinance under the provisions of this Law (other than an Ordinance under section 185), consult

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- (a) in the case of an Ordinance having effect in Alderney, the Policy and Finance Committee of the States of Alderney, and
- (b) in the case of an Ordinance having effect in Sark, the Policy and Finance Committee of the Chief Pleas of Sark,

in relation to the terms of the proposed Ordinance; but a failure to comply with this subsection does not invalidate any Ordinance made under the provisions of this Law.

(7) An Ordinance made under the provisions of this Law (other than an Ordinance under section 185) ceases to have effect –

- (a) in Alderney if, within the period of four months immediately following the approval date, the States of Alderney resolve to disapprove its application to Alderney, and
- (b) in Sark if, at the first or second meeting of the Chief Pleas of Sark following the approval date, the Chief Pleas resolve to disapprove its application to Sark.

(8) If the States of Alderney or the Chief Pleas of Sark resolve to disapprove the application of an Ordinance in accordance with the provisions of subsection (7), the Ordinance ceases to have effect in Alderney or (as the case may be) in Sark, but without prejudice to –

- (a) anything done under the Ordinance in Alderney or (as the case may be) in Sark, or
- (b) the making of a new Ordinance having effect in Alderney or (as the case may be) in Sark.

(9) In this section -

- (a) "**approval date**", in relation to an Ordinance, means the date of its approval by the States of Deliberation, and
- (b) "**enactment**" means any Law, Ordinance or subordinate legislation enacted (in each case) in the Bailiwick.

(10) The provisions of this section are without prejudice to any other

provision of this Law conferring power to enact Ordinances, regulations, rules, codes, guidance, principles, policies or instructions (and vice versa).

(11) Rules, codes, guidance, principles, policies and instructions under the provisions of this Law shall be made by an instrument in writing.

**Regulations : consultation with Committees and Commission and laying before the States.**

177. Regulations made under the provisions of this Law -

- (a) where made by the BRC or the Commission, shall be made after consultation with the Committee, the Policy and Finance Committee of the States of Alderney and the Policy and Finance Committee of the Chief Pleas of Sark,
- (b) where made by the Committee or any other committee of the States of Guernsey, shall be made after consultation with the BRC and the Commission and with the agreement of the Policy and Finance Committee of the States of Alderney and the Policy and Finance Committee of the Chief Pleas of Sark,
- (c) whether made by the BRC or the Commission or by the Committee or any other committee of the States of Guernsey, shall be laid before a meeting of the States as soon as possible after being made; and if at that or the next meeting the States resolve that the regulations be annulled, the regulations shall cease to have effect but

without prejudice to anything done under them or to the making of new regulations.

**Publication of regulations, rules, codes and guidance, etc.**

178. (1) The BRC or, as the case may be, the Commission shall publish, in such manner as it considers best calculated to bring them to the attention of persons likely to be affected by them and the public in general, on such terms and conditions as it considers appropriate and subject to such charges (if any) as it may decide to levy to cover the costs of publication -

- (a) any regulations, rules, codes, guidance, principles and instructions made or issued by the BRC or, as the case may be, by the Commission in the performance of its functions under the provisions of this Law, and
- (b) any policies issued by the BRC or, as the case may be, by the Commission in respect of the performance of its functions.

(2) Without prejudice to the provisions of subsection (1), the BRC or, as the case may be, the Commission may charge such fee -

- (a) as it may prescribe by regulations, or
- (b) if no such fee is so prescribed, as it reasonably thinks fit,

for providing a person with a copy of any regulations, rules, codes, guidance, principles, instructions and policies described in paragraph (a) or (b) of that subsection.

**Making and effect of contravention of rules.**

179. (1) Before making any rules under the provisions of this Law the BRC or, as the case may be, the Commission shall, unless it considers that the delay involved would be prejudicial to the interests of the public or the reputation of the Bailiwick as a finance centre, publish proposals for the rules -

- (a) in such manner as it considers best calculated to bring them to the attention of persons likely to be affected by them and the public in general, and
- (b) for such period as it may determine,

and shall consider any representations made to it concerning those proposals.

(2) Rules of the BRC or of the Commission under the provisions of this Law shall specify the provisions under which they are made.

(3) Without prejudice to any other provision of this Law or any other enactment as to the consequences of any such contravention, a contravention by any person of any rule of the BRC or of the Commission under the provisions of this Law does not of itself render that person liable to any criminal proceedings, but –

- (a) the BRC or, as the case may be, the Commission, in the performance of its functions, may take the rule and the contravention thereof into account in determining whether and in what manner to perform those functions, and



- (b) in any legal proceedings (criminal or otherwise), whether or not under the provisions of or for the purposes of this Law, the rule is admissible in evidence, and if the rule appears to the court or other tribunal before which the proceedings are being conducted to be relevant to any question arising in the proceedings then the rule may be taken into account in determining that question.

**Regulations and rules are statutory instruments.**

180. For the avoidance of doubt, regulations and rules under the provisions of this Law are statutory instruments within the meaning of the Guernsey Statutory Instruments (Registration) Ordinance, 1949<sup>o</sup>, the provisions of which shall apply accordingly.

**Power to adapt rules, codes and guidance, etc, under this Law.**

181. (1) Subject to the provisions of subsection (2), the BRC or the Commission, as the case may be, may, of its own motion or on the application of a bank or any other person subject to the provisions of the requirements in question, by notice in writing served on the bank or that person, adapt the requirements of any rules, code, guidance, principles, policies or instructions issued by it under the provisions of this Law to the circumstances of that bank or person or to the circumstances of any particular business carried on by the bank or that person.

(2) Neither the BRC nor the Commission, as the case may be, shall exercise the powers conferred by subsection (1) in any case unless it appears to it that

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<sup>o</sup> Recueil d'Ordonnances Tome X, p. 16.

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- (a) compliance with the requirements in question would be unduly burdensome for the bank or person in question having regard to the resolution objectives, and
- (b) the exercise of those powers will not result in any undue risk to the resolution objectives.

(3) The powers conferred by subsection (1) may be exercised unconditionally or subject to conditions.

(4) In this section "**adaptations**" includes exceptions and modifications (and related expressions shall be construed accordingly).

*Interpretation, repeals, commencement, etc*

### **Interpretation.**

182. (1) In this Law, unless the contrary intention appears, the words and expressions listed below have the following meanings and shall be construed as follows (and related expressions shall be construed accordingly) –

"**Additional Tier 1 instruments**" has the meaning given by the Directive,

"**Additional Tier 1 or Tier 2 capital**" has the meaning given by the Directive,

"**administration manager**" means a person appointed by the Royal

Court under the provisions of section 81(2) of the Enforcement Powers Law,

**"affected creditor"** means a creditor whose claim relates to a liability that is reduced or converted to shares by the exercise of the write down or conversion power pursuant to the application of the bail-in tool,

**"Alderney company"** means a company the memorandum and articles of which are registered in the Register of Companies within the meaning of section 163(1) of the Companies (A) Law<sup>P</sup>,

**"Alderney Greffier"** means the person appointed to the office of Greffier under section 20 of the Government of Alderney Law, 2004<sup>Q</sup>,

**"Alderney Registrar"** means the Alderney Greffier, performing the functions of Registrar under the Companies (A) Law,

**"annual report"** : see section 8(1),

**"appointed Laws"** means -

- (a) the Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law, 1991,
- (b) the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999,

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<sup>P</sup> Order in Council No. XXXIV of 1994; this enactment has been amended.

<sup>Q</sup> Order in Council No. III of 2005; this enactment has been amended.

- (c) the Drug Trafficking (Bailiwick of Guernsey) Law, 2000,
- (d) the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002,
- (e) the Disclosure (Bailiwick of Guernsey) Law, 2007, or
- (f) any other enactment prescribed for the purposes of this Law by regulations of the Commission,

**"appropriate Court"** : see section 171(6),

**"approved supervised role"** means a role or position which is an approved supervised role for the purposes of the Banking Supervision Law by virtue of section 12(1) of that Law,

**"asset management vehicle"** : see section 91,

**"asset separation tool"** : see section 91,

**"assets, rights or liabilities"** includes, for the avoidance of doubt and without limitation, debt instruments and other financial instruments,

**"auditor"** means –

- (a) a person who is qualified for appointment as an auditor pursuant to section 260 (as read in conjunction with any Ordinance under section 533) of the Companies (G)

Law<sup>r</sup> and who is, where required by or under the provisions of the Banking Supervision Law, approved by the Commission to audit the accounts of licensed institutions,

- (b) any other person who performs or has performed the functions of an auditor of a licensed institution,

**"bail-in tool"** means the mechanism described in section 97(1) for recapitalising a bank that meets the resolution conditions or for effecting the exercise of the write down or conversion power,

**"Bailiff"** means the Bailiff, Deputy-Bailiff, Judge of the Royal Court, Lieutenant-Bailiff or Juge Délégué,

**"Bailiwick"** means the Bailiwick of Guernsey,

**"bank"** means –

- (a) a licensed institution, or
- (b) a Guernsey company or an Alderney company which is a holding company or subsidiary, or other member of the group, of a licensed institution,

to which the provisions of this Law apply by virtue of section 16,

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<sup>r</sup> Order in Council No. VIII of 2008; this enactment has been amended.

**"bank in resolution"** means a bank in respect of which resolution action is being taken,

**"bank liquidator"** means the liquidator appointed by the Court under a bank winding up order,

**"bank winding up"** means the winding up of a bank by virtue of a winding up order under the provisions of Part XII,

**"bank winding up order"** means an order for the winding up of a bank under the provisions of Part XII,

**"banking deposit compensation scheme"** means the Guernsey Banking Deposit Compensation Scheme established by the BDCS Ordinance,

**"banking licence"** means a banking licence granted by the Commission under the provisions of section 6 of the Banking Supervision Law,

**"Banking Supervision Law"** means the Banking Supervision (Bailiwick of Guernsey) Law, 2020<sup>s</sup>,

**"BDCS Ordinance"** means the Banking Deposit Compensation Scheme (Bailiwick of Guernsey) Ordinance, 2008<sup>t</sup>,

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<sup>s</sup> Order in Council No. XXI of 2020; this enactment has been amended.

<sup>t</sup> Ordinance No. XLVIII of 2008; this enactment has been amended.

**"board of directors"** of a bank or other body includes the committee or other similar governing body thereof,

**"body"** includes a company, any other legal person and an unincorporated body,

**"branch"** means a place of business which forms part of a bank and which carries out directly all or some of the transactions inherent in the business of that bank but is not a legal person separate from the bank,

**"BRC"** means the Guernsey Bank Resolution Committee established under Part I,

**"bridge bank"** : see section 79,

**"business day"** means any day other than -

- (a) a Saturday, a Sunday, Christmas Day and Good Friday,
- (b) a day appointed as a public holiday -
  - (i) in relation to the Bailiwick excluding the islands of Alderney and Sark, by Ordinance of the States of Deliberation under section 1(1) of the Bills of Exchange (Guernsey) Law, 1958<sup>u</sup>,

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<sup>u</sup> Ordres en Conseil Vol. XVII, p. 384; this enactment has been amended.

(ii) in relation to the island of Alderney, by Ordinance of the States of Alderney under the said section 1(1) or under paragraph (o) of Schedule 2 to the Government of Alderney Law, 2004<sup>v</sup>,

(iii) in relation to the island of Sark, by Ordinance of the Chief Pleas of Sark under the said section 1(1),

**"chief executive"**, in relation to a body, means a person who, alone or jointly with other persons, is responsible under the immediate authority of the directors or partners (or general partners, in the case of a limited partnership, or members, in the case of a limited liability partnership) for the conduct of the business of the body and, in relation to a body whose principal place of business is outside the Bailiwick, includes a person who, alone or jointly with other persons, is responsible for the conduct of its business in the Bailiwick,

**"client assets"** means assets which a licensed institution has undertaken to hold for a client (whether or not on trust, and whether or not the undertaking has been complied with),

**"Commission"** means the Guernsey Financial Services Commission established by the Financial Services Commission Law,

the **"Committee"** means the States of Guernsey Policy and Resources

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<sup>v</sup> Order in Council No. III of 2005; this enactment has been amended.



Committee or such other committee as the States may specify by Ordinance,

**"committee"** of the States of Guernsey, States of Alderney or Chief Pleas of Sark means any committee, council, department, authority, board or like body thereof, however called,

**"Common Equity Tier 1 capital"** has the meaning given by the Directive,

**"Common Equity Tier 1 capital ratio"** has the meaning given by the Directive,

**"Common Equity Tier 1 instruments"** has the meaning given by the Directive,

**"Common Equity Tier 1 items"** has the meaning given by the Directive,

**"Companies (A) Law"** means the Companies (Alderney) Law, 1994<sup>w</sup>,

**"Companies (G) Law"** means the Companies (Guernsey) Law, 2008<sup>x</sup>,

**"company"** means a body corporate, of whatever description, incorporated with or without limited liability in any part of the world,

**"contract of employment"** means –

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<sup>w</sup> Order in Council No. XXXIV of 1994; this enactment has been amended.

<sup>x</sup> Order in Council No. VIII of 2008; this enactment has been amended.

- (a) a contract of service or apprenticeship, or
- (b) a contract for services or otherwise personally to execute any work or labour,

whether express or implied and whether written or oral,

**"contravention"** includes failure to comply,

**"core business lines"** means business lines and associated services which represent material sources of revenue, profit or franchise value for a bank or a bank's group,

**"Court of Appeal"** means the Court of Appeal established under the Court of Appeal (Guernsey) Law, 1961<sup>y</sup>,

**"Court of the Seneschal"** means the Court of the Seneschal of Sark,

**"covered bond"** means a bond issued by a bank where sums deriving from the issue of those bonds must be invested in assets which, during the whole period of validity of the bonds, are capable of covering claims attaching to the bonds and which, in the event of failure of the bank, would be used on a priority basis for the reimbursement of the principal and payment of the accrued interest,

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<sup>y</sup> Ordres en Conseil Vol. XVIII, p. 315; this enactment has been amended.

**"covered deposit"** means the part of an eligible deposit, or the part of a deposit that would be an eligible deposit of a bank incorporated in the Bailiwick if it was not held in a bank account in a branch outside the Bailiwick, that does not exceed the maximum amount of compensation payable to any depositor under the banking deposit compensation scheme or under the laws of the bank's home jurisdiction or relevant jurisdiction up to a maximum that corresponds to the maximum applicable under the banking deposit compensation scheme,

**"crisis management measure"** means –

- (a) the exercise of a stabilisation power in relation to a bank by the BRC,
- (b) the recognition of a foreign resolution action by the BRC,
- (c) the exercise of a stabilisation power in support of a foreign resolution action by the BRC,

**"crisis prevention measure"** means –

- (a) the imposition by the BRC or Commission of a requirement to take specified measures with respect to a bank's recovery plan,
- (b) the imposition by the BRC or Commission of a requirement to take measures to remove impediments to recoverability of a bank,

- (c) the imposition of an early intervention measure described in section 39,
- (d) the appointment of a special manager under section 54, or
- (e) the exercise of the write down or conversion power,

**"critical functions"** means activities, services or operations the discontinuance of which is likely to lead to -

- (a) the disruption of services that are essential to the real economy of the Bailiwick, or
- (b) the disruption of financial stability due to the size, market share, external and internal interconnectedness, complexity or cross-border activities of a bank or a bank's group,

with particular regard to the substitutability of those activities, services or operations,

**"debt instruments"** means bonds and other forms of transferable debt, instruments creating or acknowledging debt, and instruments giving rights to acquire debt instruments,

**"default event provision"** : see section 123(3),

**"definitive valuation"** : see section 60,

**"deposit"** : see section 2 of the Banking Supervision Law,

**"deposit-taking business"** : see section 3 of the Banking Supervision Law,

**"determined"**, in relation to an appeal, means that the appeal has been finally disposed of or withdrawn,

**"difference of treatment valuation"** : see section 63,

**"Directive"** means Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190), as from time to time amended, re-enacted (with or without modification), extended or applied,

**"director"**, in relation to a body, includes any person who occupies the position of or fulfils the role of director, by whatever name called, and also includes the chief executive and any member of the committee or other similar governing body,

**"Director"**, in relation to the BRC, means the person appointed as Director of the BRC under paragraph 12 of Schedule 1,

**"documents"** includes information stored or recorded in any form (including, without limitation, in electronic form) and -

(a) in relation to information stored or recorded otherwise than in legible form, references to its production, howsoever expressed, include (without limitation) references to the production of a copy of the information in a form -

(i) in which it can be taken away, and

(ii) in which it is visible and legible or from which it can readily be produced in a visible and legible form,

(b) without prejudice to paragraph (a), references to the production of documents, howsoever expressed, include (without limitation) references to the production of a copy thereof in the English language:

Provided always that the Committee may by regulation amend the definition of "documents",

**"domestic systemically important bank"** (or **"D-SIB"**) means a bank -

(a) the impact of which, in the event of distress or failure, could cause significant disruption to the financial system in the Bailiwick, and

(b) which has been determined to be a D-SIB by the Commission, after consultation with the BRC, having regard to all relevant factors including, without limitation –

(i) size,

(ii) interconnectedness,

(iii) substitutability and the jurisdiction's financial institution infrastructure (including considerations related to the concentrated nature of the banking sector), and

(iv) complexity (including the additional complexities from cross-border activity,

**"early intervention measures"** : see section 39,

**"electronic address"** : see section 171(1)(ii),

**"electronic form"**, in relation to the electronic storage or recording of information or documents, includes storage or recording by means of any form of information storage technology,

**"electronic means"**, in relation to the sending of a document, includes any technology by which the document is -

(a) sent and received at its destination by means of

electronic equipment for the processing (which expression includes, without limitation, digital compression) or storage of data, and

- (b) entirely transmitted and received by wire, by radio or by electrical, magnetic, wireless, optical, digital or electromagnetic means:

Provided always that the Committee may by regulation amend the definitions of "electronic address", "electronic form" and "electronic means",

**"eligible deposit"** means a qualifying deposit within the meaning of the BDCS Ordinance,

**"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 that are not excluded from the exercise of the write down or conversion power under section 99(2),

**"employee"** means an individual who has entered into or who works under (or, where the employment has ceased, who worked under) a contract of employment,

**"enactment"** includes any Law, Ordinance and subordinate legislation,

**"Enforcement Powers Law"** means the Financial Services Business



(Enforcement Powers) (Bailiwick of Guernsey) Law, 2020<sup>z</sup>,

**"entity"** includes a scheme, trust, structure, arrangement and cell of a protected cell company,

**"equity share capital"** means, in relation to a company limited by shares, its issued share capital excluding any part thereof which, as respects neither dividends nor capital, carries any right to participate beyond a specified amount in a distribution,

**"exercise"**, or **"control the exercise of"** voting power : for the purposes of this Law a person becomes entitled to exercise or control the exercise of voting power where that person, by any means whatsoever -

- (a) becomes entitled to do so as a member of a body, or
- (b) acquires any interest which may entitle that person to be a member of, or otherwise to exercise or control the exercise of voting power of, that body,

**"extraordinary public financial support"** means financial support provided by any public authority in the Bailiwick in order to preserve or restore the viability, liquidity or solvency of a bank,

**"failing or likely to fail"**, in respect of a bank : see section 44,

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<sup>z</sup> Order in Council No. XVII of 2020; this enactment has been amended.

**"Financial Services Commission Law"** means the Financial Services Commission (Bailiwick of Guernsey) Law, 1987<sup>aa</sup>,

**"foreign bank"** means a bank the head office of which is established in a jurisdiction other than the Bailiwick,

**"foreign resolution action"** means an action under the law of a jurisdiction other than the Bailiwick to manage the failure or likely failure of a foreign bank that is comparable, in terms of objectives and anticipated results, to resolution action under this Law,

**"former bank"** means –

- (a) an institution which –
  - (i) does not hold and is not deemed to hold a banking licence under the Banking Supervision Law, but
  - (ii) has previously held or been deemed to hold –
    - (A) such a licence, or
    - (B) a banking licence under the Banking Supervision (Bailiwick of Guernsey)

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<sup>aa</sup> Ordres en Conseil Vol. XXX, p. 243; the enactment has been amended.

Law, 1994<sup>bb</sup>, or

- (b) a Guernsey company or an Alderney company which is not, but which has previously been, a holding company or subsidiary, or other member of the group, of a licensed institution,

**"foundation"** means -

- (a) a Guernsey foundation, or
- (b) an equivalent or similar body created or established under the laws of a jurisdiction other than the Bailiwick (and however named),

**"foundation official"** means -

- (a) in relation to a Guernsey foundation, a foundation official within the meaning of the Foundations (Guernsey) Law, 2012<sup>cc</sup>, and
- (b) in relation to an equivalent or similar body created or established under the laws of a jurisdiction other than the Bailiwick, a person with functions corresponding to those of a foundation official described in paragraph (a),

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<sup>bb</sup> Ordres en Conseil Vol. XXXV(1), p. 271; this enactment has been repealed.

<sup>cc</sup> Order in Council No. I of 2013; this enactment has been amended.

**"functions"** includes duties, powers and privileges,

**"functions"** of the Commission means its general functions and statutory functions within the meaning of the Financial Services Commission Law,

**"Fund"** means the Guernsey Bank Resolution Fund established under section 37,

**"general partner"** means -

- (a) in relation to a Guernsey limited partnership, a general partner within the meaning of the Limited Partnerships (Guernsey) Law, 1995<sup>dd</sup>, and
- (b) in relation to a limited partnership falling within paragraph (b) of the definition of **"limited partnership"**, a person whose liability for, and functions in relation to, the partnership correspond to those of a general partner described in paragraph (a),

**"general principles of resolution"** : see section 47,

**"group"**, in relation to a company, means that company, any other company which is its holding company or subsidiary and any other company

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<sup>dd</sup> Order in Council No. XII of 1995; this enactment has been amended.

which is a subsidiary of that holding company,

**"group entity"** means a body that is part of a group,

**"Guernsey Banking Deposit Compensation Board"** means the Board of that name appointed under section 3 of the BDCS Ordinance,

**"Guernsey company"** means a company registered in the Register of Companies within the meaning of section 496 of the Companies (G) Law<sup>ee</sup>,

**"Guernsey foundation"** means a foundation established under the Foundations (Guernsey) Law, 2012,

**"Guernsey limited liability partnership"** means a limited liability partnership registered under the Limited Liability Partnerships (Guernsey) Law, 2013<sup>ff</sup>,

**"Guernsey limited partnership"** means a limited partnership which is registered as a limited partnership, and in respect of which there is a valid certificate of registration, under the Limited Partnerships (Guernsey) Law, 1995 (whether with or without legal personality),

**"His Majesty's Procureur"** includes His Majesty's Comptroller,

**"holding company"** : see Schedule 2,

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<sup>ee</sup> Order in Council No. VIII of 2008; this enactment has been amended.

<sup>ff</sup> Order in Council No. VI of 2014; this enactment has been amended.

**"home jurisdiction"**, in relation to a bank or other body, means the jurisdiction in which the bank or other body is incorporated,

**"home resolution authority"**, in relation to a bank or other body, means the resolution authority in the home jurisdiction of the bank or other body,

**"home supervisory authority"**, in relation to a bank or other body, means the supervisory authority in the home jurisdiction of the bank or other body,

**"Income Tax Law"** means the Income Tax (Guernsey) Law, 1975<sup>88</sup>,

**"independence"** of a valuer : see section 65,

**"information"** includes, for the avoidance of doubt, a signature,

**"institution"** means a body corporate, of whatever description, incorporated with or without limited liability in any part of the world,

**"instruments of ownership"** means shares, other instruments that confer ownership, instruments that are convertible into or give the right to acquire shares or other instruments of ownership, and instruments representing interests in shares or other instruments,

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<sup>88</sup> Ordres en Conseil Vol. XXV, p. 124; this enactment has been amended.

**"Insurance Business Law"** means the Insurance Business (Bailiwick of Guernsey) Law, 2002,

**"Insurance Managers and Intermediaries Law"** means the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002,

**"international obligations notice"** means a notice served on the BRC under section 126,

**"jurisdiction"** includes any country, territory or other place,

**"Lending, Credit and Finance Law"** means the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022<sup>hh</sup>,

**"licensed institution"** means an institution which holds or which is deemed to hold a banking licence,

**"limited liability partnership"** means -

- (a) a Guernsey limited liability partnership, or
- (b) an entity formed under the laws of a jurisdiction other than Guernsey, being an entity corresponding to a Guernsey limited liability partnership,

**"limited partner"** means -

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<sup>hh</sup> Order in Council No. XIX of 2022 ; this enactment has been amended.

- (a) in relation to a Guernsey limited partnership, a limited partner within the meaning of the Limited Partnerships (Guernsey) Law, 1995<sup>ii</sup>, and
- (b) in relation to a limited partnership falling within paragraph (b) of the definition of "**limited partnership**", a person described in paragraph (b)(ii) of that definition,

"**limited partnership**" means –

- (a) a Guernsey limited partnership, or
- (b) an arrangement entered into under the laws of a jurisdiction other than Guernsey between two or more persons, under which –
  - (i) one or more of them is, or are jointly and severally, liable without limitation for all debts and obligations to third parties incurred pursuant to the arrangement, and
  - (ii) the others (referred to in this Law as "**limited partners**") have, by whatever means, contributed or agreed to contribute specified amounts pursuant to the arrangement and are

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<sup>ii</sup> Order in Council No. XII of 1995; this enactment has been amended.



not liable for those debts and obligations (unless they participate in controlling the business or are otherwise subjected to a greater liability by those laws in specified circumstances) beyond the amount contributed or agreed to be contributed,

whether with or without legal personality,

**"liquidator"** includes any person conducting a dissolution or winding up and a receiver, administrator and administration manager,

**"management"**, in relation to a bank, includes, individually and collectively -

- (a) the directors and senior managers, and
- (b) if applicable, former directors and former senior managers,

**"mandatory reduction instrument"** : see section 119,

**"member"**, in respect of -

- (a) a Guernsey company, has the same meaning as in the Companies (G) Law,
- (b) an Alderney company, has the same meaning as in the Companies (A) Law, and

(c) a Guernsey limited liability partnership, has the meaning given by section 114(1) of the Limited Liability Partnerships (Guernsey) Law, 2013,

**"member"**, in respect of the BRC, means a member of the BRC, and includes the Chair,

**"minimum criteria for licensing"** means the minimum criteria as to integrity and skill, fitness and propriety, and other matters, specified in the provisions of Schedule 2 to the Banking Supervision Law,

**"MREL"** : see section 34,

**"netting arrangement"** means an arrangement under which a number of claims or obligations can be converted into a single net claim, including close-out netting arrangements under which, on the occurrence of an enforcement event (however or wherever defined) the obligations of the parties are accelerated so as to become immediately due or are terminated, and in either case are converted into or replaced by a single net claim, and **"netting right"** shall be construed accordingly,

**"notified supervised role"** means a role or position which is a notified supervised role for the purposes of the Banking Supervision Law by virtue of section 12(3) of that Law,

**"officer"**, in relation to a company, includes a director, liquidator, manager and secretary thereof,

**"officer of police"** means a member of the salaried police force of the

Island of Guernsey, any officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 and –

(a) in relation to Guernsey, Herm and Jethou, and within the limits of his or her jurisdiction, a member of the special constabulary of the Island of Guernsey,

(b) in relation to Alderney -

(i) a member of any police force which may be established by the States of Alderney, and

(ii) within the limits of his or her jurisdiction, a special constable appointed under section 47 of the Government of Alderney Law, 2004<sup>jj</sup>,

(c) in relation to Sark -

(i) the Constable, an Assistant Constable and the Vingtenier, and

(ii) within the limits of his or her jurisdiction, a special constable appointed under section 54 of the Reform (Sark) Law, 2008,

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<sup>jj</sup> Order in Council No. III of 2005; this enactment has been amended.

**"ordinary member"**, in respect of the BRC, means a member of the BRC other than the Chair,

**"overseas resolution authority"** means a resolution authority in a jurisdiction other than the Bailiwick,

**"overseas supervisory authority"** means a supervisory authority in a jurisdiction other than the Bailiwick,

**"own funds"** has the meaning given by the Directive,

**"parent"**, in relation to a bank, means the body that wholly owns the bank,

**"partner"** has the same meaning as in the Partnership (Guernsey) Law, 1995<sup>kk</sup>, and includes a general partner and a limited partner of a limited partnership,

**"partnership"** : see section 1 of the Partnership (Guernsey) Law, 1995,

**"person"** includes -

- (a) an individual,
- (b) a company,

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<sup>kk</sup> Ordres en Conseil Vol. XXXVI, p. 179; this enactment has been amended.

(c) any other legal person, and

(d) an unincorporated body,

**"Policy and Finance Committee of the Chief Pleas of Sark"** : see subsection (2),

**"Policy and Finance Committee of the States of Alderney"** : see subsection (2),

**"pre-resolution valuation"** : see section 55,

**"property transfer instrument"** means an instrument made by the BRC for the transfer of assets, rights or liabilities,

**"protected cell company"** means a company incorporated as, or converted into, a protected cell company in accordance with the provisions of the Companies (G) Law,

**"Protection of Investors Law"** means the Protection of Investors (Bailiwick of Guernsey) Law, 2020<sup>II</sup>,

**"provisional valuation"** : see section 58,

**"provisions of"** this Law or any other enactment include the provisions of -

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<sup>II</sup> Order in Council No. XVIII of 2020; this enactment has been amended.

- (a) any Ordinance or subordinate legislation, or any code, guidance, principles, policies or instructions, made or issued under this Law or that other enactment (as the case may be), and
- (b) any subordinate legislation, or any code, guidance, principles, policies or instructions, made or issued under any such Ordinance or subordinate legislation,

(and see also the definition below of the "**purposes of**" this Law or any other enactment),

"**public**" means the public, including any section of the public, however selected, in the Bailiwick or elsewhere, and includes, for the avoidance of doubt and without limitation, depositors, investors and customers and potential depositors, investors and customers (whether of any person or entity, or of any particular, or any particular class or description of, person or entity) and, in relation to a body, a section consisting of, or consisting of a section of, members, debenture holders, depositors, investors or customers of, in or with that body,

"**public authority**" has the same meaning as in the Human Rights (Bailiwick of Guernsey) Law, 2000<sup>mm</sup>,

"**purposes of**" this Law or any other enactment include the purposes of

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<sup>mm</sup> Order in Council No. XIV of 2000; this enactment has been amended.

all or any of the provisions of this Law or that other enactment, as the case may be (and see also the definition above of the "**provisions of**" this Law or any other enactment),

**"qualifying holding"** : see section 52(2),

**"recipient"** means the person to whom shares, assets, rights or liabilities, or any combination of those items, are transferred from a bank in resolution,

**"recognition order"** means an order of the BRC made under section 140(1) concerning a foreign resolution action in respect of a bank,

**"recovery plan"** means a recovery plan drawn up and maintained by a bank in accordance with the provisions of Part III, and includes any update thereof,

**"Registrar of Companies"** means the holder for the time being of the office established under section 495(1) of the Companies (G) Law,

**"regulated market"** means a market recognised as a regulated market for the purposes of this Law by rules or guidance of the BRC,

**"Regulation of Fiduciaries Law"** means the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020<sup>nn</sup>,

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<sup>nn</sup> Order in Council No. XIX of 2020; this enactment has been amended.

**"regulatory Laws"** means –

- (a) the Protection of Investors Law,
- (b) the Banking Supervision Law,
- (c) the Regulation of Fiduciaries Law,
- (d) the Insurance Business Law,
- (e) the Insurance Managers and Intermediaries Law,
- (f) the Lending, Credit and Finance Law,
- (g) the Enforcement Powers Law,
- (h) the Financial Services Commission Law,
- (i) the Prescribed Businesses (Bailiwick of Guernsey) Law, 2008,
- (j) any other enactment prescribed for the purposes of this Law by regulation of the Committee,

**"relevant capital instruments"** means Additional Tier 1 instruments and Tier 2 instruments,

**"relevant electronic address"** : see section 171(1)(iii),



**"relevant insolvency proceedings"**, in respect of a bank, means -

- (a) proceedings for a bank winding up order under the provisions of Part XII,
- (b) where the BRC recognises the foreign resolution action of a home resolution authority or relevant resolution authority, proceedings for the winding up of the bank under the laws of the bank's home jurisdiction or relevant jurisdiction, as the case may be, or
- (c) in the case of the application of a stabilisation tool by the BRC -
  - (i) proceedings for a bank winding up order under the provisions of Part XII, or
  - (ii) proceedings for the winding up of the bank under the laws of the bank's home jurisdiction or relevant jurisdiction, at the election of the BRC,

**"relevant jurisdiction"**, in relation to a bank or other body, means a jurisdiction in which a relevant resolution authority of the bank or other body is located,

**"relevant regulatory information service"** : see section 137(2)(d),

**"relevant resolution authority"**, in relation to a bank or other body

("body A"), means -

- (a) the resolution authority (other than the home resolution authority) in a jurisdiction in which the bank or body A has a branch, and
- (b) the resolution authority (other than the home resolution authority) in a jurisdiction in which another body ("body B") in the same group as the bank or body A is incorporated,

where, in each case, that resolution authority can take a resolution action in respect of the branch or body B, as the case may be,

**"relevant supervisory authority"**, in relation to a bank or other body, means the supervisory authority in a jurisdiction in which a relevant resolution authority of the bank or other body is situated,

**"residual bank"** means, in circumstances where part of the business of a bank has been sold to a private sector purchaser using the sale of business tool, or transferred to a bridge bank using the bridge bank tool, the non-sold or non-transferred part of the bank,

**"resolution"** means the application of a resolution tool under the provisions of this Law in order to achieve one or more of the resolution objectives; and **"entry into resolution"** shall be construed accordingly,

**"resolution action"** means a decision to place a bank that satisfies the resolution conditions in resolution, the application of a resolution tool or the

exercise of a resolution power,

**"resolution authority"** means the BRC or any other authority performing, in a jurisdiction other than the Bailiwick, functions similar to those of the BRC,

**"resolution conditions"** means the conditions specified in section 43(1),

**"resolution instrument"** means an instrument effecting the decision of the BRC regarding the resolution of a bank,

**"resolution objectives"** means the objectives specified in section 42,

**"resolution plan"** means a resolution plan drawn up for a bank by the BRC in accordance with the provisions of section 22,

**"resolution powers"** means the powers set out in Part VIII and any of the general powers set out in Part IX,

**"resolution safeguards"** means the safeguards set out in sections 130 to 135 or any other safeguard prescribed by regulations of the Committee,

**"resolution tool"** means a stabilisation tool,

**"right of set off"** : see **"set off arrangement"** below,

**"Royal Court"** means the Royal Court sitting as an Ordinary Court, and for the purposes of this Law -

- (a) the Royal Court is constituted by the Bailiff sitting unaccompanied by the Jurats, and
- (b) the Royal Court may appoint one or more assessors to assist it in the determination of any matter before it,

**"sale of business tool"** : see section 69,

**"secured liability"** means a liability where the right of the creditor to payment or other form of performance is secured by a security or collateral arrangement, including a liability arising from repurchase transactions and other title transfer collateral arrangements,

**"security"** means any charge, mortgage, hypothèque, lien or other security, including a security interest within the meaning of the Security Interests (Guernsey) Law, 1993<sup>oo</sup>,

**"security arrangement"** means an arrangement under which a person has, by way of security, an actual or contingent interest in assets or rights, irrespective of whether that interest is secured by any specific assets or rights,

**"senior manager"**, in relation to a bank, means a natural person who exercises executive functions within the bank and who is responsible and accountable to the management for the day-to-day management of the bank,

**"servant"** includes a person working under a contract for services and

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<sup>oo</sup> Ordres en Conseil Vol. XXXIV, p. 299; this enactment has been amended.

an employee,

**"set off arrangement"** means an arrangement under which two or more claims or obligations owed between the bank in resolution and a counterparty can be set off against each other, and **"right of set off"** shall be construed accordingly,

**"share transfer order"** means an order made by the BRC for the transfer of shares,

**"shareholder"** means a holder of shares or holders of other instruments of ownership,

**"shares"** includes shares and other instruments of ownership,

**"stabilisation power"** means a resolution power which relates specifically to the application of a stabilisation tool,

**"stabilisation tool"** means -

- (a) the sale of business tool,
- (b) the bridge bank tool,
- (c) the asset separation tool, and
- (d) the bail-in tool,

**"States"** means the States of Deliberation,

**"structured finance arrangements"** includes –

- (a) securitisations, and
- (b) instruments which –
  - (i) are used for hedging purposes,
  - (ii) form an integral part of the cover pool, and
  - (iii) under the law of the Bailiwick are secured in a way similar to covered bonds which involve the granting and holding of security by a party to the arrangement or a trustee, agent or nominee,

**"subordinate legislation"** means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any statutory, customary or inherent power and having legislative effect, but does not include an Ordinance,

**"subsidiary company"** : see Schedule 2 (and **"subsidiary"** has the same meaning),

**"supervised role"** means an approved supervised role, a notified supervised role or a vetted supervised role,

**"supervisory authority"** means the Commission or any other authority performing, in a jurisdiction other than the Bailiwick, functions similar to those

of the Commission in respect of the supervision of banks,

**"Tier 1 capital"** has the meaning given by the Directive,

**"Tier 2 capital"** has the meaning given by the Directive,

**"Tier 2 capital instruments"** has the meaning given by the Directive,

**"Tier 2 instruments"** has the meaning given by the Directive,

**"title transfer financial collateral arrangement"** means an arrangement, including a repurchase arrangement, under which collateral to secure or cover the performance of specified obligations is provided by a transfer of full ownership of assets from the collateral provider to the collateral taker, on terms providing for the collateral taker to transfer assets if those specified obligations are performed,

**"transmitted"** : see section 171(1)(iv),

**"uniform scale"** means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989<sup>PP</sup>,

**"valuation"** means a pre-resolution valuation, provisional valuation, definitive valuation or difference of treatment valuation,

**"vetted supervised role"** means a role or position which is a vetted

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<sup>PP</sup> Ordres en Conseil Vol. XXXI, p. 278; this enactment has been amended.

supervised role for the purposes of the Banking Supervision Law by virtue of section 12(2) of that Law,

**"write down or conversion power"** means the power referred to in section 118 to write down or convert relevant capital instruments, other eligible liabilities, debt instruments and shares of the bank in resolution, exercised by mandatory reduction instrument under section 119.

(2) Unless the contrary intention appears, references in the provisions of this Law to –

- (a) the Policy and Finance Committee of the States of Alderney, and
- (b) the Policy and Finance Committee of the Chief Pleas of Sark,

are references to the committees of those islands for the time being performing the functions respectively conferred by or under the provisions of this Law on those committees.

(3) The States may by Ordinance amend this section by adding any definition to it or by removing or varying any definition set out in it.

(4) Subsection (3) is without prejudice to any other power to enact Ordinances or subordinate legislation conferred by the provisions of this Law.

#### **Amendments.**

183. The enactments specified in Schedule 3 are amended as set out in that



Schedule.

**Citation.**

184. This Law may be cited as the Bank Resolution (Bailiwick of Guernsey) Law, 2025.

**Commencement.**

185. This Law shall come into force on the day appointed by Ordinance of the States; and different days may be appointed for different provisions or different purposes.

## SCHEDULE 1

Section 3(3)

### THE GUERNSEY BANK RESOLUTION COMMITTEE ("BRC")

#### AND THE DIRECTOR

#### **Membership and status of BRC.**

1. (1) The BRC is a subsidiary body of the Commission and shall consist of four members ("**members**"), one of whom shall be the Chair thereof.

(2) Two members shall be appointed by the Commission after consultation with the Committee and may be officers or employees of the Commission.

(3) Two members shall be appointed by the States on the recommendation of the Committee after consultation with the Commission and may be officers or employees of the States of Guernsey.

(4) The Chair shall be appointed by the Commission after consultation with the Committee and shall be one of the members appointed by the Commission.

(5) The members shall be individuals appearing to the Commission or Committee, as the case may be, to have knowledge, qualifications, experience or expertise appropriate and relevant to the functions of the BRC.

(6) The validity of any proceedings of the BRC is unaffected by a vacancy in its members, by any defect in the appointment of a member and by any lack of qualification of a person to act as a member.

**Tenure of office of members.**

2. (1) A member shall, subject to the provisions of this Law, hold and vacate office in accordance with the terms and conditions of the member's appointment.

(2) A member shall be appointed for a period not exceeding 5 years and is eligible for reappointment.

**Resignation and removal of members.**

3. (1) A member may at any time resign from office –

(a) by giving not less than three months' written notice (or notice of such lesser period as the member and the Commission may agree) –

(i) in the case of the Chair, to the Commission,

(ii) in the case of an ordinary member, to the Chair,  
or

(b) in such other manner as may be specified by the terms and conditions of the member's appointment.

(2) The Commission may, after consultation with the Committee, revoke the appointment of the member appointed as Chair ("C") –

(a) if satisfied that –

(i) C has been absent from meetings of the BRC for

a period exceeding 6 consecutive months  
without the BRC's consent,

(ii) C has neglected the duties of Chair or member  
or has engaged in misconduct,

(iii) C is insolvent,

(iv) C is incapacitated by physical or mental illness,  
or

(v) C is otherwise unable or unfit to discharge the  
functions of Chair or member, or

(b) on such other grounds as may be specified by the terms  
and conditions of C's appointment.

(3) The Commission may, after consultation with the Chair, revoke  
the appointment of a member other than the Chair ("M") –

(a) if satisfied that –

(i) M has been absent from meetings of the BRC for  
a period exceeding 6 consecutive months  
without the BRC's consent,

(ii) M has neglected the duties of member or has  
engaged in misconduct,

- (iii) M is insolvent,
  - (iv) M is incapacitated by physical or mental illness,  
or
  - (v) M is otherwise unable or unfit to discharge the  
functions of member, or
- (b) on such other grounds as may be specified by the terms  
and conditions of M's appointment.

**Remuneration of members.**

4. (1) The BRC shall pay its members –

- (a) such expenses, and
- (b) such remuneration, if any,

as the BRC may, after consultation with the Commission, determine.

(2) The BRC may also with the approval of the Commission establish and maintain such schemes or make such other arrangements as it thinks fit, if any, for the payment of pensions and other benefits in respect of its members or former members.

**Committees.**

5. (1) The BRC may establish committees whose members may, but need not, be members, officers, employees or agents of the BRC.

(2) A committee of the BRC may, without limitation, be established

–

(a) to advise the BRC as to such matters concerning the exercise of the BRC's functions, and any other matter of relevance to the BRC, as the BRC thinks fit,

(b) to exercise any function of the BRC, so far as may be lawfully delegated to it.

(3) A committee of the BRC may itself establish subcommittees whose members may, but need not, be members of the committee or members, officers, employees or agents of the BRC.

(4) The BRC may, in respect of a committee established under this paragraph –

(a) discharge or reconstitute it,

(b) redefine or add to its terms of reference, and

(c) remove any person appointed to it.

(5) A committee established under this paragraph may, subject to any directions given by the BRC, regulate its own procedure.

**Procedure at meetings.**

6. (1) At a meeting of the BRC –

- (a) a quorum is the nearest whole number above one half of the number of members (including, for the avoidance of doubt, the Chair) for the time being in office,
- (b) the person presiding shall be –
  - (i) the Chair, if the Chair is present, or
  - (ii) if the Chair is not present –
    - (A) the person nominated by the Chair to act in the Chair's place, or
    - (B) if no such person is present, the person elected to chair the meeting by, and from among, the ordinary members present,
- (c) each member including the person presiding has one vote,
- (d) if there is an equality of votes, the person presiding has a casting vote.

(2) For the avoidance of doubt, any person (including, without limitation, members, officers, employees, servants and agents of the BRC, Commission, States of Guernsey, States of Alderney and Chief Pleas of Sark) may by invitation attend and participate in meetings of the BRC but may not vote.

**Transaction of business and written resolutions.**

7. (1) The BRC may, if it thinks fit, transact any business by the circulation of papers (in electronic form and by electronic means or otherwise) to all members.

(2) Anything that may be done by resolution passed at a meeting in person of the members of the BRC may be done by resolution in writing signed by members who, on the date on which the resolution is deemed to be passed, would be entitled to vote on the resolution if it were proposed at a meeting in person of the members.

(3) A resolution in writing may consist of several instruments in the same form each signed by one or more members.

(4) A resolution in writing shall be deemed to be passed when the instrument, or the last of several instruments, is last signed or on such later date as may be specified in the resolution.

(5) A document attached to a resolution in writing shall be deemed to have been laid before a meeting in person of the members signing the resolution.

(6) A resolution in writing of the BRC shall be passed by the majority that it would have required if put to a meeting of the BRC at which all members were present in person.

(7) Notice specifying a proposed resolution in writing shall be given by the BRC to all members in accordance with such formalities as the BRC may determine or as all members may agree in any particular case.

**Remote participation in meetings.**



8. (1) If a member of the BRC, with the permission of the person presiding at the meeting, is, by any means, in communication with one or more of the other members so that each member participating in the communication can hear or read what is said or communicated by each of the others, each member so participating is deemed to be present at a meeting with the other members so participating for all purposes, including quorum and voting.

(2) A meeting of members conducted pursuant to subparagraph (1) shall be deemed to be held in the place in which the chair of the meeting is present.

**Minutes.**

9. The BRC shall keep proper minutes of its proceedings, including minutes of any business transacted by virtue of paragraphs 7 and 8.

**Residual power to regulate procedure.**

10. The BRC may, subject to the provisions of this Law, regulate its own procedure.

**Appointment of staff.**

11. (1) The BRC may, with the approval of the Commission –
- (a) appoint such officers, employees and agents on such terms and conditions (whether as to remuneration, expenses, pensions or otherwise) as it thinks necessary to ensure that it has the expertise, resources and operational capacity required for the performance of its functions, and

- (b) establish and maintain such schemes or make such other arrangements as it thinks fit for the payment of pensions and other benefits in respect of its officers and employees.

(2) Without prejudice to the provisions of section 59 (exclusion of liability), the BRC shall take such steps as it considers necessary and reasonable to protect and indemnify its current and former members, officers and employees against any costs, claims, liabilities and proceedings arising from or in consequence of anything done or omitted to be done in the discharge or purported discharge by them of their respective functions as members, officers or, as the case may be, employees of the BRC.

- (3) This paragraph is subject to the provisions of paragraph 12.

**Director.**

- 12.** (1) The most senior officer of the BRC shall have the title Director.

(2) The Director shall be appointed by the BRC after consultation with the Commission.

(3) The Director shall be an individual appearing to the BRC to have knowledge, qualifications, experience and expertise appropriate and relevant to the functions of the BRC and Director.

(4) For the avoidance of doubt the Director may be an officer or employee of the BRC or an officer or servant of the Commission.

(5) The Director shall, subject to the provisions of this Law, hold and vacate office in accordance with the terms and conditions of the Director's appointment.

(6) The Director may, subject to provisions of subparagraph (8), be appointed for a minimum or maximum period of such duration as may be specified in the terms and conditions of the Director's appointment and, if so appointed, is eligible for reappointment.

(7) The BRC shall pay the Director such salary, emoluments and other allowances as the BRC may, after consultation with the Commission, determine.

(8) The BRC may, after consultation with the Commission, revoke the appointment of the Director -

(a) if satisfied that—

- (i) the Director has been absent from meetings of the BRC for a period exceeding 6 consecutive months without the BRC's consent,
- (ii) the Director has neglected the duties of Director or has engaged in misconduct,
- (iii) the Director is insolvent,
- (iv) the Director is incapacitated by physical or mental illness, or

- (v) the Director is otherwise unable or unfit to discharge the functions of Director, or
- (b) on such other grounds as may be specified by the terms and conditions of the Director's appointment.

**Delegation of functions by BRC.**

13. (1) The BRC may, by an instrument in writing, either generally or otherwise as specified in the instrument, arrange for any of its functions under this Law or any other enactment to be exercised in its name by any of its members, officers or employees named or described in the instrument, other than –

- (a) this power of delegation,
- (b) the duty under section 8 to submit an annual report to the Commission,
- (c) any power to apply for the winding up of a company or other person, or
- (d) the power conferred by paragraph 12 –
  - (i) to appoint, re-appoint or revoke the appointment of the Director, or
  - (ii) to determine the Director's terms and conditions of appointment or salary, emoluments and other allowances.

(2) For the avoidance of doubt, a function may be delegated under subparagraph (1) to a committee of members, officers and / or employees.

**Delegation of functions by Director.**

14. The Director may, notwithstanding the principle of *delegatus non potest delegare*, by an instrument in writing, and either generally or otherwise as specified in the instrument, arrange for any of the Director's functions under this Law or any other enactment (including, for the avoidance of doubt, any functions delegated to the Director by the BRC under paragraph 13(1)) to be exercised in the Director's name by any of the officers or employees of the BRC named or described in the instrument, other than this power of delegation.

**Other provisions as to delegation.**

15. (1) A function exercised by a delegate pursuant to an arrangement made under paragraph 13 or 14 is for all purposes exercised by the BRC or Director, as the case may be; and every decision taken or other thing done by a delegate pursuant to such an arrangement has the same effect as if taken or done by a quorate meeting of the BRC or personally by the Director, as the case may be.

(2) An arrangement made under paragraph 13 or 14 for the exercise of a function by a delegate –

- (a) may be varied or terminated at any time by the BRC or by the Director, as the case may be, but without prejudice to anything done pursuant to the arrangement or to the making of a new arrangement,

- (b) does not prevent the exercise of the function by the BRC or by the Director, as the case may be, while the arrangement subsists.
- (3) The provisions of paragraphs 13 and 14 –
  - (a) have effect for the removal of doubt and are not to be construed as impliedly invalidating anything done in conformity with any other enactment or rule of law, whether before or after those paragraphs come into force,
  - (b) are without prejudice to the provisions of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991<sup>99</sup>.

**Disclosure of interests.**

16. (1) Any member of the BRC shall, if the member has any direct or indirect personal interest in the outcome of any matter of which the member or the BRC is seised in the exercise of their respective functions under this Law or any other enactment, disclose the nature of the interest to the other members of the BRC and to the Commission.

(2) For the purposes of this paragraph, a general notice given by a member of the BRC to the effect that the member is a shareholder, member or partner in, or a director of, a company, other legal person or unincorporated body, and is to

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<sup>99</sup> Ordres en Conseil Vol. XXXIII, p. 478; this enactment has been amended.

be regarded as interested in any matter concerning that company, person or body, is a sufficient disclosure in relation to any such matter.

(3) This paragraph applies in relation to the Director as it applies in relation to a member of the BRC.

**Official seal.**

17. (1) The BRC may have an official seal for the authentication of documents required for the purpose of exercising its functions.

(2) Any document –

(a) sealed with the official seal of the BRC, and

(b) signed by –

(i) the Chair of the BRC,

(ii) the Director, or

(iii) any member, officer or employee of the BRC to whom, pursuant to paragraph 13 or 14, the BRC or the Director, as the case may be, has delegated authority to affix the official seal,

is deemed to be duly executed by or on behalf of the BRC and is effective in law to bind it.

(3) The provisions of this paragraph are without prejudice to any other lawful method of authentication or execution of documents.

**Proof of documents.**

18. (1) In any legal proceedings (criminal or otherwise) the provisions of subparagraph (2) apply in relation to any document purporting to be –

- (a) issued by or on behalf of the BRC or Director, or
- (b) signed by a member, officer or employee of the BRC.

(2) The document –

- (a) may be received in evidence,
- (b) unless the contrary is proved, is deemed –
  - (i) to be the document which it purports to be, and
  - (ii) to have been issued by or on behalf of the BRC or Director or, as the case may be, to have been signed by the person by whom it purports to have been signed, without proof of the signatory's identity, signature or official capacity, and
- (c) is evidence of the matters stated therein.

**Power to amend Schedule by Ordinance.**



19. The States may by Ordinance amend the provisions of this Schedule.

## SCHEDULE 2

### MEANING OF "HOLDING COMPANY" AND "SUBSIDIARY COMPANY"

1. For the purposes of this Law a company ("A") is, subject to the provisions of paragraph 3, a subsidiary of another company ("B") if, but only if –

(a) B –

(i) is a member of A and controls the composition of A's board of directors, or

(ii) holds more than half in nominal value of A's equity share capital, or

(b) A is a subsidiary of a company which is a subsidiary of B.

2. For the purposes of paragraph 1 the composition of a A's board of directors shall be deemed to be controlled by B if, but only if, B has some power, exercisable without the consent or concurrence of any other person, to appoint or remove all or a majority of the directors of A; and B shall be deemed to have power to appoint a person as director of A where any of the following conditions is satisfied –

(a) that a person cannot be appointed as director of A without the exercise in that person's favour by B of such a power,

(b) that a person's appointment as director of A follows necessarily from that person's appointment as director

of B,

- (c) that the director of A is B itself or a subsidiary of B.

3. In determining whether a company ("A") is a subsidiary of another company ("B") –

- (a) any shares held or power exercisable by B in a fiduciary capacity shall be treated as not held or exercisable by B,
- (b) subject to items (c) and (d), any shares held or power exercisable –

- (i) by any person as a nominee for B (except where B is concerned only in a fiduciary capacity),

- (ii) by, or by a nominee for, a subsidiary of B, not being a subsidiary which is concerned only in a fiduciary capacity,

shall be treated as held or exercisable by B,

- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of A or of a trust instrument for securing any issue of such debentures shall be disregarded,
- (d) any shares held or power exercisable by, or by a nominee for, B or its subsidiary (not being held or

exercisable as mentioned in item (c)) shall be treated as not held or exercisable by B if the ordinary business of B or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

4. For the purposes of this Law a company "(B)" shall be deemed to be a holding company of another company ("A") if, but only if, A is B's subsidiary.

**Power to make regulations.**

5. The Committee may make regulations amending the provisions of this Schedule.

## SCHEDULE 3

Section 183

### AMENDMENTS

#### **Amendment of Financial Services Commission Law.**

1. (1) The Financial Services Commission (Bailiwick of Guernsey) Law, 1987<sup>rr</sup> is amended as follows.

(2) In section 2(2)(ea) for "the provision of" substitute "the provision, receipt, exchange, transmission and use of".

(3) After section 2(2)(ea) insert the following paragraph

"(eb) to enable –

(i) the Guernsey Bank Resolution Committee  
(established by the Bank Resolution (Bailiwick of  
Guernsey) Law, 2025), or

(ii) any person to whom it has delegated any  
function,

to carry out their functions,".

(4) After section 21(2)(d) insert the following paragraph -

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<sup>rr</sup> Ordres en Conseil Vol. XXX, p. 243; this enactment has been amended.

"(da) to enable -

- (i) the Guernsey Bank Resolution Committee (established by the Bank Resolution (Bailiwick of Guernsey) Law, 2025), or
- (ii) any authority which appears to the Commission to exercise, in a place outside the Bailiwick, functions corresponding to any of those of the Guernsey Bank Resolution Committee,

to carry out their respective functions or to investigate matters of relevance to their respective functions,".

(5) In section 24(1), in the definition of "regulatory Laws", after paragraph (h) insert the following paragraph –

"(ha) the Bank Resolution (Bailiwick of Guernsey) Law, 2025,".

**Amendment of Banking Supervision Law.**

2. (1) The Banking Supervision (Bailiwick of Guernsey) Law, 2020<sup>ss</sup> is amended as follows.

(2) After section 7(2)(c) insert the following paragraph -

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<sup>ss</sup> Order in Council No. XXI of 2020; this enactment has been amended.

"(ca) the provision of funding for the purposes of enabling the Commission and the Guernsey Bank Resolution Committee to perform their respective functions under the provisions of the Bank Resolution Law,".

(3) In section 11(1) for "whether for the purpose of safeguarding assets or otherwise" substitute -

"whether for the purpose of –

(a) the performance by the Commission of the functions of the Commission or the performance by the Guernsey Bank Resolution Committee of the functions of that Committee,

(b) safeguarding assets,

or otherwise.".

(4) After section 11(2)(a) insert the following paragraph -

"(aa) a Guernsey company or an Alderney company which is a holding company or subsidiary, or other member of the group, of a licensed institution,".

(5) In section 11(2)(d)(ii) after "paragraph" insert "(aa) or".

(6) For section 27(5)(a)(ii) substitute the following subparagraph -

"(ii) for the purposes of -

(A) the performance by the Commission of the functions of the Commission, or

(B) the performance by the Guernsey Bank Resolution Committee of the functions of that Committee,".

(7) In section 28(1) for "for the purpose of the performance of the Commission's functions" substitute "for the purposes of the performance by the Commission of the functions of the Commission or the performance by the Guernsey Bank Resolution Committee of the functions of that Committee,".

(8) For section 29(1)(b) substitute the following paragraph -

"(b) for the purposes of -

(i) the performance by the Commission of the functions of the Commission, or

(ii) the performance by the Guernsey Bank Resolution Committee of the functions of that Committee,".

(9) After section 29(4)(a) insert the following paragraph -

"(aa) a Guernsey company or an Alderney company which is a holding company or subsidiary, or other member of



the group, of a licensed institution,".

- (10) After section 31(1)(a) insert the following paragraph -

"(aa) a Guernsey company or an Alderney company which is a holding company or subsidiary, or other member of the group, of a licensed institution,".

- (11) After section 45(b)(i) insert the following subparagraph -

"(ia) the Guernsey Bank Resolution Committee, or".

- (12) In section 45(c) after "assist the Commission" insert "or the Guernsey Bank Resolution Committee".

- (13) In section 45(d) for "assist it" substitute "assist the Commission or the Guernsey Bank Resolution Committee".

- (14) In section 45(m)(i) after "or the Commission" insert "or the Guernsey Bank Resolution Committee".

- (15) After section 45(n)(iia) insert the following subparagraph -

"(iib) section 161 of the Bank Resolution Law,".

- (16) After section 58 insert the following cross heading and section

—

*"Consultation by Commission with*

*Bank Resolution Committee*

**Duty to consult.**

58A. The Commission, before performing any function under the provisions of this Law for the purposes of –

- (a) the performance, or enabling or assisting the performance, by the Commission or the Guernsey Bank Resolution Committee of their respective functions under the provisions of the Bank Resolution Law, or
- (b) the provisions of the Bank Resolution Law or the enforcement or carrying into effect of those provisions,

must consult the Guernsey Bank Resolution Committee and take the view of that Committee into account."

(17) In section 66(1) after the definition of "Bailiwick body" insert the following definition –

**""Bank Resolution Law"** means the Bank Resolution (Bailiwick of Guernsey) Law, 2025,".

(18) In section 66(1) immediately before the definition of "Guernsey company" insert the following definition -

**""Guernsey Bank Resolution Committee"** means the body of

that name established by the Bank Resolution Law,".

(19) In section 66(1) in the definition of the "regulatory Laws" after paragraph (h) insert the following paragraph –

"(ha) the Bank Resolution Law,".

(20) In section 66(1), in paragraph (d) of the definition of "relevant supervisory authority", after "a public authority" insert "(including, for the avoidance of doubt, the Guernsey Bank Resolution Committee)".

**Amendment of Enforcement Powers Law.**

3. (1) The Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020<sup>tt</sup> is amended as follows.

(2) After section 2(b)(iiia) in the definition of "the supervisory Laws" insert the following paragraph –

"(iiib) the Bank Resolution (Bailiwick of Guernsey) Law, 2025  
(**"the Bank Resolution Law"**),".

(3) For section 6(5)(a)(ii) substitute the following subparagraph -

"(ii) for the purposes of -

(A) the performance by the Commission of

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<sup>tt</sup> Order in Council No. XVII of 2020; this enactment has been amended.

the functions of the Commission, or

- (B) the performance by the Guernsey Bank Resolution Committee of the functions of that Committee,".

(4) In section 7(1)(a) for "for the performance of its functions" substitute "for the purposes of the performance by the Commission of the functions of the Commission or the performance by the Guernsey Bank Resolution Committee of the functions of that Committee,".

(5) In section 7(2) for "for the purpose of the performance of its functions" substitute "for the purposes of the performance by the Commission of the functions of the Commission or the performance by the Guernsey Bank Resolution Committee of the functions of that Committee,".

(6) For section 8(1)(b) substitute the following paragraph –

"(b) for the purposes of -

- (i) the performance by the Commission of the functions of the Commission, or
- (ii) the performance by the Guernsey Bank Resolution Committee of the functions of that Committee,".

(7) For section 10(1)(a) substitute the following paragraph -

"(a) for the purposes of -

- (i) the performance by the Commission of the functions of the Commission, or
- (ii) the performance by the Guernsey Bank Resolution Committee of the functions of that Committee,".

(8) In section 12(1)(c)(iii) for "the performance by the Commission of its functions" substitute "the performance by the Commission of the functions of the Commission or the performance by the Guernsey Bank Resolution Committee of the functions of that Committee,".

(9) For section 14(1)(b)(ii) substitute the following subparagraph -

- "(ii) the performance by the Commission of the functions of the Commission or the performance by the Guernsey Bank Resolution Committee of the functions of that Committee,".

(10) In section 14(1)(B) for "the performance by the Commission of its functions" substitute "the performance by the Commission of the functions of the Commission or the performance by the Guernsey Bank Resolution Committee of the functions of that Committee;".

(11) After section 20(b)(i) insert the following subparagraph -

- "(ia) the Guernsey Bank Resolution Committee, or".

(12) In section 20(c) after "assist the Commission" insert "or the Guernsey Bank Resolution Committee".

(13) In section 20(d) for "assist it" substitute "assist the Commission or the Guernsey Bank Resolution Committee".

(14) In section 20(m)(i) after "or the Commission" insert "or the Guernsey Bank Resolution Committee".

(15) After section 20(n)(iva) insert the following subparagraph -

"(ivb) section 161 of the Bank Resolution Law,".

(16) In section 36 –

(a) after subsection (1)(a) insert the following paragraph -

"(aa) a Guernsey company or an Alderney company which is a holding company or subsidiary, or other member of the group, of a licensed institution, or",

(b) in subsection (1)(b) after "a licensee" insert "or a company described in paragraph (aa)", and

(c) in subsections (1) and (2) for "the licensee or person" substitute "the licensee, company or person".

(17) In section 41(1) for "for the purposes of the performance of its functions" substitute "for the purposes of the performance by the Commission of the functions of the Commission or the performance by the Guernsey Bank Resolution Committee of the functions of that Committee,".

(18) In section 109(2) after "fails to provide the Commission" insert "or the Guernsey Bank Resolution Committee".

(19) In section 109(2)(i) after "by the Commission" insert "or, as the case may be, the Guernsey Bank Resolution Committee".

(20) In section 109(2)(ii) after "the Commission" insert "or, as the case may be, the Guernsey Bank Resolution Committee".

(21) In section 121(1)(a)(i) after "the Commission" insert "or the Guernsey Bank Resolution Committee".

(22) In section 121(3) -

(a) after "(including a body to which subsection (2)(a) or (b) applies)" insert "or which is a bank within the meaning of the Bank Resolution Law", and

(b) in subparagraph (i) after "the Commission" insert "or the Guernsey Bank Resolution Committee",

(23) After section 126 insert the following cross heading and section

—

*"Consultation by Commission with  
Bank Resolution Committee*

**Duty to consult.**

**126A.** The Commission, before performing any function under the provisions of this Law for the purposes of -

- (a) the performance, or enabling or assisting the performance, by the Commission or the Guernsey Bank Resolution Committee of their respective functions under the provisions of the Bank Resolution Law, or
- (b) the provisions of the Bank Resolution Law or the enforcement or carrying into effect of those provisions,

must consult the Guernsey Bank Resolution Committee and take the view of that Committee into account."

(24) In Schedule 1 after the definition of "Bailiwick body" insert the following definition –

**""Bank Resolution Law"** means the Bank Resolution (Bailiwick of Guernsey) Law, 2025,".

(25) In Schedule 1 immediately before the definition of "Guernsey company" insert the following definition -



""**Guernsey Bank Resolution Committee**" means the body of that name established by the Bank Resolution Law,".

(26) In Schedule 1, in paragraph (d) of the definition of "relevant supervisory authority", after "a public authority" insert "(including, for the avoidance of doubt, the Guernsey Bank Resolution Committee)".

**Amendment of Companies (A) Law.**

4. (1) After section 108 of the Companies (Alderney) Law, 1994<sup>uu</sup> insert the following section -

**"Modifications of Part XVI pursuant to Bank Resolution Law.**

**108A.** The provisions of this Part of this Law have effect subject to the provisions of Part XII of the Bank Resolution (Bailiwick of Guernsey) Law, 2025.".

(2) After section 124 of the Companies (Alderney) Law, 1994 insert the following section -

**"Modifications of Part XVII pursuant to Bank Resolution Law.**

**124A.** The provisions of this Part of this Law have effect subject to the provisions of Part XII of the Bank Resolution (Bailiwick of Guernsey) Law, 2025.".

(3) After section 134 of the Companies (Alderney) Law, 1994 insert the following section -

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<sup>uu</sup> Order in Council No. XXXIV of 1994; this enactment has been amended.

**"Modifications of Part XVIII pursuant to Bank Resolution Law.**

**134A.** The provisions of this Part of this Law have effect subject to the provisions of Part XII of the Bank Resolution (Bailiwick of Guernsey) Law, 2025."

(4) After section 144 of the Companies (Alderney) Law, 1994 insert the following section -

**"Modifications of Part XIX pursuant to Bank Resolution Law.**

**144A.** The provisions of this Part of this Law have effect subject to the provisions of Part XII of the Bank Resolution (Bailiwick of Guernsey) Law, 2025."

**Amendment of Companies (G) Law.**

5. (1) After section 373 of the Companies (Guernsey) Law, 2008<sup>vv</sup> insert the following cross heading and section –

*"Striking off of banks*

**Modifications of Part XX pursuant to Bank Resolution Law.**

**373A.** The provisions of this Part of this Law have effect subject to the provisions of Part XII of the Bank Resolution (Bailiwick of Guernsey) Law, 2025."

(2) In section 375(1)(e) of the Companies (Guernsey) Law, 2008

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<sup>vv</sup> Order in Council No. VIII of 2008; this enactment has been amended.

after "companies engaged in financial services business" insert "(including, without limitation, companies which are banks within the meaning of the Bank Resolution (Bailiwick of Guernsey) Law, 2025)".

(3) After section 390 of the Companies (Guernsey) Law, 2008 insert the following section -

**"Modifications of Part XXI pursuant to Bank Resolution Law.**

**390A.** The provisions of this Part of this Law have effect subject to the provisions of Part XII of the Bank Resolution (Bailiwick of Guernsey) Law, 2025."

(4) After section 405 of the Companies (Guernsey) Law, 2008 insert the following section -

**"Modifications of Part XXII pursuant to Bank Resolution Law.**

**405A.** The provisions of this Part of this Law have effect subject to the provisions of Part XII of the Bank Resolution (Bailiwick of Guernsey) Law, 2025."

(5) After section 418 of the Companies (Guernsey) Law, 2008 insert the following section -

**"Modifications of Part XXIII pursuant to Bank Resolution Law.**

**418ZA.** The provisions of this Part of this Law have effect subject to the provisions of Part XII of the Bank Resolution (Bailiwick of Guernsey) Law, 2025."

(6) After section 418B of the Companies (Guernsey) Law, 2008

insert the following section –

**"Modifications of Part XXIIIA pursuant to Bank Resolution Law.**

**418C.** The provisions of this Part of this Law have effect subject to the provisions of Part XII of the Bank Resolution (Bailiwick of Guernsey) Law, 2025."

(7) After section 426A of the Companies (Guernsey) Law, 2008

insert the following section -

**"Modifications of Part XXIV pursuant to Bank Resolution Law.**

**426B.** The provisions of this Part of this Law have effect subject to the provisions of Part XII of the Bank Resolution (Bailiwick of Guernsey) Law, 2025."