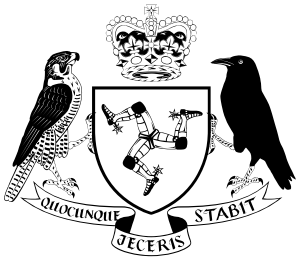

Isle of Man

Ellan Vannin

AT 15 of 2020

BANK (RECOVERY AND RESOLUTION) ACT 2020

Isle of Man

Ellan Vannin

BANK (RECOVERY AND RESOLUTION) ACT 2020

Index

Isle of Man

Ellan Vannin

BANK (RECOVERY AND RESOLUTION) ACT 2020

Signed in Tynwald:	*17 November 2020*
Received Royal Assent:	*17 November 2020*
Announced to Tynwald:	*17 November 2020*

AN ACT to provide for bank recovery and resolution and for connected purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

PART 1 – PRELIMINARY

1 Short title

The short title of this Act is the Bank (Recovery and Resolution) Act 2020.

2 Commencement

(1) This Act (except section 1 and this section) will come into operation on such day or days as the Treasury may by order appoint.[1]

(2) An order under subsection (1) may make such consequential, incidental, supplementary and transitional provisions as appear to the Treasury to be necessary or expedient for the purposes of the order.

3 Interpretation

(1) In this Act —

"action for a breach" has the meaning given in section 48(3) of the *Financial Services Act 2008*, and includes the power to impose a civil penalty in accordance with section 170;

"Additional Tier 1 instruments" means capital instruments that meet the conditions laid down in Article 52(1) of Regulation (EU) No 575/2013;

"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 use of the bail-in tool;

"asset management vehicle" has the meaning ascribed to it in section 95(2);

"Authority" means the resolution authority for the Island (as designated in section 6);

"bail-in tool" means the mechanism for effecting the exercise by the Authority of the write-down or conversion power in relation to liabilities of a bank in resolution in accordance with the provisions set out in sections 101 to 107;

"bank" has the meaning given in section 4;

"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 pursuant to section 177 of the *Companies Act 1931*;

"bank winding-up", "in bank winding-up" and **"in a bank winding-up"** refer to the process and state of a bank being subject to a bank winding-up order, in accordance with this Act, and a bank which is in that state is referred to as a "**bank in winding-up**";

"bank winding-up order" means an order of the Court to enter a bank into a bank winding-up procedure pursuant to Part 13;

"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 does not have a legal personality separate from the bank;

"bridge bank" has the meaning given in section 82(2);

"bridge bank tool" means the mechanism for transferring shares, assets, rights or liabilities of a bank in resolution to a bridge bank in accordance with sections 82 to 94;

"business day" means a day other than a Saturday, a Sunday, or a bank holiday in the Island;

"business reorganisation plan" means a business reorganisation plan drawn up and implemented in accordance with sections 115 to 118;

"the BRRD" or **"Directive 2014/59/EU"** —

(a) means —

(i) 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;

(ii) Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU, 2013/36/EU, 2017/1132/EU and 2017/2399/EU; and

(iii) Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council, as amended by Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC; and

(b) includes any amendments to that Directive from time to time made in accordance with the appropriate procedure under EU law, whether made before or after the coming into operation of this Act (or any part of it);

"central counterparty" means a legal person that interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer;

"client assets" means assets which a bank has undertaken to hold for a client (whether or not on trust, and whether or not the undertaking has been complied with);

"Common Equity Tier 1 Instruments" means capital instruments that meet the conditions laid down in the following provisions of Regulation (EU) No. 575/2013 —

(a) Article 28(1) to (4);

(b) Article 29(1) to (5); or

(c) Article 31(1);

"competent authority" means a public authority or body which is by law made responsible for prudential supervision or resolution of banks;

"conversion rate" means the factor that determines the number of shares into which a liability of a specific class will be converted, by reference either to a single instrument of the class in question or to a specified unit of value of a debt claim;

"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" means the Isle of Man Courts of Justice;

"covered deposits" means the part of eligible protected deposits or the part of a deposit that would be an eligible protected deposit of a bank incorporated in the Island if it was not held in a bank account in a branch outside the Island, that does not exceed the relevant maximum compensation level prescribed in the DCS Regulations;

"crisis management measure" means —

(a) the exercise of a stabilisation power in relation to a bank by the Authority;

(b) the recognition of a foreign resolution action by the Authority; or

(c) the exercise of a stabilisation power in support of a foreign resolution action by the Authority;

"crisis prevention measure" means —

(a) the imposition by the Authority of —

(i) a requirement to take specified measures with respect to a respective bank's recovery plan;

(ii) a requirement to take measures to remove impediments to resolvability; or

(iii) early intervention measures; or

(b) the exercise by the Authority of its write-down or conversion powers;

"critical functions" means activities, services or operations the discontinuance of which is likely to lead to the disruption of services that are essential to the real economy of the Island or to disrupt financial stability due to the size, market share, external and internal interconnectedness, complexity, or cross-border activities of a bank or group, with particular regard to the substitutability of those activities, services or operations;

"DCS" means the Depositors' Compensation Scheme established by regulation 3(1) of the Depositors' Compensation Scheme Regulations 2010[1]; *(But, see subsection (2).)*

"DCS Regulations" means the Depositors' Compensation Scheme Regulations 2010; *(But, see subsection (2).)*

"DCS Manager" means the Manager of the Depositors' Compensation Scheme, appointed under regulation 4 of the Depositors' Compensation Scheme 2010; *(But, see subsection (2).)*

"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" means a provision of a contract or other agreement that has the effect that—

(a) 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;

[1] S.D. No 683/10 (as amended)

(iii) a right accrues to terminate, modify or replace the agreement;

(iv) a right accrues to terminate, modify or replace rights or duties under the agreement;

(v) a set-off or netting right accrues under the contract;

(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) a provision of a contract or other agreement 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;

"definitive valuation" means an ex-post valuation carried out in accordance with sections 62 to 65;

"deposit" has the same meaning as in the Regulated Activities Order 2011[2], as amended from time to time;

"derivative contracts" means —

(a) options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivative instruments, financial indices or financial measures which may be settled physically or in cash;

(b) options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event);

(c) options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled, provided that they are traded on a regulated market or a multilateral trading facility;

[2] SD 0884/11, Schedule 2, Part 1 (definitions)

(d) options, futures, swaps, forwards and any other derivative contracts relating to commodities, that —

(i) can be physically settled;

(ii) are not otherwise mentioned in subparagraph (c);

(iii) are not for commercial purposes; and

(iv) have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are cleared and settled through recognised clearing houses or are subject to regular margin calls;

(e) derivative instruments for the transfer of credit risk;

(f) financial contracts for differences; or

(g) the following —

(i) any —

(A) options;

(B) futures;

(C) swaps;

(D) forward rate agreements; and

(E) other derivative contracts relating to climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event); or

(ii) any other derivative contracts relating to —

(A) assets;

(B) rights;

(C) obligations; or

(D) indices and measures not otherwise mentioned in this definition,

which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market or other multilateral trading facility, are cleared and settled through recognised clearing houses, or are subject to regular margin calls;

"difference of treatment valuation" means a valuation for the purposes of assessing whether shareholders and creditors would have received better treatment under relevant insolvency proceedings than under the stabilisation power used, carried out in accordance with sections 66 and 67;

"Directive" —see definition of **"the BRRD"** or **"Directive 2014/59/EU"**;

"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 scope of the bail-in tool by virtue of section 103;

"eligible protected deposit" has the meaning given in the DCS Regulations;

"enter a bank into resolution" must be construed in accordance with the meaning of **"resolution"** (set out below in this section);

"extraordinary public financial support" means financial support provided by any public body in the Island in order to resolve or restore the viability, liquidity or solvency of a person within the scope of this Act;

"financial contracts" includes the following contracts and agreements —

(a) securities contracts, including —

(i) contracts for the purchase, sale or loan of a security, a group or index of securities;

(ii) options on a security or group or index of securities; and

(iii) repurchase or reverse repurchase transactions on any such security, group or index;

(b) commodities contracts, including —

(i) contracts for the purchase, sale or loan of a commodity or group or index of commodities for future delivery;

(ii) options on a commodity or group or index of commodities; and

(iii) repurchase or reverse repurchase transactions on any such commodity, group or index;

(c) futures and forwards contracts, including contracts (other than a commodities contract) for the purchase, sale or transfer of —

(i) a commodity or property of any other description;

(ii) a service; or

(iii) a right or interest,

for a specified price at a future date;

(d) swap agreements, including —

(i) swaps and options relating to: interest rates; spot or other foreign exchange agreements; currency; an equity index or equity; a debt index or debt; commodity indexes or commodities; weather; emissions or inflation;

(ii) total return, credit spread or credit swaps; and

(iii) any agreements or transactions that are similar to an agreement referred to in head (i) or (ii) which is the subject of recurrent dealing in the swaps or derivatives markets;

"foreign bank" means a bank the head office of which is established in a jurisdiction other than the Island;

"foreign resolution action" means an action under the law of another jurisdiction to manage the failure or likely failure of a foreign bank that is comparable, in terms of objectives and anticipated results, to resolution actions under this Act;

"FSA" means the statutory board known as the Isle of Man Financial Services Authority —

(a) as established by article 4 of the Transfer of Functions (Isle of Man Financial Services Authority) Order 2015[3]; and

(b) the existence of which is acknowledged by section 1(1) of the *Financial Services Act 2008*;

"Fund" means the Bank Resolution Fund established by section 37;

"group" means a parent and its subsidiaries;

"group entity" means a legal person that is part of a group;

"group resolution" means either of the following —

(a) the taking of resolution action at the level of a parent of a group; or

(b) the coordination of the application of resolution tools and the exercise of resolution powers by resolution authorities in relation to group entities that meet the resolution conditions;

"home jurisdiction", in relation to a bank, means the jurisdiction in which the bank is incorporated;

"home regulatory supervisor" means the supervisor of banks within a bank's home jurisdiction;

"home resolution authority" means the resolution authority within a bank's home jurisdiction;

"instruments of ownership" means —

(a) shares;

(b) instruments that are convertible into or give the right to acquire shares; or

(c) instruments representing interests in shares;

"international obligations notice" means a notice served on the Authority pursuant to section 133, in which the giver of the notice states that they believe (with reasons) that a proposed action (or actions) of the Authority would cause the Island to contravene its international obligations, or confirming that it does not believe such proposed action would cause the Island to contravene its international obligations;

[3] SD 2015/0090

"intragroup financing agreement" means a contract by which one group entity guarantees the obligations to a third party of another group entity within the same group;

"management" (in relation to a bank) means, both individually and collectively, —

(a) the directors and senior managers; or

(b) if applicable, former directors and former senior managers;

"mandatory reduction instrument" means an instrument by which the Authority exercises the write-down or conversion power pursuant to section 126(1);

"Manx law" includes "Manx legislation", any "statutory provision", any "Manx enactment", and any "provision";[4]

"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" must be construed accordingly;

"own funds" means the sum of Tier 1 capital and Tier 2 capital;

"parent" in relation to a bank, means the body that wholly owns the bank;

"pre-resolution valuation" means a valuation conducted in accordance with section 57(1);

"property transfer instrument" means an instrument for the transfer of assets, rights or liabilities;

"provisional valuation" means a pre-resolution valuation which is conducted in accordance with section 60;

"recipient" means the person to which shares or other instruments of ownership, debt instruments, assets, rights or liabilities, or any combination of those items are transferred from a bank in resolution;

"recognised foreign resolution action" means a foreign resolution action which is, or part of which is, recognised by the Authority pursuant to section 149(1);

"recognition order" means an order made by the Authority under section 148(1);

"recovery plan" means a recovery plan drawn up and maintained by a bank in accordance with Part 3;

"regulated market" means any market, however operated, which, by an order made by the Treasury, is identified (whether by name or by

[4] All the terms included in the definition of "Manx law" are defined in Part 2 of the *Interpretation Act 2015*.

reference to criteria prescribed by the order) as a regulated market for the purposes of this Act;

"relevant capital instruments" means Additional Tier 1 instruments and Tier 2 instruments;

"relevant insolvency proceedings" means —

(a) proceedings for a bank winding-up order as set out in this Act;

(b) where the Authority recognises a foreign resolution action, the proceedings for making a bank insolvent under the laws of a foreign jurisdiction; or

(c) in the case of the application of a stabilisation tool by the Authority, proceedings for a bank winding-up order under either the law of the Island or the law of a foreign jurisdiction, whichever is chosen by the Resolution Authority;

"relevant resolution authority", in relation to a bank, means —

(a) a resolution authority (other than the home resolution authority) in a jurisdiction in which the bank has a branch, where that resolution authority can take a resolution action with respect to the branch; and

(b) a resolution authority (other than the home resolution authority) in a jurisdiction in which the holding company of the bank is incorporated, where that resolution authority can take a resolution action with respect to the holding company;

"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 (or tools) as outlined in this Act in order to achieve one or more of the resolution objectives; and **"enter a bank into resolution"** must be construed accordingly;

"resolution action", which is an alternative to winding-up, means any action taken in furtherance of the decision to subject a bank to the resolution process —

(a) pursuant to the resolution conditions; and

(b) through the use of a resolution tool or the application of a resolution power;

"resolution conditions" means the conditions listed in section 45(2);

"resolution instrument" means an instrument effecting the decision of the Authority regarding the resolution of a bank;

"resolution objectives" means the objectives specified in section 44;

"resolution plan" means a resolution plan drawn up for a bank by the Authority in accordance with section 25;

"resolution power" means any of the powers set out in Part 8 and any of the general powers set out in Part 10;

"resolution safeguards" means the safeguards specified in sections 138, 139, 141, 142 and 143;

"resolution tools" means the stabilisation tools as well as the bank winding-up procedure set out in Part 13 (and each of them is a "resolution tool");

"sale of business tool" means the mechanism for effecting a transfer by the Authority of shares, assets, rights or liabilities of a bank in resolution to a purchaser that is not a bridge bank in accordance with the provisions specified in sections 72 to 81;

"secured liability" means a liability where the right of the creditor to payment or other form of performance is secured by a charge, pledge or lien, or collateral arrangements including liabilities arising from repurchase transactions and other title transfer collateral arrangements;

"security arrangement" means an arrangement under which a person has, by way of security, an actual or contingent interest in the assets or rights that are subject to transfer, irrespective of whether that interest is secured by specific assets or rights or by way of a floating charge or similar interest;

"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;

"shares" includes both shares and other instruments of equity ownership;

"stabilisation power" means a resolution power which relates specifically to the use of one of the stabilisation tools;

"stabilisation tools" means —

(a) the sale of business tool;

(b) the bridge bank tool;

(c) the asset separation tool;

(d) the bail-in tool; and

(e) the government financial assistance tool;

"structured finance arrangements" includes securitisations and instruments which —

(a) are used for hedging purposes;

(b) form an integral part of the cover pool; and

(c) are secured in a way similar to the covered bonds which involve the granting and holding of security by a party to the arrangement or a trustee, agent or nominee;

"Tier 2 instruments" has the meaning given in Article 2.1(73) of the Directive;

"title transfer financial collateral arrangement" means an arrangement, including a repurchase arrangement, under which a collateral provider transfers full ownership of financial collateral to a collateral taker for the purpose of securing or otherwise covering the performance of relevant financial obligations;

"transfer powers" means the power under this Act to transfer shares, other instruments of ownership, debt instruments, assets, rights or liabilities, or any combination of those items from a bank in resolution to a recipient;

"winding-up" means the realisation of the assets of a bank in accordance with Manx law (and the distribution of the assets to those entitled to receive them);

"write-down or conversion power" means the power to write-down or convert relevant capital instruments of a bank in accordance with section 125.

(2) If any amendment proposed to the DCS Regulations after this Act comes into operation would, in the opinion of the FSA, necessitate a consequential amendment to this Act, the FSA may (by means of public document by which the amendment to the DCS Regulations is made) make the necessary consequential amendment to this Act.

Tynwald procedure – approval required.

4 Meaning of "bank"

(1) In this Act, "**bank**" means a person licensed under the *Financial Services Act 2008* to carry on in or from the Island, the regulated activity of deposit taking.

(2) But "bank" does not include —

(a) a building society (within the meaning of section 7 of the *Industrial and Building Societies Act 1892*); or

(b) any other class of institution excluded by an order made by the Treasury.

Tynwald procedure – affirmative.

5 Scope of Act

[P.2009/1/2 and drafting]

(1) This Act applies to —

(a) banks; and

(b) any company incorporated in the Island which is a holding company or subsidiary of a bank.

This is subject to subsection (2).

(2) Where a stabilisation power is exercised in respect of a bank, it does not cease to be a bank if, as a result of a resolution action, it is no longer licensed as referred to in subsection (1)(a).

(3) The Schedule, which makes consequential amendments to the *Preferential Payments Act 1908*, has effect.

PART 2 – THE AUTHORITY

6 The resolution authority for the Island

(1) The resolution authority for the Island (in all subsequent sections referred to as "**the Authority**") is the FSA.

(2) In keeping with section 9, the FSA must make regulations prescribing how it will perform its functions in the capacity of resolution authority in a manner that is operationally separate from manner in which it performs its functions in the capacity of regulatory supervisor (as specified in the *Financial Services Act 2008*).

Tynwald procedure – approval required.

7 Functions of the Authority

(1) The Authority, in addition to any functions it may have under the *Financial Services Act 2008*, has the functions generally ascribed to it under this Act.

(2) The Authority may do anything it reasonably considers necessary to facilitate, or which is conducive to, the performance of its functions.

(3) Without limiting subsection (2) or the FSA's powers under the *Financial Services Act 2008*, the Authority may exchange relevant information, on a confidential basis, with —

(a) the DCS Manager; or

(b) the Treasury.

8 Authority's duty with respect to recovery and resolution planning

(1) The Authority must have regard for both the recovery and resolution planning processes.

(2) The Authority has responsibility for reviewing recovery plans. In discharging this responsibility it must —

(a) periodically review recovery plans; and

(b) take into consideration any results of such a review that would have a bearing on the resolvability of a bank.

(3) The Authority may prepare resolution plans.

9 Conflicts of interest between staff

Staff involved in carrying out the functions of the Authority must be, at least, structurally separate from those staff which carry out the FSA's functions in the capacity of regulatory supervisor.

10 Joint decisions with resolution authorities overseas

(1) The Authority must make efforts 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 Island, agreement must be sought with the home resolution authority as to the scope of respective resolution plans with a view to avoiding overlapping plans which are inconsistent.

11 Framework or cooperation agreements

The Authority may develop and enter into framework or cooperation agreements with other competent authorities, whether with respect to general approaches to resolution or in relation to specific banking groups and their proposed resolution plans.

12 Funding of the Authority

(1) The ongoing administrative operations of the Authority may be funded, *inter alia*, through —

(a) a subvention from the Treasury;

(b) borrowings;

(c) investment earnings; or

(d) a levy which the Authority may impose annually upon banks operating in the Island.

(2) The amount and terms of a levy under subsection (1)(d) must be prescribed by order made by the Authority under this subsection, after the Authority has consulted with the Treasury.

Tynwald procedure – affirmative.

13 Authority resources for carrying out its functions

(1) The Authority must be provided with adequate staff and financial resources for the effective and expeditious performance of its functions.

(2) The Authority may draw on further resources and incur reasonable additional financial costs where it is necessary to do so in the conduct of its responsibilities.

(3) Without limiting subsection (2), the Authority may, in appropriate circumstances and on such terms as the Authority thinks fit, engage additional resources or staff as may be necessary to ensure the timely carrying out of its duties and responsibilities.

(4) In acting in accordance with subsections (2) and (3), the Authority must take account of the potential for, and use its best endeavours to avoid, conflicts of interest.

14 Delegation

(1) The Authority may delegate any of its functions under this Act.

This is subject to subsection (2).

(2) The Authority retains ultimate responsibility for any action taken in its name by any person to whom it has delegated a function under subsection (1).

15 Limitation of Authority's liability

(1) Section 33 of the *Financial Services Act 2008* applies equally to this Act as it does to that Act.

This is subject to subsection (2).

(2) In so far as section 33 of the *Financial Services Act 2008* applies to this Act, the term "specified enactment" is to be construed as if the definition of it in subsection (5) of that section were amended by —

(a) the substitution of a semicolon for the full stop at the end of paragraph (q); and

(b) the insertion, immediately after paragraph (q), of the following —

"(r) the *Bank (Recovery and Resolution) Act 2020*.".

PART 3 – RECOVERY PLANNING

16 Recovery plans

(1) The Authority may require banks to —

(a) prepare and submit to it recovery plans; and

(b) regularly update those recovery plans,

in line with any guidance or requirements the Authority may develop.

(2) The board of directors of a bank —

(a) must review the bank's recovery plan before submitting it to the Authority; and

(b) must not submit the recovery plan to the Authority unless it has approved the recovery plan.

(3) Where the Authority elects to impose on a bank a requirement under subsection (1), it must issue a direction to the bank and must specify in that direction the date by which the bank is expected to comply.

(4) If a bank fails to comply with a direction under this section, the Authority may undertake such action for a breach as is appropriate.

17 Authority to examine recovery plans

(1) In reviewing any recovery plan it receives, the Authority must seek to identify any actions in the recovery plan which may adversely impact the resolvability of the bank.

(2) Following its examination of a recovery plan, the Authority must determine its proposed course of action with regard to the matters referred to in the recovery plan.

(3) The Authority must also transmit a recovery plan —

(a) to the competent authorities in jurisdictions in which the bank has any branches or subsidiaries; and

(b) to the home regulatory supervisor of the bank's group.

18 Group-wide recovery plans

(1) This section applies only to banks conducting business in the Island that are part of a group of banks, some of which are situated outside the Island.

(2) Requirements relating to recovery plans may be met by the bank sharing with the Authority relevant details of the group-wide recovery plan accompanied by an explanation of how such plan relates to and affects the bank's business in the Island.

(3) Recovery plans which are prepared specifically in relation to the Island business or entity must be consistent with the recovery plans for the rest of the group.

19 Contents of recovery plans: general provisions

(1) Recovery plans must contemplate a range of scenarios of severe macroeconomic and financial stress relevant to the bank's specific conditions.

(2) Each recovery plan must include a framework of indicators established by the bank which identifies the points at which appropriate actions referred to in the plan may be taken. The indicators may be of a qualitative or quantitative nature relating to the bank's financial position.

(3) Banks must put in place appropriate arrangements for the regular monitoring of the indicators referred to in subsection (2).

(4) Despite subsections (2) and (3), a bank may —

(a) take action under its recovery plan where the relevant indicator has not been met, but where the management consider it appropriate in the circumstances; or

(b) refrain from taking such action where the management does not consider it to be appropriate in the circumstances.

Such a decision either way must be notified by the bank to the Authority immediately. Failure by the bank to do so may render it liable to the Authority's taking action for a breach.

(5) A recovery plan must not assume access to extraordinary public financial support.

20 Review of recovery plan by the Authority

(1) The Authority must review each plan once it has been submitted and assess the extent to which it meets the following criteria —

(a) the implementation of the arrangements proposed in the plan is reasonably likely to maintain or restore the viability and financial position of each bank or group, taking into account the preparatory measures that each bank has taken or has planned to take; and

(b) the options within the plan are reasonably likely to be implemented quickly and effectively —

(i) in situations of financial stress; and

(ii) avoiding to the maximum extent possible any significant adverse effect on the financial system.

(2) When assessing the appropriateness of the recovery plans, the Authority must take into consideration —

(a) the appropriateness of the bank's capital and funding structure to the level of complexity of the organisational structure; and

(b) the risk profile of the bank.

(3) In the case of recovery plans which impact on a subsidiary or branch of the bank operating in another jurisdiction, the Authority must, when reviewing the plans, take into account the potential impact of the recovery measures on such other jurisdiction.

21 Confidentiality of recovery plans

(1) Recovery plans are confidential and must be treated as such by all persons to whom they are disclosed under this Act.

(2) A person who, having had a recovery plan disclosed to him or her under this Act, without lawful authority discloses any of the contents of the recovery plan commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale or to a term of custody not exceeding 6 months, or to both.

22 Recovery plan not presented, etc.

(1) Where the Authority assesses that —

(a) the bank has not presented an adequate recovery plan;

(b) there are material deficiencies in the recovery plan; or

(c) there are material impediments to its implementation of the plan the bank has submitted,

the Authority must notify the bank of its assessment.

(2) The Authority may require that bank to take measures necessary to redress the material deficiencies of the plan, including by requiring the bank to submit, within three months, a revised plan demonstrating how these deficiencies or impediments are addressed.

This is subject to subsection (3).

(3) Before requiring a bank to resubmit a recovery plan, the Authority must give the bank an opportunity to state its opinion on that requirement.

(4) Where the Authority does not consider the deficiencies and impediments to have been adequately addressed by the revised plan, it may direct the bank to make specific changes to the plan, having taken into account any opinion expressed by the bank as set out in subsection (3).

(5) If —

(a) the bank fails to submit a revised recovery plan; or

(b) the Authority determines that —

(i) the revised recovery plan does not adequately remedy the deficiencies or potential impediments identified in its original assessment; and

(ii) it is not possible to adequately remedy the deficiencies or impediments through a direction to make specific changes to the plan,

the Authority must require the bank to identify, within a reasonable timeframe, changes it can make to its business in order to address the deficiencies in or impediments to the implementation of the recovery plan.

(6) If —

(a) the bank fails, within the timeframe set by the Authority, to identify changes in accordance with subsection (4); or

(b) the Authority assesses that the actions proposed by the bank would not adequately address the deficiencies or impediments,

the Authority must direct the bank to take any measures it considers to be necessary and proportionate, taking into account the seriousness of the deficiencies and impediments and the effect of the measures on the bank's business.

(7) If a bank fails to comply with a direction under this section, the Authority may undertake such action for a breach as is appropriate.

23 Authority's directions to a bank following submission of recovery plan

(1) The Authority, —

(a) following its receipt from a bank of a recovery plan;

(b) where it considers such action necessary, reasonable and proportionate; and

(c) without prejudice to the FSA's functions under the *Financial Services Act 2008*,

may direct the bank to take any of the actions listed in subsection (2).

(2) Those actions are —

(a) to reduce the risk profile of the bank, including liquidity risk;

(b) to enable timely recapitalisation measures;

(c) to review the bank's strategy and structure;

(d) to make changes to the funding strategy so as to improve the resilience of the core business lines and critical functions; or

(e) to make changes to the governance structure of the bank.

(3) If a bank fails to comply with a direction under this section, the Authority may take such action for a breach as is appropriate.

24 Regulations regarding recovery plans

The FSA may make regulations relating to recovery planning.

Tynwald procedure – approval required.

PART 4 – RESOLUTION PLANNING

25 Resolution plans

(1) The Authority, after consulting with the resolution authorities and regulators in jurisdictions in which a bank operates branches or subsidiaries, must draw up a resolution plan for each bank incorporated in the Island.

(2) The resolution plan must outline the resolution actions which the Authority would take where the bank meets the resolution conditions.

(3) An overview of the contents of the resolution plan must be shared with the bank concerned.

(4) The preparation of resolution plans must be proportionate to the systemic importance of the bank or group to which they relate.

(5) The Authority may require a bank to cooperate, assist and provide all such information as may be required to draw up, implement and update each resolution plan.

(6) The Treasury may make regulations relating to resolution planning.

Tynwald procedure – affirmative.

26 Further provision in respect of resolution plans

(1) Where a bank's home jurisdiction is not the Island, the Authority must —

(a) discuss resolution plans with the home resolution authority; and

(b) seek details of how the group plans impact the business in the Island.

(2) In appropriate circumstances, the resolution plan may focus primarily on the assistance that the Authority will need to provide to a home jurisdiction's resolution authority.

(3) Where the Authority disagrees with the home resolution authority with regard to —

(a) the formulation of resolution plans; and

(b) a decision to deviate from the home resolution authority's plans in the Island,

the Authority must inform the home resolution authority of the disagreement and of the reasons for it.

(4) The resolution plan —

(a) must take into consideration relevant scenarios; and

(b) must not assume access to extraordinary public financial support.

27 Authorised share capital

(1) The Authority may, where applicable, require banks which are incorporated in the Island to maintain at all times a sufficient amount of authorised share capital or of other Common Equity Tier 1 instruments, in either case as specified in writing by the Authority to the bank.

(2) The decision on whether to impose such capital requirements (or to what extent) must be made in conjunction with the development of the resolution plan in relation to each bank.

(3) A bank that, by one calendar month after the Authority has specified the sufficient amount in accordance with subsection (1), does not have that sufficient amount is liable to the Authority's taking action for a breach.

28 Power to take additional measures

The Authority may by direction require a bank to take measures which, in the opinion of the Authority, are required to address —

(a) the effective exercise of the stabilisation powers; or

(b) the winding-up of the bank (whether by use of the bank winding-up procedure or otherwise).

29 Resolution actions affecting overseas branches or subsidiaries

(1) Subsection (2) applies when the Authority is —

(a) drawing up a resolution plan; or

(b) taking a resolution action,

which affects subsidiaries or branches outside the Island.

(2) The Authority must take into account, as far as is practicable, the following factors in respect of any jurisdiction in which the bank's subsidiaries or branches operate —

(a) the economic situation in the jurisdiction; and

(b) the impact that the resolution plan or the resolution action is likely to have on the jurisdiction.

Resolvability assessments

30 Duty of the Authority

(1) The Authority must carry out an assessment of the extent to which each bank incorporated in the Island is resolvable as part of the development of each resolution plan.

(2) The resolvability assessment must not assume the provision of extraordinary public financial support or access to any central bank liquidity assistance.

(3) A bank must be deemed to be resolvable if it is feasible and credible for the Authority to either —

(a) liquidate it under relevant insolvency proceedings; or

(b) resolve it by applying the different stabilisation tools or resolution powers to the bank while avoiding to the maximum extent possible any significant adverse effect on the financial system of the Island.

31 Consultation in resolvability assessment

(1) The resolvability assessment must be carried out in consultation with relevant resolution authorities in other jurisdictions in which the bank or its wider group operates.

This is subject to subsection (6).

(2) The resolvability assessment must —

(a) take into account the proposed group-wide resolution plan and consider resolvability of the elements of the bank's group which are relevant to the purview of the Authority; and

(b) identify impediments that, in the Authority's opinion, are material to resolvability.

(3) After having identified material impediments in accordance with subsection (2)(b), the Authority must in writing notify the following of those impediments —

(a) the bank; and

(b) the relevant resolution authorities in other jurisdictions in which the bank's subsidiaries or branches operate.

(4) Within 4 months of the date of receipt of such a notification, a bank must propose to the Authority possible measures to address or remove the substantive impediments identified in the notification.

If a bank fails to comply with this subsection, the Authority may undertake such action for a breach as is appropriate.

(5) The Authority must assess whether the measures proposed under subsection (4) effectively address or remove the substantive impediments in question.

(6) The Authority may decline to carry out a resolvability assessment where the bank in question is subject to a resolvability assessment in its home jurisdiction.

32 Alternative measures

(1) If the Authority assesses that the measures proposed under section 31(4) do not effectively reduce or remove the impediments in question, it must —

(a) require the bank to take alternative measures that may achieve that objective; and

(b) notify the bank, in writing, of those measures.

Paragraph (b) is subject to subsections (2) and (3).

(2) The Authority must explain to the bank how the measures proposed by the bank would not have adequately removed the impediments to resolvability and how the alternative measures are proportionate in removing them.

(3) The Authority may, if applicable, —

(a) require the bank to revise any intra-group financing agreements (including the absence thereof), including by entering into

agreements which provide for financial support to be given by the bank's parent to its subsidiary in the Island;

(b) require the bank to limit its maximum individual and aggregate exposures;

(c) impose specific or regular additional information requirements relevant for resolution purposes;

(d) require the bank to divest specific assets;

(e) require the bank to limit or cease specific existing or proposed activities;

(f) require the bank to restrict or prevent the development of new or existing business lines or sale of new or existing products;

(g) require changes to legal or operational structures of the bank or entities in its control so as to reduce complexity; and

(h) require a bank to issue eligible liabilities or take other steps to meet minimum requirements for own funds and eligible liabilities.

(4) On receipt of notification from the Authority under subsection (1)(b), the bank must within one calendar month propose a plan to comply with them.

(5) The Authority may take action for a breach against any bank that contravenes subsection (4).

33 Authority's discretion in respect of alternative measures

(1) The Authority's discretion in respect of which (if any) alternative measures it proposes is limited to what is necessary in order to simplify the structure and operations of the bank and thereby improve its resolvability.

(2) Any measures the Authority proposes for the purposes referred in subsection (1) must be —

(a) fair and non-discriminatory; and

(b) justifiable in the public interest.

(3) In developing resolution plans and conducting resolvability assessments, the Authority must conform with and pursue the resolution objectives set out in section 44 and the resolution principles set out in section 49.

(4) In drawing up resolution plans which include within their scope branches or subsidiaries in other jurisdictions, the Authority must, insofar as is possible, specifically take into account the potential impact of the alternative measures in such other jurisdictions.

34 Consultation with employee representatives and others

(1) Resolution plans must include procedures for informing and consulting employee representatives throughout the resolution process, where appropriate.

(2) Where applicable, collective agreements or other arrangements provided for by trade union partnerships or any Manx enactment must be complied with.

(3) The Authority must also provide information regarding the resolution plan[5] to —

(a) the resolution authorities in jurisdictions in which the bank has any branches or subsidiaries; and

(b) to the home resolution authority of the bank's group.

(4) The information provided under subsection (3) must include all information that is relevant to the respective subsidiary or branch.

35 Review of resolution plans

(1) The Authority must review resolution plans and, where appropriate, update them —

(a) at least annually; and

(b) after any material changes to —

(i) the legal or organisational structure of the bank;

(ii) its business; or

(iii) its financial position,

that could have a material effect on the effectiveness of the plan or otherwise necessitates a revision of the resolution plan.

(2) Resolution plans are confidential and must be treated as such by all persons to whom they are disclosed under this Act.

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

36 MREL

(1) The Authority may, on a case-by-case basis, —

(a) set a minimum requirement for own funds and eligible liabilities ("MREL") in respect of each bank incorporated in the Island; and

(b) require the bank in respect of which the MREL has been set to fulfil the MREL.

[5] See sections 25 and 26.

(2) MREL must be expressed as a percentage of the total liabilities and own funds of the bank.

(3) In respect of any MREL requirement set in respect of a bank incorporated in the Island, the bank must ensure that at all times it meets that requirement.

(4) The Authority may take action for a breach against any bank which fails to comply with subsection (3).

PART 5 –BANK RESOLUTION FUND

37 Establishment of the Fund

(1) A fund is established and is to be known as the Bank Resolution Fund ("**the Fund**").

(2) The following monies are to be paid into the Fund —

(a) money obtained by levying contributions from banks;

(b) money provided by the Treasury;

(c) money borrowed by the Authority for the purposes of the Fund;

(d) money received as income from investments;

(e) any other money required by this Act (or any regulations made hereunder) to be paid into the Fund or received by the Authority in connection with a resolution action and determined by the Authority to be so paid.

(3) For the purposes of the Fund, the Authority has the power —

(a) to recover from a bank any funds that it has paid, or which are payable by it, in respect of —

(i) any action taken by the Authority in order to consider whether to take a resolution action or recognise a foreign resolution action in respect of the bank; or

(ii) the taking of a resolution action or recognition of a foreign resolution action in respect of the bank; or

(b) to raise contributions from banks other than the bank referred to in paragraph (a), where funds referred to in paragraph (a) are insufficient, and must —

(i) decide and apply the method of calculating the amount of the contributions to be paid by each bank liable to pay such contributions;

(ii) determine the date by which the contributions must be paid; and

(iii) give at least 7 days written notice to each bank requiring it to pay the contributions and specifying —

(A) the amount of the contribution the bank is required to pay;

(B) the method of calculation of the contribution; and

(C) the date or dates on which the contribution becomes payable; or

(c) to borrow from any source.

(4) The Authority must from time to time invest the assets of the Fund in the manner it considers prudent.

(5) The Authority may borrow money or otherwise incur indebtedness including charges by way of interest, for the purposes of this Act, in such manner and on such terms as it thinks fit.

(6) The Authority may take out policies of insurance for the purposes of this Act.

(7) The following are to be paid out of the Fund —

(a) money required for the arrangement, service and repayment of loans obtained by the Authority, or for the discharge of other indebtedness incurred for the purposes of this Act;

(b) premiums of policies of insurance taken out by the Authority for the purposes of this Act; and

(c) the compensation costs incurred by the Authority.

(8) In respect of the Fund, the Authority —

(a) may not pay out an amount in excess of £60,000,000;

(b) must seek to recover from the bank in resolution any funds paid out; and

(c) may, if there is any negative balance left to the Fund following recovery of as much as possible from the bank in resolution, recover such balance from banks (in accordance with subsection (2)) over a period of 10 years.

(9) The Treasury may by order amend the amount specified in subsection (8)(a) and the period specified in subsection (8)(c).

Tynwald procedure – affirmative.

(10) Where any shareholder or creditor has a right of redress arising as a result of—

(a) the Authority's exercising a resolution power or applying a resolution tool; and

(b) the monies in the Fund have been exhausted to the extent of monies recovered from —

(i) the bank in resolution under subsection (3)(a); or

(ii) banks other than the bank in resolution under subsection (3)(b),

the right is exercisable only against the bank in resolution.

38 Control and management of the Fund

(1) The Fund must be controlled, managed and administered by the Authority in accordance with this Act and any regulations made by the Treasury under this subsection.

Tynwald procedure – approval required.

(2) Despite subsection (1), the Authority may not use the Fund unless it has obtained the prior approval of the Treasury.

(3) The Fund may be used only in accordance with the general principles of resolution and when necessary to achieve the resolution objectives.

(4) The provisions of this section do not limit the Authority's general powers of management, either under this Act or under the *Financial Services Act 2008*.

39 Permitted and prohibited uses of the Fund

(1) The Authority may use the Fund only to the extent necessary to ensure the effective application of the stabilisation tools (including by applying such funds to a purchaser under the sale of business tool) for the following purposes —

(a) to guarantee the assets or liabilities of the bank in resolution, its subsidiaries, a bridge bank, or an asset management vehicle;

(b) to purchase assets of the bank in resolution;

(c) to make contributions to a bridge bank or an asset management vehicle or, where the sale of business tool is applied, a purchaser;

(d) to pay compensation to shareholders or creditors in accordance with the general resolution principle under section 49(1)(g) and the resolution safeguards under sections 138 and 139;

(e) to make a contribution to the bank in resolution in lieu of the use of the write-down or conversion power, when the bail-in tool is applied and the Authority decides to exclude certain creditors from the scope of the bail-in tool in accordance with section 104; or

to take any combination of the actions referred to in paragraphs (a) to (e).

(2) The Fund may not be used to directly absorb the losses of a failed or failing bank or to recapitalise such a bank, unless such use is expressly provided for by any other enactment.

(3) In the event that the use of the Fund for the purposes set out in subsection (1) indirectly results in part of the losses of the bank in resolution being passed on to the Fund, such amount is recoverable from the bank in resolution in accordance with the general principles of resolution.

40 Funding from the Fund

Funding from the Fund is subject to the following conditions —

(a) the provision of temporary funding is necessary to protect financial stability in the Island;

(b) the provision of temporary funding is necessary to achieve the resolution objectives; and

(c) every reasonable effort has been made by the Authority to raise the required funds from a private source, and every possible source of such private funds has been exhausted or the Authority is satisfied that there is no reasonable prospect of the required funds being available within the timeframe in which they will be required.

PART 6 – ADMINISTRATIVE PROVISIONS

Early intervention powers

41 Resolution without early intervention

The Authority may take resolution action irrespective of whether or not it has first used any of the early intervention powers specified in section 42.

42 Early intervention powers

(1) The Authority may take any of the actions specified in subsection (2) if a bank —

(a) infringes any of the capital adequacy requirements placed on the bank by the FSA or any minimum requirement for own funds and eligible liabilities set under section 36; or

(b) is likely to so infringe in the near future due, *inter alia*, to what the Authority assesses to be a rapidly deteriorating financial condition, including —

(i) deteriorating liquidity situation;

(ii) increasing level of leverage;

(iii) non-performing loans; or

(iv) concentration of exposures.

The Authority's power under this section does not limit its power under section 41.

(2) The actions referred to in subsection (1) are as follows —

(a) the Authority may —

(i) require the management of the bank to —

(A) implement one or more of the arrangements or measures set out in its recovery plan; or

(B) update its recovery plan where the circumstances that led to the early intervention are different from the assumptions in the recovery plan; and

(ii) implement one or more of the arrangements or measures set out in the updated recovery plan —

(A) within a specific timeframe; and

(B) in order to ensure that the conditions for early intervention no longer apply;

(b) the Authority may 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) the Authority may —

(i) require the management of the bank to convene; or

(ii) if the management fails to comply with that requirement, convene directly,

a meeting of shareholders of the bank and, in either case, set the agenda and require certain decisions to be considered for adoption by the shareholders;

(d) the Authority may require one or more members of management to be removed or replaced if those persons are deemed unfit to perform their duties;

(e) the Authority may, where applicable, 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;

(f) the Authority may require changes to the bank's strategy;

(g) the Authority may require changes to the legal or operational structures of the bank;

(h) the Authority may require, including through on-site inspections if necessary, the provision to the Authority of all information 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 57; or

(i) the Authority may 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.

(3) In relation to the exercise of the measures set out in subsection (2), the Authority must set an appropriate deadline for completion.

Resolution objectives

43 Authority's responsibilities during a resolution

When applying the resolution tools and exercising the resolution powers, the Authority must —

(a) have regard to the resolution objectives specified in section 44; and

(b) choose the tools and powers that best achieve the objectives that are relevant in the circumstances of the case.

44 Resolution objectives

The resolution objectives are —

(a) to ensure the continuity of banking services in the Island and the provision of critical functions in the Island;

(b) to protect and enhance the stability of the financial system of the Island, including by preventing contagion and maintaining market discipline;

(c) to protect and enhance public confidence in the stability of the financial system in the Island;

(d) to protect public funds, including by minimising reliance on extraordinary public financial support;

(e) to protect depositors to the extent that they have eligible protected deposits; and

(f) to protect client assets.

Resolution conditions

45 Duty to resolve in a timely manner

(1) The Authority may not enter a bank into resolution unless it considers that the bank is no longer viable.

(2) In order for a bank to be considered no longer viable, the Authority must be satisfied that all of the following conditions are met —

(a) the bank is failing or is likely to fail;

(b) having regard to timing and other relevant circumstances, it is not reasonably likely that (ignoring the stabilisation powers) any action 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; and

(c) the use of the stabilisation tools is in the public interest of the Island.

(3) The conditions listed in subsection (2) are the "**resolution conditions**".

46 Deeming bank "failing or likely to fail"

(1) For the purposes of the resolution conditions in section 45, 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 continue to satisfy the Authority that it has met, or will continue to meet, the conditions for its continued licensing, including, but not limited to, 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 to apply to the bank; or

(e) extraordinary public financial support is required in respect of the bank, except in the circumstance 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 Island 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 government guarantee to back liquidity facilities;

(b) a government 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 the extraordinary public financial support is granted.

47 Winding-up to be preferred to resolution

(1) The Authority must always consider the winding-up of a failing bank through the relevant insolvency proceedings before it applies any of the stabilisation tools.[6]

(2) However, for the purposes of the resolution conditions, the Authority must regard the use of a stabilisation tool as in the public interest if —

(a) it is necessary for the achievement of and is proportionate to one or more of the resolution objectives; and

(b) winding-up the bank under the bank winding-up procedure would not meet those objectives to the same extent.

(3) If the Authority regards the use of a stabilisation tool (in respect of a particular bank or group of banks) as in the public interest, the Authority may use the stabilisation tool instead of pursuing winding-up.

(4) The Authority must not regard the previous adoption of an early intervention measure with regard to a bank as an indication that the resolution conditions are met.

48 Resolution of entity within a group

(1) The resolution conditions can be met in relation to an entity which is part of a group irrespective of whether or not the other entities in the group would also meet the resolution conditions.

(2) Where the entity in the Island does not in isolation meet the resolution conditions, the resolution conditions can nonetheless be met as a result of the failure or likely failure of a group entity outside the Island which —

(a) would have adverse consequences for the entity in the Island; and

(b) may cause the entity in the Island to meet the resolution conditions in the future.

General principles of resolution

49 Resolution principles

(1) When applying resolution tools and exercising resolution powers, the Authority must take all appropriate measures to ensure that a resolution action is taken in accordance with the following principles —

(a) the shareholders of a bank in resolution must bear first losses;

(b) the creditors of a bank in resolution must bear losses after the shareholders, in accordance with the ordinary priority of their

[6] Note that, pursuant to section 3, "stabilisation tools" and "the winding-up procedure" together constitute "resolution tools". 'Winding-up' is therefore as much a "resolution tool" as is use of any of the "stabilisation tools".

claims under relevant insolvency proceedings, save as otherwise expressly provided for in this Act;

(c) the management of the bank in resolution must be replaced, except in those cases where the Authority reasonably considers that the retention 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 must provide all necessary assistance for the achievement of the resolution objectives;

(e) natural and legal persons are liable, in either or both of civil and criminal proceedings (as may be appropriate), for any actions or omissions for which they are culpable and which contributed to the failure of the bank;

(f) except where otherwise provided in this Act, creditors of the same class must be treated in an equitable manner;

(g) unless it is in the public interest, a creditor must not incur greater losses than would have been incurred had the bank been wound-up under relevant insolvency proceedings;

(h) covered deposits must be fully protected;

(i) any resolution action taken must be in accordance with the resolution safeguards; and

(j) the costs of the resolution of a bank must be minimised.

(2) Neither the Authority nor any other person is required to finance resolution arrangements from the general revenue of the Island.

(3) 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.

50 Qualified duty to follow resolution plan

(1) When taking resolution actions, the Authority must take into account and follow the measures provided for in the resolution plans. However, this requirement does not apply if the condition in subsection (2) is met.

(2) The condition referred to in subsection (1) is that the Authority assesses, taking into account the circumstances of the case, that the resolution objectives will be achieved more effectively by taking actions which are not provided for in the resolution plans.

(3) Where the Authority decides to apply a resolution tool to a bank and that resolution action would result in losses being borne by creditors or their claims being converted, the Authority must exercise the write-down or conversion power to convert capital instruments immediately before or contemporaneously with the application of the resolution tool.

51 Power to apply resolution tools separately or together

(1) The Authority 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 have been transferred must be wound-up utilising the bank winding-up procedure.

(3) In accordance with the bank winding-up procedure, such winding-up must be done within a reasonable timeframe having regard, if relevant, to the need for that entity 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.

52 Recovery of reasonable expenses

The Authority may recover any reasonable expenses properly incurred (and paid out of the Fund) in connection with the use of the resolution tools or powers (including the bank winding-up procedure), or government financial stabilisation tool, in one or more of the following ways —

(a) as a deduction from any consideration paid by the recipient 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 in accordance with the general principles of resolution; 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.

53 Alternative funding sources

(1) In the event of a systemic crisis, the Authority may seek funding from alternative funding sources through the use of stabilisation tools.

This is subject to the condition in subsection (2).

(2) The condition referred to in subsection (1) is that a satisfactory contribution to loss absorption and recapitalisation, measured by the pre-resolution valuation, has been made by —

(a) the shareholders; and

(b) the holders of other instruments of ownership,

(c) the holders of relevant capital instruments; and

(d) the holders of other liabilities that are eligible through write-down, conversion, or otherwise.

(3) A contribution referred to in subsection (2) is a "satisfactory contribution" only if —

(a) it is equal to an amount not less than 8% of total liabilities including own funds of the bank in resolution; and

(b) the required minimum percentage of total liabilities referred to in paragraph (a) is measured by the pre-resolution valuation.

(4) The Treasury may, after consultation with the Authority, by order reduce or increase the percentage of total liabilities referred to in subsection (3)(a).

Tynwald procedure – affirmative.

54 Duty to carry out relevant assessment

(1) Where —

(a) there is a requirement to notify the FSA of a change in the level of ownership of a person by another person;

(b) that change in the level of ownership is by virtue of the application of a stabilisation tool; and

(c) the application of the stabilisation tool would result in the acquisition of a holding which crosses an applicable threshold,

the FSA must carry out a relevant assessment related to the notification given in accordance with paragraph (a).

(2) The relevant assessment referred to in subsection (1) must be carried out in a timely manner that neither —

(a) delays the application of the stabilisation tools; nor

(b) prevents the resolution action from achieving the relevant resolution objectives.

(3) Where the FSA has not completed an assessment or given any relevant approval to the transfer or conversion by the date that the stabilisation would be made effective by the Authority, the following provisions apply —

(a) such a transfer or conversion has immediate legal effect;

(b) during the assessment period and during any divestment period provided for in this Act, an acquirer's voting rights attached to such shares must be suspended and vested solely in the Authority, which is not obliged to exercise any such voting rights and which is not liable for exercising or refraining from exercising any such voting rights;

(c) promptly upon completion of the assessment, the FSA must notify the acquirer in writing of whether it approves or opposes such a transfer of shares to the acquirer (or the acquisition of shares by the acquirer as a result of conversion);

(d) if the FSA approves such 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 such shares must be deemed to be fully vested in the acquirer immediately upon receipt by the acquirer of such approval notice from the FSA; and

(e) if the FSA opposes such a transfer of shares to the acquirer (or the acquisition of shares by the acquirer as a result of conversion), then —

(i) the voting rights attached to such shares as provided by paragraph (b) remain in full force and effect; and

(ii) the FSA may require the acquirer to divest such shares within a divestment period determined by the FSA having taken into account prevailing market conditions.

Competition law

55 Duty to have regard to relevant competition laws

(1) The Authority, in carrying out its functions under this Act, must have regard to any relevant competition law in the Island and operate within the relevant provisions.

This is subject to subsection (2).

(2) The requirements in subsection (1) do not apply in circumstances where derogation from any relevant competition law in the Island is required in order to achieve the resolution objectives.

An example of this is where the resolution objectives would not be met if additional delay were caused by the requirement to have regard to the relevant competition law.

Special management

56 Appointment of business manager

The FSA may apply to the High Court for the appointment of a business manager to a bank in resolution, in accordance with section 22 of the *Financial Services Act 2008*.

PART 7 – VALUATION

Pre-resolution valuation

57 Pre-resolution valuation of assets and liabilities

(1) Before taking resolution action or exercising the write-down or conversion power in respect of a bank, the Authority must ensure that the assets and liabilities of the bank are valued.

(2) Unless the conditions for a provisional valuation are present, the Authority must arrange for the appointment of an independent valuer.

58 Objective and purposes

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

(2) The purposes of the 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 tools are to be used;

(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 or other instruments of ownership, 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 assets, rights, liabilities or shares 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 assets, rights, liabilities or shares to be transferred and to inform the Authority's understanding of what constitutes commercial terms for the purposes 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 tools are applied or the write-down or conversion power is exercised.

59 Duties in the course of pre-resolution valuation

(1) In carrying out the 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 to the bank from the point at which resolution action is taken or the write-down or conversion power is exercised; and

(c) take account of the fact that, if any resolution tool is applied —

(i) the Authority may recover any reasonable expenses properly incurred (and paid out of the Fund) from the bank in resolution in accordance with the general principles of resolution; and

(ii) 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 DCS if the bank were to enter relevant insolvency proceedings.

(3) The pre-resolution valuation must also be carried out in accordance with section 70.

Provisional valuation

60 Power to carry out provisional valuation

(1) In the circumstance specified in subsection (2), the Authority may cause 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 70.

(2) The circumstance referred to in subsection (1) is that the Authority 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 57(2).

(3) A provisional valuation is a valid basis on which to take a resolution decision, including a decision to use the write-down or conversion power or other resolution tools.

61 Objective and purposes

(1) The objective and purposes of a provisional valuation are the same as those of the pre-resolution valuation set out in section 58.

(2) To the extent reasonable in the circumstances, the provisional valuation must meet the requirements specified in section 59.

(3) The provisional valuation must include a buffer for additional losses, with appropriate justification.

Definitive valuation

62 Definitive valuation by independent valuer

(1) In the circumstance specified in subsection (2), the Authority must arrange for the appointment of an independent valuer to carry out a definitive valuation as soon as reasonably practicable.

(2) The circumstance referred to in subsection (1) is that the Authority has carried out a provisional valuation in accordance with section 60(1) and (2) before using the write-down or conversion power or exercising a stabilisation power.

63 Purposes of definitive valuation

(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 the decision of the Authority as to whether —

(i) additional consideration must be paid by a purchaser, bridge bank or asset management vehicle for any assets, rights, liabilities or shares transferred under the sale of business tool, bridge bank tool or asset separation tool; or

(ii) the Authority must exercise the power under the resolution safeguards to increase or reinstate any liability which has been reduced or cancelled by a resolution instrument.

(2) For the purposes of subsection (1), the Authority may —

(a) instruct a purchaser, bridge bank or asset management vehicle to pay additional consideration for any assets, rights, liabilities or shares 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 beyond the value it would have had if the resolution instrument which reduced, cancelled or deferred it had not been made; and

(b) must be exercised by a mandatory reduction instrument or resolution instrument (whether or not that instrument contains any other provision authorised by this subsection or subsection (2)).

64 Definitive valuation must be distinct

A definitive valuation may be carried out either —

(a) separately from the difference of treatment valuation; or

(b) simultaneously with, and by the same independent person as, the difference of treatment valuation,

but the definitive valuation and the difference of treatment valuation must be distinct from one another.

65 Participant not automatically ineligible to be independent valuer

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

Difference of treatment valuation

66 Authority must arrange for difference of treatment valuation

(1) For the purpose specified in subsection (2), the Authority must arrange for a difference of treatment valuation to be carried out by an independent person as soon as possible after the resolution action or actions have been effected.

(2) The purpose referred to in subsection (1) is that of assessing whether shareholders and creditors would have received better treatment if the bank in resolution had entered relevant insolvency proceedings.

(3) The difference of treatment valuation must be distinct from any pre-resolution valuation, provisional valuation or definitive valuation.

67 Purposes of difference of treatment valuation

(1) The difference of treatment valuation must determine —

(a) the treatment that shareholders, creditors, and the DCS would have received if the bank in resolution had entered relevant insolvency proceedings at the time when the decision was taken to stabilise the bank;

(b) the actual treatment that shareholders, creditors and the DCS have received; and

(c) if there is any difference between the treatment referred to in paragraphs (a) and (b).

(2) The difference of treatment valuation must also —

(a) assume that the bank in resolution would have entered relevant insolvency proceedings on the date on which the decision was taken to stabilise it;

(b) assume that the bank in resolution would, if it had entered relevant insolvency proceedings in accordance with paragraph (a), have been liquidated in full as at the date on which it would have entered relevant insolvency proceedings;

(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.

General provisions relating to valuation

68 Valuer to be independent from public authorities

(1) Independence of the valuer, in the context of the pre-resolution valuation, must include independence from any public authority.

(2) In subsection (1), "public authority" includes the Authority.

(3) The Treasury, by order, may—

(a) set technical standards in respect of valuations generally; or

(b) without restricting the scope of its power make subsequent orders under this subsection, —

(i) define "independence" under subsection (1); or

(ii) make provision specific to difference of treatment valuations.

Tynwald procedure – affirmative.

69 Powers of independent valuer

An independent valuer may do anything necessary or desirable for the purposes of or in connection with the performance of the functions of his office.

70 Standards

[Jersey.2017/10/48 and drafting]

(1) The Treasury may set or adopt standards for the purpose of a valuation.

(2) A valuation must be carried out in accordance with the standards set or adopted by the Treasury under subsection (1).

71 Eligibility criteria for independent valuer

[Jersey.2017/10/49 and drafting]

The Treasury may by order specify the eligibility criteria for appointment of a person as an independent valuer for the purposes of —

(a) sections 57 to 59;

(b) sections 62 to 65; or

(c) sections 66 and 67.

Tynwald procedure – affirmative.

PART 8 – RESOLUTION TOOLS

Sale of business tool

72 Nature and purpose

The Authority 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 by making —

(a) one or more share transfer instruments for the transfer of the shares of the bank in resolution; or

(b) one or more property transfer instruments for the transfer of all or any assets, rights or liabilities of the bank in resolution.

73 Use of tool without shareholders' consent

(1) Subject to the resolution safeguards, the Authority may effect the sale of business tool —

(a) without the consent of the shareholders of the bank in resolution or any third party other than the purchaser; and

(b) without complying with any procedural requirements other than those which are set out in this Act.

(2) The Authority 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 that bank or part of its business in an open, transparent and non-discriminatory process, while aiming to maximise as far as possible the sale price.

74 Use of net proceeds of consideration

(1) Subject to the general principle that the costs of resolution must be recovered from the bank in resolution, the net proceeds of consideration paid by the purchaser on the transfer must benefit —

(a) the owners of the shares, where the sale of business has been effected by transferring shares issued by the bank in resolution from the holders of those shares or instruments to the purchaser; or

(b) the bank in resolution where the sale of business has been effected by transferring some or all of the assets or liabilities of the bank in resolution to the purchaser, including where the bank in resolution is then subject to winding-up.

(2) When applying the sale of business tool, the Authority may exercise the transfer power more than once in order to make supplemental transfers of shares issued by the bank in resolution or, as the case may be, assets, rights or liabilities of the bank in resolution.

75 Power of Authority to exercise the transfer powers

(1) Following an application of the sale of business tool, the Authority may, with the consent of the purchaser, exercise the transfer powers in respect of assets, rights or liabilities transferred to the purchaser in order to transfer the assets, rights or liabilities back to the bank in resolution, or the shares back to their original owners.

(2) Either the bank in resolution or the original owners must take back any such assets, rights, liabilities or shares.

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

76 Purchaser to acquire banking business

(1) The purchaser under the sale of business tool will acquire such banking business as a continuation of the banking business being conducted prior to the transfer.

(2) As such, where the transfer has been effected by way of a transfer of shares in the bank in resolution, the bank in resolution may exercise any of the rights following the transfer as it was entitled to exercise prior to the transfer.

(3) Where the transfer has been effected by way of a transfer of assets, rights and liabilities, the purchaser may exercise any of the rights following the transfer as the bank in resolution was entitled to exercise prior to the transfer.

(4) The purchaser (or the transferred entity) may continue to exercise rights of membership and access to payment, clearing and settlement systems, securities exchanges and the DCS, provided that it meets the membership and other criteria for participation in such systems.

(5) Without limiting subsection (4) —

(a) the purchaser, where not already licensed under the *Financial Services Act 2008* to conduct deposit taking, —

(i) must apply for any relevant licence within a 2 month period; and

(ii) may not act in accordance with subsection (4) unless the purchaser has been granted the licence within 6 months of purchasing the business (or part thereof) of the bank in resolution; and

(b) where the purchaser does not meet the membership or other criteria for participation in —

(i) a relevant payment, clearing or settlement system;

(ii) a relevant securities exchange; or

(iii) the DCS,

the rights referred to in this section may be exercised for such period of time as may be specified by the Authority, not exceeding 24 months, renewable on application by the purchaser to the Authority.

77 Shareholders' and creditors' rights over assets and liabilities

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

78 Marketing of assets, rights, liabilities or shares

[Jersey.2017/10/55 and drafting]

(1) Subject to the exceptions set out in section 79(2) and (3) and section 80, when applying the sale of business tool to a bank, the Authority must

market, or make arrangements for the marketing of, the assets, rights, liabilities or shares of the bank that the Authority intends to transfer.

(2) Pools of assets, rights, liabilities or shares may be marketed separately.

(3) Marketing under subsection (2) must be carried out in accordance with the following criteria —

(a) it must be as transparent as possible;

(b) it must 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 must not unduly favour or discriminate against potential purchasers;

(d) it must be free from conflicts of interest;

(e) it must not confer any unfair advantage on a potential purchaser;

(f) it must take account of the need to effect a rapid resolution action; and

(g) it must aim at maximising, as far as possible, the sale price for the shares, assets, rights or liabilities involved.

79 Authority's power to solicit potential purchasers

(1) Subject to the requirement that marketing of a bank in resolution must not unduly favour or discriminate against potential purchasers, the criteria in section 78(3) must not prevent the Authority from soliciting particular potential purchasers.

(2) Any disclosure to the public of information which would ordinarily be required as a matter of law in relation to the sale of such a business may be delayed for the time necessary to plan and structure the resolution of the bank.

(3) Any public disclosure of the marketing of the bank in resolution which would ordinarily be required as a matter of law, may be delayed where all of the following conditions are met —

(a) immediate disclosure is likely to prejudice the legitimate interests of the bank in resolution;

(b) delay of disclosure is not likely to mislead the public;

(c) delay of disclosure is in the public interest; and

(d) the disclosure of the marketing information entails a risk of undermining the financial stability of the bank in resolution and the financial system.

80 Authority may apply tool without marketing bank

The Authority may apply the sale of business tool without complying with the requirement to market the bank when it determines that compliance with the marketing requirements would be likely to undermine one or more of the resolution objectives and, in particular, if the following conditions are met —

(a) the Authority considers that there is a material threat to financial stability arising from or aggravated by the failure of the bank in resolution; and

(b) it considers that compliance with those requirements would be likely to undermine the effectiveness of the sale of business tool in addressing that threat or achieving the resolution objective of protecting and enhancing the stability of the financial system of the Island, including by preventing contagion and maintaining market discipline.

81 Residual bank to be wound-up

(1) Where the sale of business tool has been used to transfer part of the business that meets the resolution conditions to a private sector purchaser, the residual bank must be liquidated using the bank winding-up procedure within an appropriate timeframe.

(2) For the purposes of subsection (1), an "appropriate timeframe" must be 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.

The bridge bank tool

82 Nature and requirements

(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.

(2) A bridge bank must be a legal entity that —

(a) is wholly owned by one or more public bodies;

(b) is controlled by the Authority; and

(c) is created for the purposes of receiving a transfer of the shares (or other instruments of ownership) or business of the bank in resolution by virtue of the utilisation of such transfer power under the bridge bank tool, with a view to maintaining access to critical functions and (in due course) selling the bank or its business.

83 Procedure for transfer of business of bank

(1) The Authority may, by making —

(a) one or more share transfer instruments for the transfer of the shares of one or more banks in resolution; or

(b) one or more property transfer instruments for the transfer of all or any assets, rights or liabilities of one or more banks in resolution,

apply the bridge bank tool to a bank that meets the resolution conditions.

(2) Subject to the resolution safeguards, the Authority may use the bridge bank tool —

(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 other than those which are set out in this Act.

(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 that bridge bank, must not interfere with the ability of the Authority to control the bridge bank.

84 Bridge bank to be a viable going concern

(1) The bridge bank must be created and operated as a viable going concern (with a view to being put back on the market when conditions are appropriate).

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

85 Use of consideration by bridge bank

(1) Subject to the general principle that the Authority may recover any reasonable expenses properly incurred in connection with the use of the resolution tools from the consideration paid by the purchaser of the bank in resolution or from the bank in resolution, any consideration paid by the bridge bank must benefit —

(a) the owners of the shares or instruments of ownership, where the transfer of 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 assets or liabilities of the bank in resolution to the bridge bank.

(2) When applying the bridge bank tool, the Authority may exercise the transfer power more than once in order to make supplemental transfers of

shares issued by a bank in resolution or, as the case may be, assets, rights or liabilities of the bank in resolution.

86 Powers of Authority on application of tool

(1) Following the application of the bridge bank tool, the Authority may —

(a) transfer assets, rights or liabilities transferred to the bridge bank back to the bank in resolution, or the shares back to their original owners, and the bank in resolution or original owners must take back any such assets, rights or liabilities, or shares; or

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

(2) The Authority may, within any period and subject to complying with any other conditions in a relevant instrument of transfer, transfer shares, assets, rights or liabilities back from the bridge bank in one of the following circumstances —

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

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

(3) A transfer between —

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

(b) the owners and the bridge bank,

is subject to the resolution safeguards.

87 Bridge bank to acquire banking business

(1) The bridge bank under the bridge bank tool acquires such banking business as a continuation of the banking business being conducted prior to the transfer.

(2) Accordingly —

(a) where the transfer has been effected by way of a transfer of shares in the bank in resolution, the bank in resolution may exercise any rights following the transfer as it was entitled to exercise prior to the transfer; and

(b) where the transfer has been effected by way of a transfer of assets, rights and liabilities, the bridge bank may exercise any rights following the transfer as the bank in resolution was entitled to exercise prior to the transfer.

88 Bridge bank to continue exercising rights of membership, etc.

(1) The bridge bank (or the transferred entity) must continue to exercise rights of membership and access to payment, clearing and settlement systems, securities exchanges and the DCS, provided that it meets the membership and participation criteria for participation in such systems.

(2) Without limiting subsection (1), where the bridge bank does not meet the membership or participation criteria for a relevant payment, clearing or settlement system, securities exchange or the DCS, the rights referred to in section 87(2)(b) are exercisable for such period of time as may be specified by the Authority, not exceeding 24 months, renewable on application by the bridge bank to the Authority.

89 Shareholders, etc. with untransferred assets, rights and liabilities

(1) The following persons do not have any rights over or in relation to the assets, rights or liabilities transferred to the bridge bank —

(a) shareholders or creditors of the bank in resolution; and

(b) other third parties whose assets, rights or liabilities are not transferred to the bridge bank.

This subsection does not limit the resolution safeguards.

(2) The objectives of the bridge bank do not imply any duty or responsibility to shareholders or creditors of the bank in resolution.

(3) The management has no liability to the shareholders or creditors for acts or omissions in the discharge of their duties, unless the act or omission implies —

(a) gross negligence; or

(b) serious misconduct,

which directly affects rights of shareholders or creditors.

90 Requirements for operation of a bridge bank

(1) A bridge bank must be operated in compliance with the following requirements —

(a) the contents of a bridge bank's constitutional documents must be consented to in writing by the Authority;

(b) subject to the bridge bank's ownership structure, the Authority must either appoint or approve the bridge bank's management board;

(c) the Authority's prior written consent must be sought regarding the following matters —

(i) proposed remuneration of the members of the management board;

(ii) the responsibilities determined to be appropriate to entrust to the members of the management board;

(d) the Authority's prior written consent must be obtained regarding the strategy and risk profile of the bridge bank;

(e) the bridge bank must be licensed under the *Financial Services Act 2008* to undertake deposit-taking business and any other regulated activities it acquires the right to engage in via the bridge bank tool; and

(f) the bridge bank must comply with the requirements of a licence issued to it under the *Financial Services Act 2008*.

(2) Subject to subsection (3), the bridge bank may be established and licensed without complying with the requirements for licensing for a period not exceeding 6 months. However, this is only permissible if the Authority determines that it is necessary to meet the resolution objectives.

This section is despite the provisions referred to in paragraphs (e) and (f) of subsection (1) relating to licensing.

(3) If a decision to grant such a licence is made under the *Financial Services Act 2008*, the Authority must indicate the period (not exceeding 6 months) for which the bridge bank is, as permitted by subsection (2), not obligated to comply with the requirements for licensing.

91 Access to critical functions, etc.

(1) Subject to any restrictions under Manx competition law, the management of the bridge bank must operate the bridge bank with a view to maintaining access to critical functions and subsequently selling the bridge bank, its assets, rights or liabilities, to one or more private sector purchasers.

(2) The Authority must take a decision that the bridge bank is no longer a bridge bank in any of the following cases, whichever occurs first —

(a) the bridge bank merges with another entity;

(b) the bridge bank ceases to meet the requirements of a bridge bank set out at section 82(2);

(c) the sale of all or substantially all of the bridge bank's assets, rights and liabilities to a third party;

(d) the expiry of the periods specified in section 92(3); or

(e) the bridge bank's assets are completely wound down and its liabilities are completely discharged.

92 Authority's duty to market bridge bank, etc.

(1) In cases where the Authority seeks to sell the bridge bank or its assets, rights or liabilities, the Authority —

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

(b) must not, in the course of the sale —

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

(ii) unduly favour or discriminate between potential purchasers.

(2) Any such sale must be on commercial terms, having regard to the circumstances.

(3) Where none of the outcomes referred to in paragraphs (a), (b), (c) or (e) of section 91(2) applies, the Authority must 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 pursuant to the bridge bank tool.

This is subject to section 93.

93 Extension of period for termination of bridge bank

(1) The Authority may extend the period for termination of the bridge bank for one or more additional one year periods where such an extension —

(a) supports the outcomes referred to in paragraphs (a), (b), (c) or (e) of section 91(2); or

(b) is necessary to ensure the continuity of essential banking or financial services.

(2) Any decision of the Authority to extend the period for termination of the bridge bank must be reasoned and must contain a detailed assessment of the situation (including the market conditions and outlook) that justifies the extension.

94 Duty to wind-up bridge bank

(1) Where the operations of a bridge bank have been terminated as a result of the sale of all or substantially all of its assets, rights or liabilities, or as a result of the expiry of the two year time limit set out at section 92(3), the bridge bank must be wound-up under the bank winding-up procedure.

This is subject to the extension permitted by section 93.

(2) Any proceeds generated as a result of the termination of the operations of the bridge bank must benefit the shareholders of the bridge bank. This is subject to the general principle specified in subsection (3).

(3) The general principle referred to in subsection (2) is that the costs of resolution must be recovered from —

(a) the bank in resolution; or

(b) the proceeds of the sale of —

(i) the bank in resolution; or

(ii) the assets, rights or liabilities of the transferred business.

Asset separation tool

95 Nature and permitted use

(1) The asset separation tool may be used only in conjunction with the other stabilisation tools.

(2) In sections 96 to 100, "asset management vehicle" means a legal person which meets all of the following requirements —

(a) it is wholly owned by one or more public bodies; and

(b) 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 or bridge banks (or both).

96 Asset management vehicle to manage transferred assets

(1) An asset management vehicle must manage the assets transferred to it with a view to maximising their value through their eventual sale or orderly liquidation.

(2) The asset management vehicle must not be operated unless the following requirements have been satisfied —

(a) the Authority's written consent to the contents of the asset management vehicle's constitutional documents must be obtained;

(b) subject to the asset management vehicle's ownership structure, the vehicle's management body must have been either appointed or approved by the Authority;

(c) the Authority's prior written consent must be obtained regarding the following matters —

(i) proposed remuneration of the members of the management board; and

(ii) the responsibilities determined to be appropriate to entrust to the members of the management board; and

(d) the Authority's prior written consent must be obtained regarding the strategy and risk profile of the asset management vehicle.

97 Restrictions on use of tool

(1) The Authority may not utilise the asset separation tool unless —

(a) the situation of the particular market for those assets 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) such a transfer 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) The Authority 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 enures to the benefit of the bank in resolution.

This is subject to the general principle that the costs of resolution must be recovered from the bank in resolution.

(3) Consideration may be paid in the form of debt issued by the asset management vehicle.

98 Authority's power to transfer assets, rights and liabilities

(1) In order to give effect to the asset separation tool, the Authority may transfer the assets, rights and liabilities of —

(a) a bank in resolution; or

(b) a bridge bank to which shares or assets, rights and liabilities have been transferred under the bridge bank tool, to an asset management vehicle.

(2) For the purposes of the transfer referred to in section 100(1), the Authority may make one or more property transfer instruments.

(3) Where assets, rights or liabilities are transferred to an asset management vehicle pursuant to the asset separation tool, the Authority 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.

(4) The transfer of business under the asset separation tool may take place without obtaining the consent of the shareholders of the bank in resolution or any third party and without complying with any procedural requirements under the *Companies Acts 1931 to 2004*, the *Companies Act 2006*, or the *Financial Services Act 2008*.

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

99 Transfers back from an asset management vehicle

(1) The Authority may transfer assets, rights or liabilities from the bank in resolution to one or more asset management vehicles on more than one occasion and transfer assets, rights or liabilities back from one or more

asset management vehicles to the bank in resolution; provided that either of the conditions specified in subsection (3) are met.

(2) Where the Authority seeks to make a transfer back to the bank in resolution, the bank in resolution must take back any assets, rights or liabilities.

(3) The Authority may, within any period and subject to complying with any other conditions in a relevant instrument of transfer, transfer assets, rights or liabilities back from the asset management vehicle to the bank in resolution in one of the following circumstances —

(a) the possibility that the specific assets, rights or liabilities might be transferred back is stated expressly in the instrument by which the transfer was made; or

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

100 Transfers subject to resolution safeguards

(1) Transfers between the bank in resolution and the asset management vehicle are subject to the safeguards for partial property transfers 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) The objectives of an asset management vehicle do not imply any duty or responsibility to shareholders or creditors of the bank in resolution, and the management has no liability to such shareholders or creditors for acts or omissions in the discharge of their duties unless the act or omission implies gross negligence or serious misconduct which directly affects the rights of shareholders or creditors.

Bail-in tool

101 Resolution instruments when using tool

(1) In order to exercise the bail-in tool, the Authority may make one or more resolution instruments.

(2) The Authority 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 its ability to comply with minimum capital requirements as required under the *Financial Services Act 2008*;

(ii) to continue to carry out the activities for which it is licensed under that Act; and

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

(b) to convert to equity or reduce the principal amount of 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.

102 Restoration to financial soundness and long-term viability

(1) The Authority may apply the bail-in tool for the purposes referred to in section 101(2)(a) only if there is a reasonable prospect that the application of that 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 Authority 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 101(2)(b).

(3) The Authority may apply the bail-in tool to all banks that are within the scope of this Act, while respecting in each case the legal form of the entity concerned, or while changing the legal form if the Authority is of the view that changing the legal form is necessary to achieve the resolution objectives.

103 Scope of tool

(1) The scope of the bail-in tool extends to all the liabilities of a bank to which the scope of this Act extends, other than those liabilities which are excluded in accordance with 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 bonds and liabilities in the form of financial instruments used for hedging purposes, which form an integral part of the cover pool and which are secured in a way similar to covered bonds;

(c) any liability that arises by virtue of the holding by the bank of client assets or client money including client assets or client money held on behalf of an Authorised Scheme (within the meaning of Schedule 1 to the *Collective Investment Schemes Act 2008*) or an International Scheme (within the meaning of Schedule 2 to the *Collective Investment Schemes Act 2008*) or an equivalent scheme established outside the Island;

(d) any liability that arises by virtue of a fiduciary relationship between the bank (as fiduciary) and another person (as beneficiary);

(e) liabilities to credit institutions, excluding 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 payment and securities settlement systems or their participants and arising from the participation in such system, or to central counterparties;

(g) a liability to any one 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 rental, servicing and upkeep of premises;

(iii) creditors described in section 3(1)(a), (g) or (h) of the *Preferential Payments Act 1908*; or

(h) the DCS.

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

104 Authority's power to exclude certain liabilities

(1) In exceptional circumstances where the bail-in tool is applied, the Authority 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 Authority;

(b) the exclusion is strictly necessary and is proportionate to achieving 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 strictly necessary and proportionate to avoid giving rise to widespread contagion; and

(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 Authority decides to exclude or partially exclude an eligible liability or class of eligible liabilities under subsection (1), the Authority may, to take account of such exclusions, increase the level of write-down or conversion it applies to other eligible liabilities.

105 Contributions from the Fund to bank in resolution

(1) Where the Authority decides to exclude or partially exclude an eligible liability or class of eligible liabilities pursuant to sections 103 and 104(1) and the losses that would have been borne by those liabilities have not been passed on fully to other creditors, the Authority may make a contribution out of the Fund to the bank in resolution.

This is subject to subsection (2).

(2) The contribution out of the Fund may be made only to do one of more of the following —

(a) 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 this Act relating to the assessment of the amount of bail-in; or

(b) purchase shares in the bank in resolution, in order to recapitalise the bank in accordance with the provisions of this Act relating to the assessment of the amount of bail-in.

(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 and the holders of other instruments of ownership, the holders of relevant capital instruments and other eligible liabilities through write-down, conversion or otherwise; and

(b) the contribution of the Fund does not exceed 5% of the total liabilities including own funds of the bank in resolution, measured by the pre-resolution valuation.

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

(5) The Treasury may, after consultation with the Authority, by order reduce or increase the percentages of total liabilities referred to in subsection (3).

Tynwald procedure – approval required.

106 Factors for due consideration by Authority

(1) When exercising its discretion under section 104(1), the Authority 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.

(2) The exclusions under section 104(1) may be applied either to completely exclude a liability from write-down or to limit the extent of the write-down applied to that liability.

(3) 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 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 either the bank in resolution or the bridge bank.

107 Authority by which eligible liabilities to be written-down

(1) The assessment referred to in section 106(3) must establish the amount by which eligible liabilities need to be written-down and converted in order to —

(a) restore the Common Equity Tier 1 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 section 39(1)(c));

(b) sustain sufficient market confidence in the bank in resolution or the bridge bank; and

(c) enable the bank in resolution or the bridge bank to continue to satisfy, for at least one year, the minimum capital requirements as set pursuant to the *Financial Services Act 2008*.

(2) Where the Authority 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 must 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-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

108 Actions to be taken in respect of shareholders

(1) When applying the bail-in tool or the write-down or conversion power, the Authority must take in respect of shareholders 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 shareholders 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 Authority 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 on the occurrence of an event that preceded or occurred at the same time as the assessment by the Authority 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 Authority must have regard to —

(a) the pre-resolution valuation (or provisional valuation, if applicable);

(b) the amount by which the Authority has assessed that Common Equity Tier 1 items must be reduced and relevant capital instruments must be written-down or converted pursuant to the write-down or conversion power; and

(c) the aggregate amount assessed by the Authority pursuant to section 106(3).

Sequence of write-down or conversion

109 Requirements when exercising write-down or conversion power

The Authority must, where exercising the write-down or conversion power, subject to any exclusion set out in sections 103 and 104(1), ensure that the following requirements are met —

(a) Common Equity Tier 1 items are reduced in accordance with section 108(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 108(3)(b) and (c), the Authority 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 108(3)(b) and (c), the Authority 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) to (c) is less than the sum of the amounts referred to in section 108(3)(b) and (c), the Authority 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 hierarchy of claims in relevant insolvency proceedings, in conjunction with the write-down pursuant to paragraphs (a) to (c) to produce the sum of the amounts referred to in section 108(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 108(3)(b) and (c), the Authority 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 hierarchy of claims in 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 108(3)(b) and (c).

110 Authority's duty to allocate losses equally

(1) When applying the write-down or conversion power, the Authority must allocate the losses represented by the sum of the amounts referred to in section 108(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 104(1).

(2) Subsection (1) does not prevent liabilities which have been excluded from bail-in in accordance with sections 103 and 104(1) from receiving more favourable treatment than eligible liabilities which are of the same rank in relevant insolvency proceedings.

111 Authority's duty to convert or reduce principal amount

(1) Before applying the write-down or conversion referred to in section 109, the Authority must convert or reduce the principal amount on instruments referred to in paragraphs (b), (c) and (d) of section 109 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 pursuant to section 109, the Authority must apply the write-down or conversion power to the residual amount of that principal in accordance with section 109.

112 Restrictions on converting classes of liabilities

(1) When deciding on whether liabilities are to be written-down or converted into equity, the Authority may 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 pursuant to sections 103 and 104(1).

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

(3) The Authority may, for that reason, terminate and close out any derivative contract upon entry into resolution.

(4) However, where a derivative contract has been excluded from the application of the bail-in tool pursuant to section 104(1), the Authority is not obliged to terminate or close out the derivative contract.

(5) Where a derivative contract is subject to a netting arrangement, the Authority 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 arrangement.

113 Determining value of liabilities from derivative contracts

The Authority must determine the value of liabilities arising from derivative contracts in accordance with the following —

(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 must be established; and

(c) appropriate methodologies for comparing the destruction in value that would arise from the close out and bail-in of derivatives with the amount of losses that would be borne by derivatives in bail-in.

114 Authority's power to apply a different conversion rate

When the write-down or conversion power is used, the Authority 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 must 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 are considered to be senior under this Act must be higher than the conversion rate applicable to subordinated liabilities.

Business reorganisation plans

115 Requirements regarding business reorganisation plan

(1) Where the bail-in tool has been used, the Authority 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.

(2) The implementation of a business reorganisation plan may include the appointment by the Authority of persons appointed pursuant to its

general power to exercise control over a bank in resolution with the objective of drawing up and implementing the business reorganisation plan.

(3) Within 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 Authority 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 where foreign resolution legislation has been made, a group level business reorganisation plan may be accepted by the Authority.

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

116 Minimum required contents of business reorganisation plan

(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 be likely to fail and the circumstances that led to its difficulties;

(b) a description of the measures aimed at restoring the long-term viability of the bank that are to be adopted; and

(c) a timescale for the implementation of those measures.

(2) Measures aimed at restoring 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.

117 Authority to assess likely effectiveness of plan

(1) Within one month of the submission of the business reorganisation plan, the Authority must assess the likelihood that the plan, if implemented, will restore the long-term viability of the bank.

(2) If the Authority is satisfied that the business reorganisation plan would achieve that objective, the Authority must approve the plan.

(3) If the Authority is not satisfied that the plan would achieve that objective, the Authority must notify the management of the bank of its concerns and require the amendment of the plan in a way that will address those concerns.

118 Management's duty to submit an amended plan to the Authority

(1) Within 2 weeks of receiving a notification that the Authority is not satisfied with the business reorganisation plan, the management of the bank must submit an amended plan to the Authority.

(2) The Authority must assess the amended plan and notify the management of the bank within one week whether it is satisfied that the plan addresses the concerns notified or whether further amendment is required.

(3) The management of the bank must implement the business reorganisation plan and must submit a report to the Authority every 6 months on the progress of the implementation of the business reorganisation plan.

(4) The business reorganisation plan may be further amended following its initial implementation if the Authority is of the view that changes to the plan are required to achieve the long-term viability of the bank.

Ancillary provisions relating to bail-in

119 Immediate effect of write-down or conversion

(1) Where the Authority exercises the write-down or conversion power, such write-down or conversion takes effect and is immediately binding on the bank and affected creditors and shareholders.

(2) The Authority 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 instrument which has been written-down, without the requirement for a prospectus, if a prospectus would in normal circumstances be required.

(3) Where the Authority 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 must be treated as discharged for all purposes, and must not be provable in any subsequent proceedings in relation to the bank in resolution or any successor entity in any subsequent winding-up.

120 Effect of reduction of principal or outstanding amount

(1) Where the Authority reduces in part the principal amount of, or outstanding amount payable in respect of, a liability by means of the write-down or conversion power —

(a) such 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 Authority 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 of general 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, in particular the write-down or conversion power.

Contractual recognition of bail-in

121 Recognition of subjection to write-down or conversion power

(1) The Authority may require a bank incorporated in the Island to include a contractual term 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,

that is effected by the exercise of that power by the Authority.

This is subject to subsection (2).

(2) Subsection (1) applies only if such liability is —

(a) not excluded under section 103 or 104(1);

(b) not a covered deposit;

(c) governed by the law of another jurisdiction; and

(d) issued or entered into after the date on which this Act comes into operation.

(3) A bank that fails to comply with a requirement imposed on it by the Authority under this section is liable to the Authority's taking action for a breach.

(4) If the Authority declines to require a bank incorporated in the Island to include a contractual term referred to in subsection (1), the Authority is not thereby prevented from exercising the write-down or conversion power in relation to the eligible liability in question.

PART 9 – GOVERNMENT FINANCIAL ASSISTANCE

122 Provision of extraordinary public financial support

The Authority, acting only in agreement with and under the direction of the Treasury, may provide extraordinary public financial support to a failed or failing bank in accordance with section 123(a), for the purpose of resolving a bank (including by intervening directly to avoid its winding-up), with a view to meeting the resolution objectives.

123 Government financial assistance tool a last resort

The government financial assistance tool may only be used —

(a) as a last resort, after having assessed and exploited the other stabilisation tools to the maximum extent practicable whilst maintaining financial stability (as determined by the Treasury in consultation with the Authority);

(b) if the resolution conditions are met; and

(c) the Treasury and the Authority both determine that either or both of the following conditions are met —

(i) the application of the other resolution tools would not suffice to avoid a significant adverse effect on the financial system in the Island; or

(ii) the application of the other resolution tools would not suffice to protect the public interest.

124 Further restrictions on government financial assistance

(1) The government financial assistance tool may take place only by way of public equity support under subsection (2) or temporary public ownership under subsection (3).

(2) Where the conditions for the use of the government financial assistance tool are met, the Authority may participate in the recapitalisation of a bank in resolution by providing capital in exchange for Common Equity Tier 1 instruments, Additional Tier 1 instruments, or Tier 2 instruments, provided that the Authority ensures —

(a) to the extent that its shareholding of such bank permits, that such bank is managed on a commercial basis; and

(b) that its holding in the bank is transferred to the private sector as soon as commercial and financial circumstances allow.

(3) Where conditions for the use of the government financial assistance tool are met, the Authority may take a failed or failing bank into temporary public ownership. If the Authority does so, it must —

(a) manage the bank on a commercial basis; and

(b) transfer the bank to the private sector as soon as commercial and financial circumstances allow.

(4) For the purpose of subsection (3), the Authority may make one or more share transfer orders in which the transferee is —

(a) a nominee of the Authority; or

(b) a company wholly owned by the Authority.

Tynwald procedure – affirmative.

PART 10 – GENERAL RESOLUTION POWERS

125 Write-down or conversion power

(1) The Authority may write-down or convert relevant capital instruments or other eligible liabilities of a bank in resolution into shares of such bank.

(2) The write-down or conversion power enables the Authority, inter alia,—

(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 such shares; or

(d) to require the bank in resolution to issue new shares or other capital instruments, including preference shares and contingent convertible instruments.

126 Mandatory reduction instrument

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

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

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

(4) The write-down or conversion power may be exercised either —

(a) independently of resolution action; or

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

127 Application to relevant capital instruments

The Authority must, without delay and in relation to relevant capital instruments issued by a failed or failing bank, exercise the write-down or conversion power in accordance with the requirements of this Act when one or more of the following circumstances applies —

(a) the determination has been made that the resolution conditions have been met, before any resolution action has been taken;

(b) the Authority determines that, unless the write-down or conversion power is exercised in relation to the relevant capital instruments, the failed or failing bank would no longer be viable (in accordance with section 45(2));

(c) in the case of relevant capital instruments issued by 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 36, the Authority determines that the group would no longer be viable (in accordance with section 45(2)) unless the write-down or conversion power is exercised;

(d) in the case of relevant capital instruments issued by a parent, and where those capital instruments are recognised for the purposes of meeting any minimum funds requirements for own funds and eligible liabilities under section 36, the Authority determines that the group would no longer be viable (in accordance with section 45(2)) unless the write-down or conversion power is exercised; or

(e) government financial assistance is required by the bank, except in the circumstances described in section 46(2).

128 Priority of claims under relevant insolvency proceedings

When complying with the requirements in sections 126(4) and 127, the Authority must exercise the write-down or conversion power in accordance with the priority of claims under relevant insolvency proceedings, in a way that produces 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 Authority takes one or both of the actions specified in section 108(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.

129 Effect of writing down of principal amount

(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 107(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 challenging the legality of 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 is 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 128(b), the Authority may require banks 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) those Common Equity Tier 1 instruments are issued by the bank with the agreement of the Authority;

(b) those Common Equity Tier 1 instruments are issued prior to any issuance of shares by that bank for the purposes of provision of own funds by an Isle of Man public body;

(c) those 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 112(1).

Default event provisions

130 Disregarded factors regarding default event provisions

(1) The following will be disregarded in determining whether a default event provision applies —

(a) a crisis prevention measure, crisis management 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 such measure or action,

provided that the substantive obligations under the contract, 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 a company which is a member of the same group as the bank or foreign bank; or

(c) is entered into by an entity which is a member of 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.

131 Resolution instruments and share transfer orders

[Jersey.2017/10/75 and drafting]

(1) A resolution instrument or share transfer order may make provision for subsection (2) or (3) to apply in circumstances where section 130(1) would not apply.

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

(3) If this subsection applies, the resolution instrument or share transfer order must be disregarded in determining whether a default event provision applies; except so far as 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 or decision taken or made under this Act or another 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 obligations

132 Potential impact of resolution action

(1) Where the bank is a group entity, the Authority must, without prejudice to the application of the resolution objectives in the Island, —

(a) take into account the potential impact of the resolution action in all of the jurisdictions in which its subsidiaries or branches operate; and

(b) in the manner specified in 133(1) —

(i) apply the resolution tools; and

(ii) exercise the resolution powers.

(2) The Authority must comply with subsection (1)(b) 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.

133 International obligations notice

(1) The Authority must not carry out an action if that action would be likely to contravene an international obligation of the United Kingdom or the Island.

(2) For the purpose of ascertaining whether an international obligation of the United Kingdom or the Island would be contravened, a notice under subsection (2) ("an international obligations notice") may be served on the Authority by any of the following persons —

(a) the Attorney General; or

(b) the Treasury.

(3) An international obligations notice —

(a) either —

(i) states (with specified reasons) that the person serving it believes that a proposed action of the Authority would cause the Island to contravene its international obligations; or

(ii) confirms that the person serving it does not believe such proposed action would cause the Island to contravene its international obligations; and

(b) specifies certain actions which the Authority must or must not take in order for the Island to comply with its international obligations.

(4) The Authority may request the Attorney General or the Treasury to serve an international obligations notice where the Authority is of the view that it is at risk of taking an action which may contravene an international obligation of the Island.

(5) An international obligations notice must be in writing and may be withdrawn (generally, partially or conditionally).

(6) Nothing in this section requires any person or body to opine on a technical area which is outside its competence, jurisdiction or technical expertise.

(7) On receipt of an international obligations notice, the Authority must consider alternative courses of action that achieve the resolution objectives but avoid the objections on which the international obligations notice is based.

Assessment process

134 Timely assessment of new shareholders, etc.

(1) The Authority must assess new shareholders of a bank or the transferee of its business, with a view to enabling the Authority to perform a stabilisation in a timely manner and protect financial stability. This

assessment must be carried out in a timely manner that does not delay the application of the stabilisation tool.

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

Restriction on normal insolvency proceedings

135 Restriction on commencement of normal insolvency proceedings

Where —

(a) a stabilisation power has been exercised in respect of a bank; or

(b) the resolution conditions are met in relation to the relevant bank,

normal insolvency proceedings may not be commenced in relation to that bank except by, or with the consent of, the Authority.

Other general resolution powers

136 Power of Authority to apply resolution tools

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

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

(a) the power to require any person to provide any information required for the Authority 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 the rights and powers conferred upon the shareholders, other owners and management of the bank in resolution, including control over the bank in resolution so as to —

(i) operate and conduct activities and services of the bank in resolution with all the powers of its shareholders and management; and

(ii) manage and dispose of the assets and property of the bank in resolution, whether directly by the Authority or indirectly by a person or persons appointed by the Authority;

(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 in resolution;

(d) the power to transfer to another entity, with the consent of that entity, shares issued by a bank in resolution;

(e) the power to transfer to another entity, with the consent of that entity, rights, assets or liabilities of a bank in resolution;

(f) the write-down or conversion power and each of its component parts;

(g) the power —

(i) to amend or alter the maturity date 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 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 pursuant to section 103);

(h) the power to close out and terminate financial contracts or derivative contracts for the purposes of applying section 112;

(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 that purpose any right of compensation in accordance with the resolution safeguards will 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 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 for a recipient of shares, assets, rights or liabilities under the sale of business tool or bridge bank tool 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 use of the sale of business tool and the bridge banking 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 as a party;

(p) the power to provide for continuity arrangements necessary to ensure that the resolution action is effective and, where relevant, the business transferred may be operated by the recipient, including, in particular —

(i) the continuity of contracts entered into by the bank in resolution; and

(ii) the substitution of the recipient for the bank in resolution in any legal proceedings relating to any 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 that are necessary to enable the recipient of transferred shares, assets, rights or liabilities to operate the transferred business effectively, including 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 publication of a notice of suspension in accordance with section 145 until midnight in the Island at the end of the business day following that publication, provided that —

(i) where a payment or delivery obligation would have been due during the suspension period, the payment or delivery obligation is 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 will also be suspended for the same period of time;

(iii) any suspension under this provision does not apply to payment and delivery obligations owed to payment and security settlement systems, central counterparties and central banks; and

(iv) when exercising this power, the Authority must —

(A) have regard to the impact 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 protected deposits; and

(s) the power to restrict secured creditors of a bank in resolution from enforcing security interests in relation to any assets of that bank from the publication of a notice of the restriction in accordance with

section 145 until midnight in the Island at the end of the business day following that publication, provided that —

(i) the Authority may not exercise this power in relation to any security interest of 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 143 applies, the Authority must ensure that any restrictions imposed pursuant to this power are consistent for all group entities in relation to which a resolution action is taken; and

(iii) where exercising this power, the Authority must have regard to the impact the exercise of that power might have on the orderly functioning of financial markets.

137 Requirements for provision of services and facilities under section 136

(1) The services and facilities provided in accordance with section 136(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 or where the agreement has expired, on reasonable terms.

(2) The general powers set out in section 136(2) do not affect —

(a) the right of an employee of the bank in resolution to terminate a contract of employment; or

(b) subject to sections 130(1) and 136(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 the right to terminate, where entitled to do so in accordance with the terms of the contract by virtue of an act or omission by —

(a) the bank in resolution prior to the relevant transfer; or

(b) the recipient after the relevant transfer.

(4) The following requirements do not apply to the exercise of the resolution tools —

(a) subject to any requirements set out in this Act to seek the approval of another public authority in the Island, the 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 exercise of a resolution tool, procedural requirements to notify any person including any requirement to publish any notice or prospectus or to file or register any document with any other authority (except as set out in this Act).

(5) Without prejudice to the generality of subsection (4), the Authority may exercise the resolution powers irrespective of any restriction on, or requirement to obtain consent for, the transfer of the financial instruments, rights, assets or liabilities in question that might otherwise apply.

Creditor protections and the "no creditor worse off" principle

138 Treatment of shareholders and creditors in the case of partial transfers and application of the bail-in tool

(1) Where the Authority transfers only part of the assets, rights and liabilities of the bank in resolution, the shareholders and creditors whose claims have not been transferred must 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 taken to stabilise the bank.

This subsection does not apply where subsection (2) applies.

(2) Where the Authority applies the bail-in tool, it must do so in such a manner as to ensure that the shareholders and creditors whose claims have been written-down or converted to equity do not incur greater losses than they would have incurred if the bank in resolution had been wound-up under relevant insolvency proceedings immediately at the time when the decision was taken to stabilise it.

139 Claims for compensation from the Fund

If the difference of treatment valuation carried out in accordance with section 66 determines that any shareholder or creditor has incurred greater losses than it would have incurred in a winding-up under relevant insolvency proceedings, the shareholder or creditor may make a claim for compensation to the Fund.

Partial transfers

140 Application of protections under section 141

Where the Authority —

(a) transfers some of the assets, rights or liabilities of a bank in resolution to another entity or, in the exercise of a resolution tool, from a bridge bank or asset management vehicle to another person; or

(b) exercises the power in section 136(2)(o) to cancel or modify the terms of a contract to which the bank in resolution is a party or substitute a recipient as a party,

then the protections in section 141 apply.

141 Protected arrangements

(1) Where section 140 applies, the following arrangements are protected —

(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 requirement under section 140 applies irrespective of the number of parties involved in the arrangements, and irrespective of whether the arrangements —

(a) are created by contract, trusts 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.

142 Restrictions on transfer

(1) For the reason specified in subsection (2), the following actions are prohibited —

(a) the transfer of some of the rights and liabilities that are protected under any of the arrangements between the bank in resolution and another person; and

(b) the modification or termination of rights and liabilities that are protected under any of the arrangements through the exercise of ancillary powers.

In this subsection, "arrangements" means the arrangements specified in subsection (2).

(2) The reason referred to in subsection (1) is to protect —

(a) title transfer financial collateral arrangements referred to in section 141(1)(b);

(b) set-off arrangements referred to in section 141(1)(c); and

(c) netting arrangements referred to in section 141(1)(d).

(3) In order to protect liabilities secured under security arrangements referred to in section 141(1)(a), the following are prohibited —

(a) the transfer of assets against which a liability is secured, unless that liability and the benefit of the security are also transferred;

(b) the transfer of a secured liability, unless the benefit of the security is also transferred;

(c) the transfer of the benefit of the security, unless the secured liability is also transferred; and

(d) the modification or termination of a security arrangement through the use of ancillary powers, if the effect of that modification or termination is that the liability ceases to be secured.

(4) In order to protect structured finance arrangements (including arrangements referred to in section 141(1)(e) and (f)), the following are also prohibited —

(a) the transfer of some of the assets, rights and liabilities which constitute or form part of a structured finance arrangement, including arrangements referred to in section 141(1)(e) and (f), to which the bank in resolution is party; and

(b) the termination or modification through the use of ancillary powers of assets, rights and liabilities which constitute or form part of a structured finance arrangement, including arrangements referred to in section 141(1)(e) and (f), to which the bank in resolution is party.

(5) Notwithstanding subsections (1) to (4), where necessary in order to ensure availability of the covered deposits the Authority may —

(a) transfer covered deposits which are part of any of those arrangements without transferring other assets, rights or liabilities that are part of the same arrangements; and

(b) transfer, modify or terminate those assets, rights and liabilities without transferring the covered deposits.

143 Payment and settlement systems unaffected

The application of a resolution tool does not affect the operation of payment and settlement systems where the Authority —

(a) transfers some of the assets, rights or liabilities of a bank in resolution to another entity; or

(b) uses powers under section 136(2) to cancel or amend the terms of a contract to which the bank in resolution is a party or to substitute a recipient as a party.

Confirmation by court order

144 Court references regarding use of resolution tools

(1) The Authority may apply to the Court for the determination of a question arising in relation to the taking of a resolution action.

(2) The Court, if satisfied that it will be just and beneficial to do so, may —

(a) accede wholly or partially to the application, on such terms and conditions as it thinks fit; or

(b) make such other order on the application, as it thinks just.

(3) An order made under subsection (2) may specify that the Authority may apply a resolution tool, exercise a resolution power or take a resolution action specified in the order.

Procedural requirements

145 Requirement for publication

(1) The Authority must, as soon as reasonably practicable after the creation of an order by which a resolution action is taken, publish or procure the publication of —

(a) a copy of the order (including a recognition order); and

(b) a notice summarising the key terms of the order and the effects of the resolution action; in particular —

(i) the effects on retail customers; and

(ii) if applicable, the terms and period of suspension or restriction referred to in section 136(2)(s).

Publication must be by the means specified in subsection (2).

(2) The means referred to in subsection (1) are —

(a) by sending it to the Treasury and the DCS Manager;

(b) by publishing it on the websites of the Authority, the Isle of Man Government and the bank in resolution; and

(c) by publishing it in —

(i) a newspaper regularly circulated in the Island; and

(ii) any newspaper or other publication which, in the opinion of the Authority, 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 relevant regulatory information service.

(3) In this section, "regulatory information service" means a service approved by the Authority to disseminate information in accordance with this Act.

146 Notification requirements

(1) The management of a bank must without delay notify the Authority where they consider that the bank is failing or likely to fail within the meaning of section 46.

(2) Where the Authority determines that the resolution conditions are met in relation to a bank, it must without delay communicate that determination to the following —

(a) the DCS Manager;

(b) the Treasury;

(c) the home resolution authorities in relation to the bank's group;

(d) the home regulatory supervisors in relation to the bank's group;

(e) the resolution authorities of any branch of the bank, if it is a bank incorporated in the Island;

(f) the regulatory supervisors of any branch of the bank, if it is a bank incorporated in the Island;

(g) the central bank in the home jurisdiction of the bank's group; and

(h) the deposit guarantee system in the home jurisdiction of the bank's group.

147 Authority to determine whether resolution conditions met

(1) On receiving a notification that a bank may be failing or likely to fail, the Authority must determine whether the resolution conditions are met in respect of that bank.

(2) A determination made under subsection (1) must be recorded with information about the reasons for the determination and the actions that the Authority intends to take as a result of it.

(3) As soon as reasonably practicable after taking a resolution action, the Authority must notify the bank in resolution and all the parties listed in section 146(2) that —

(a) the resolution conditions have been met; and

(b) it has taken resolution action.

PART 11 – RECOGNITION OF FOREIGN RESOLUTION ACTIONS

148 Recognition orders

(1) Where the Authority is notified of a foreign resolution action in respect of a bank, the Authority must make an order (a "recognition order") which —

(a) recognises the action;

(b) refuses to recognise the action; or

(c) recognises part of the action and refuses to recognise the remainder.

Tynwald procedure – affirmative.

(2) The Authority must consult the Treasury before making an order under subsection (1).

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

(a) recognition would have an adverse effect on financial stability in the Island;

(b) the taking of action by the Authority, in relation to an Island-located branch 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 Island would not, by reason of being located in the Island, receive the same treatment, and have similar legal rights, as creditors (including depositors) who are located or payable in the foreign jurisdiction concerned; or

(d) recognition of, and taking action in support of, the foreign resolution action would have material fiscal implications for the Island.

149 Legal effect of foreign resolution action

(1) When a recognition order has been made by the Authority pursuant to section 148(1) which recognises a foreign resolution action (or part of it), such foreign resolution action (or part of it) produces the same legal effects in the Island as it would have produced had it been made under Manx law.

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

(a) one or more of the stabilisation tools; or

(b) one or more of the stabilisation powers,

that would be available to the Authority were the bank incorporated in the Island.

(3) Without limiting section 148, the Authority may make a recognition order that has effect in respect of a bank which —

(a) is an Isle of Man subsidiary of a foreign bank; and

(b) both recognises the group resolution action and carries out certain actions under this Act on the entity in the Island.

150 Permitted scope of order

(1) A recognition order may —

(a) include incidental, consequential or transitional provisions which may be general or for specified purposes, cases or circumstances; and

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

(2) As soon as reasonably practicable after the creation of a recognition order, the Authority must comply with the requirements of section 145.

(3) Any decision by the Authority —

(a) not to recognise a foreign resolution action;

(b) to recognise a foreign resolution action only in part; or

(c) to take independent actions to resolve a subsidiary within a global banking group,

must be communicated clearly to the group in question and to the resolution authority in the group's home jurisdiction. This communication must include the rationale for the decision.

PART 12 – POST RESOLUTION ACTION

151 Authority to report to the Treasury

(1) The Authority must submit a report (a "subsection (1) report") to the Treasury with respect to any resolution action taken. This report must be submitted within 12 months of the conclusion of such resolution action.

(2) A subsection (1) report 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, in particular outlining the findings of the valuations in relation to the position of creditors and the no creditor worse off safeguard;

(b) an outline of the other information available to the Authority on the basis of which it made the decision to take resolution action;

(c) if relevant, a review of the quality of such information;

(d) an outline of relevant information, which has subsequently come into the possession of the Authority, 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 Authority might have led the Authority 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 of this Act 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 subsection (1) report produced, the Authority must —

(a) redact the subsection (1) report to the extent it considers appropriate; and

(b) lay the appropriately redacted version before Tynwald,

at the earliest opportunity.

PART 13 – BANK WINDING-UP PROCEDURE

Application for an order to enter a bank into the bank winding-up procedure

152 Application for bank winding-up order

(1) An application for a bank winding-up order may be made by —

(a) the Authority;

(b) the Treasury; or

(c) the bank, or any shareholder or creditor of the bank.

(2) An application for a bank winding-up order under subsection (1) —

(a) must be made in the form specified by the court;

(b) must be accompanied by an affidavit of a representative of the applicant setting out the grounds for the application;

(c) may, where relevant, be accompanied by an affidavit of a representative of the Authority giving the opinion of the Authority in relation to the bank continuing, or failing to continue, to satisfy the Authority that it is a fit and proper person to be registered to undertake deposit-taking business; and

(d) must nominate one or more persons to be appointed as a bank liquidator of the bank being wound-up.

153 Application of the Companies Acts

(1) The provisions of the *Companies Acts 1931 to 2004* and the *Companies Act 2006* relating to the winding-up of companies have effect in relation to a bank. This is subject to the provisions of this Part.

(2) The Authority may present a petition for winding-up of a bank on any of the grounds set out in section 155.

(3) A person other than the Authority may not present a petition for the winding-up of a bank unless —

(a) the person has given 10 days' written notice to the Authority of his intention to do so; and

(b) the Authority has confirmed in writing that it has no objection to the person doing so.

(4) If a bank is being wound-up and the Authority has reason to believe that any of the grounds set out in section 155 applies, the Authority may apply to the Court to have the bank wound-up by the Court in accordance with this Part.

154 Objectives of the bank liquidator in performance of duties

(1) The objectives of the bank liquidator in a bank winding-up procedure are —

(a) to work with the DCS to ensure that as soon as is reasonably practicable, each depositor to whom the bank has a liability in respect of an eligible protected deposit —

(i) has the relevant account transferred to another bank; or

(ii) receives payment from (or on behalf of) the DCS, if applicable, or from the deposit guarantee system of another jurisdiction in which the bank has branches as applicable;

(b) 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, to support the transferee by ensuring the supply of such services and facilities by the residual bank as are required to enable the transferee, in the opinion of the Authority, to operate the transferred business effectively; 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.

(2) In subsection 1(c), the phrase "so as to achieve the best results for the bank's creditors as a whole" does not require the winding-up to be done quickly.

(3) In the subsequent provisions of this Act, the objectives specified in subsection (1) are referred to as follows —

(a) the objective in subsection (1)(a) is referred to as **"Objective 1"**;

(b) the objective in subsection (1)(b) is referred to as **"Objective 2"**;

(c) the objective in subsection (1)(c) is referred to as **"Objective 3"**.

(4) The objectives are listed in subsection (3) in descending order of priority. Despite this the bank liquidator must, immediately upon being appointed and so far as practicable, begin working towards all of the objectives.

155 Grounds for an application

(1) The grounds for an application for a bank winding-up order are —

(a) a bank is unable, or likely to become unable, to pay its debts;

(b) the winding-up of a bank would be in the public interest; or

(c) the winding-up of a bank would be just and equitable.

(2) The Court may grant an application and make a bank winding-up order if it is satisfied that —

(a) grounds specified in subsection (1)(a) or (c) apply; and

(b) either of the following criteria is satisfied —

(i) having regard to timing and other relevant circumstances, it is not reasonably likely that (ignoring the stabilisation powers), any action 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; or

(ii) paragraph (b) of subsection (1) applies.

(3) If the application is made to the Court by the Authority, the Court may grant the application and make a bank winding-up order if it is satisfied that —

(a) the ground in subsection (1)(a) applies;

(b) the Authority has made or intends to make a property transfer instrument under the sale of business tool or bridge bank tool; and

(c) the residual bank is unable to pay its debts as they fall due or would become so as a result of the property transfer instrument that the Authority intends to make.

156 Duty to give notice of winding-up application

(1) In the winding-up of a bank (if the FSA was not the petitioner) —

(a) the FSA is entitled to be a noticed party in all applications brought in the course of the winding-up; and

(b) the FSA may make representations to the Court.

(2) The following persons may make representations, and are entitled to be heard, at proceedings for the granting of a bank winding-up order —

(a) the Authority;

(b) the Treasury;

(c) the bank or its shareholders; and

(d) upon application to the Court and with the leave of the Court, other interested parties.

157 Restriction on using other insolvency procedures

(1) Despite any other rule of law to the contrary, the following are barred —

(a) the right to take any proceedings in bankruptcy against a bank other than proceedings to wind-up a bank under this Part; and

(b) the right to wind-up a bank under section 162 of the *Companies Act 1931*.

(2) The Court must consult the Authority before it makes a decision on the application of a bank or any shareholder or creditor of a bank for the winding-up of that bank. The Court must give due consideration to the view expressed by the Authority in response to such consultation.

Powers of bank liquidators and effects of the bank winding-up order

158 Power of bank liquidator in a bank winding-up

(1) In a bank winding-up, the powers that a bank liquidator may have are limited to —

(a) the powers listed in subsection (2); and

(b) all the powers of a liquidator as may, under the *Companies Act 1931*, be granted with the sanction of the Court or of the bank liquidation committee.

However, in order for the bank liquidator to have any of those powers, the power must be specified in the bank winding-up order.

(2) The powers referred to in subsection (1)(a) are —

(a) the power to do anything necessary or expedient for the pursuit of the objectives set out in section 154;

(b) the power to comply with a request of the DCS Manager for the provision of information and to provide any information to the DCS Manager which the bank liquidator thinks might be useful for the purpose of cooperating in pursuit of **Objective 1**; and

(c) the power to support the transferee by continuing to supply such services and facilities as are required to enable the transferee, in the opinion of the FSA, to operate the transferred business effectively. *(Note that this power is only exercisable where Objective 2 is relevant.)*

159 General effects of bank winding-up order

A bank winding-up order has the following general effects —

(a) where the circumstances of section 154(1)(b) are relevant, the bank liquidator must, at the request of the Authority, enter into an agreement for the residual bank to provide services or facilities to the transferee and —

(i) in pursuing the objective in section 154(1)(b), the bank liquidator must have regard to the terms of that or any other agreement entered into between the residual bank and the transferee;

(ii) in particular, the bank liquidator must avoid action that is likely to prejudice performance by the residual bank of its obligations in accordance with those terms;

(iii) the bank liquidator must seek to ensure that such an agreement provides for consideration to be paid at market rate, provided that this does not prevent the bank liquidator from entering into an agreement on any terms that the bank liquidator thinks necessary in pursuit of the objective in section 154(1)(b);

(iv) if in doubt about the effect of those terms or their interplay with the bank winding-up in general, the bank liquidator may apply to the Court for directions; and

(v) the transferee may apply to the Court for directions about any dispute or disagreement with the residual bank;

(b) a lien or other right to retain possession of a record of the bank in winding-up is unenforceable to the extent that its enforcement would deny possession of the record to the bank liquidator; provided that this provision does not apply to a lien on a document that gives a title to property and is held as such;

(c) all the powers of the directors of the bank cease, except insofar as the bank liquidation committee sanction their continuation;

(d) it is impermissible for any action to be taken or proceeded with against the bank or its property, except by leave of the Court and subject to such terms as the Court may impose. In particular, —

(i) no other insolvency or liquidation proceedings under Manx law may be brought in respect of the bank;

(ii) despite anything to the contrary in the *Judgments (Reciprocal Enforcement) (Isle of Man) Act 1968*, no application may be made for a judgment against the bank, to be registered in the Court under that Act and if made, must not be registered or enforceable under that Act;

(iii) no execution in the Island of any existing judgment in the Island or elsewhere may be made;

(e) any transfer of shares, not being a transfer made to or with the sanction of the bank liquidator, and any alteration in the status of the bank's members made after the commencement of the bank winding-up order are void, unless the Court orders otherwise;

(f) any disposition of the bank's property (excluding any disposition made with the consent of the bank liquidator) made after the commencement of the bank winding-up order is void, unless the Court orders otherwise; and

(g) any attachment, sequestration, distress or execution put in force against the estate or effects of the bank after the commencement of the bank's winding-up order is void.

Bank liquidation committee

160 Duty to establish the Committee

(1) Following the grant of a bank winding-up order, a bank liquidation committee ("the Committee") must be established for the purpose of ensuring that the bank liquidator properly exercises the functions of a bank liquidator in accordance with the bank winding-up procedure.

(2) Section 191 of the *Companies Act 1931* —

(a) ceases to apply to a bank while the Committee exists with respect to that bank; and

(b) resumes its application to the bank immediately upon the Committee, by virtue of section 165, ceasing to exist.

(3) The Committee must consist of a representative of, and nominated for the express purpose of this section by, each of the following —

(a) the Authority (whose representative must act as Chair of the Committee);

(b) the FSA (in the capacity of regulatory supervisor);

(c) the DCS Manager; and

(d) the Treasury.

(4) When the Committee is in existence in respect to a bank, a reference in the *Companies Act 1931* or the *Companies Act 2006* to "a committee of inspection" must be construed as a reference to the Committee.

(5) A nominating body under subsection (3) may replace its nominee at any time.

161 Liquidator's duty to report to the Committee

(1) The bank liquidator—

(a) must report to the Committee —

(i) as the Court directs in the bank winding-up order;

(ii) at the Committee's request and on any matter specified by the Committee; or

(iii) generally, at such intervals as may be agreed between the bank liquidator and the Committee; and

(b) may report to the Committee —

(i) at any time the bank liquidator thinks fit; and

(ii) on any matter which the bank liquidator thinks is likely to be of interest to the Committee.

(2) A meeting of the Committee may be summoned —

(a) by any of the members of the Committee; or

(b) by the bank liquidator,

and, in any event, a meeting must be held at least every 28 days from the date of the winding-up order until the final meeting of the Committee under section 165.

162 Committee's recommendation to bank liquidator

(1) As soon as reasonably practicable after its creation, the Committee must recommend to the bank liquidator that the bank liquidator pursue —

(a) Objective 1;

(b) Objective 2; or

(c) Objective 1 for one specified class of case and Objective 2 for another.

(See section 154 for the description of the objectives.)

(2) In making a recommendation, the Committee must consider —

(a) the desirability of achieving **Objective 1** as quickly as possible;

(b) the need for provision of services and facilities in circumstances where **Objective 2** is relevant; and

(c) Objective 3.

(3) If the Committee thinks that the bank liquidator is failing to comply with its recommendation, it must apply to the Court for directions seeking confirmation, reversal or modification of the acts or decisions of the bank liquidator (and the Court may make such consequential order as it thinks fit).

(4) Where the Committee has not made a recommendation, the bank liquidator may apply to the Court.

(5) On receipt of an application under subsection (4), the Court may make a direction in lieu of a recommendation if the Committee fails to make a recommendation within a period set by the Court.

163 Additional duties of bank liquidator

(1) The duties of a bank liquidator under this Part are in addition to the other duties of a liquidator.

(2) The bank liquidator must —

(a) keep the Committee informed of progress towards **Objective 1**;

(b) notify the Committee when, in the bank liquidator's opinion, **Objective 1** has been achieved entirely so far as is reasonably practicable ("full payment notification");

(c) keep the Committee apprised of the ongoing provision of services and facilities in accordance with **Objective 2** and seek to agree an appropriate timeline for the continuation, wind-down or transfer to a third party of the maintenance and provision of such services and facilities;

(d) notify the Committee when, in the bank liquidator's opinion, **Objective 2** is no longer relevant because —

(i) the services and facilities which were previously being provided to the transferee in accordance with **Objective 2** are no longer required by the transferee; or

(ii) the provision of such services and facilities has been transferred to a third party (an "**Objective 2** notification"); and

(e) report to the Committee in respect of any other matters which have been provided for by the Court in the bank winding-up order or any subsequent order.

164 Additional duties of the Committee

(1) The Committee must oversee the bank liquidator generally.

(2) As soon as is reasonably practicable after receiving a full payment notification under section 163(2)(b), the Committee must either —

(a) resolve that **Objective 1** has been achieved entirely or so far as is reasonably practicable (a "full payment resolution"); or

(b) apply to the Court for confirmation, reversal or modification of the acts or decisions of the bank liquidator with respect to **Objective 1** (and the Court may make such consequential order as it thinks fit).

(3) As soon as is reasonably practicable after receiving an **Objective 2** notification under section 163(2)(d), the Committee must either —

(a) resolve that **Objective 2** is no longer relevant because of the reasons set out at section 163(2)(d) (an "**Objective 2** resolution"); or

(b) apply to the Court for confirmation, reversal or modification of the acts or decisions of the bank liquidator with respect to **Objective 2** (and the Court may make such consequential order as it thinks fit).

165 Effect of particular actions of the Committee

(1) Where the Committee passes a full payment resolution or, where relevant, an Objective 2 resolution, —

(a) the Committee ceases to exist at the end of the meeting at which that resolution was passed;

(b) the bank liquidator must summon a meeting of creditors; and

(c) at the meeting, a committee of inspection may be appointed in accordance with section 191 of the *Companies Act 1931*.

(2) If the Committee ceases to exist by virtue of subsection (1)(a), —

(a) the FSA must be a "noticed party" to legal proceedings relating to the winding-up of the bank concerned; and

(b) the FSA, if a committee of inspection is appointed, —

(i) may attend meetings of the committee of inspection;

(ii) is entitled to receive copies of all documents relating to the business of the committee of inspection; and

(iii) may make representations to the committee of inspection.

166 Court applications by aggrieved persons

(1) A person aggrieved by any action of the Committee before it has passed a full payment resolution may apply to the Court, and the Court may make an order (including an order for the repayment of money).

(2) The Court may (whether on application under subsection (1), on the application of the bank liquidator or otherwise) make an order that the Committee is to be treated as having passed a full payment resolution.

(3) If the Committee fails to comply with the requirements of section 165(1), the bank liquidator must apply to the Court for —

(a) an order under subsection (2); or

(b) directions seeking confirmation, reversal or modification of the acts or decisions of the Committee (and the Court may make such consequential order as it thinks fit).

167 Processing personal data

(1) A bank liquidator may process sensitive personal data only for the purpose of achieving the objectives[7].

(2) For the purposes of the objectives, the bank liquidator may disclose sensitive information to a person, including one or more of the following —

(a) a purchaser or potential purchaser of all or any part of the business of the bank;

(b) the FSA;

(c) the Treasury;

(d) the DCS; or

(e) a professional adviser.

This subsection does not limit the power of the bank liquidator to disclose sensitive information in any circumstance or to any person permitted by the data protection legislation.

(3) Before disclosing any sensitive personal data falling outside subsection (2), the bank liquidator must seek the approval of the Committee to the disclosure. However, this requirement does not apply if the proposed disclosure is routinely required to facilitate the ongoing conduct of business and the provision of services to depositors.

(4) In this section —

"process" must be construed in accordance with the data protection legislation;

"sensitive personal data" means information relating to the bank in winding-up, its customers and its creditors.

PART 14 – MISCELLANEOUS

168 Authority not to be treated as director of a bank

The Authority must not, on account of any provision of this Act, be treated as or deemed to be a director (shadow or *de facto*) of a bank.

[7] See section 154.

169 Regulations

The Authority, after consultation with the Treasury, may make regulations that are necessary or convenient for the better carrying out of the functions under this Act.

Tynwald procedure – approval required.

170 Civil penalties

(1) If the Authority is satisfied that a bank —

(a) has contravened any provision of this Act;

(b) has contravened any prohibition or requirement imposed under this Act; or

(c0 in purported compliance with any such requirement, has furnished the Authority with false, inaccurate or misleading information,

it may require the bank to pay a penalty in respect of the contravention.

(2) The Authority must give written notice to the bank concerned of any decision under subsection (1), together with a statement of the reasons for the decision.

(3) The Authority may not in respect of any such contravention require a bank to pay a penalty under this section if criminal proceedings have been commenced in respect of the contravention.

(4) When setting the amount of a financial penalty, the Authority must have regard to any regulations made under subsection (5).

(5) The Authority must make such regulations as are necessary to give effect to this section with respect to —

(a) the imposition of financial penalties under this section; and

(b) the amount of those penalties.

Tynwald procedure – approval required.

(6) Any amount received as a penalty must be paid into and form part of the General Revenue of the Island.

171 Appeals

[Jersey.2017/10/168 and drafting]

(1) A person aggrieved by —

(a) a decision of the Authority to take a crisis prevention measure; or

(b) a decision under this Act of —

(i) the Authority, other than a decision referred to in paragraph (a); or

(ii) any other person exercising a function or power under this Act,

may, within 28 days of the decision being made, appeal to the Court in accordance with this section against the decision.

(2) An appeal under subsection (1) may be made only on the ground that the decision of the Authority or other person was unreasonable having regard to all the circumstances of the case.

(3) The right of appeal under subsection (1)(a) is subject to the following —

(a) the lodging of an appeal under subsection (1)(a) must not automatically suspend the effects of the decision against which the appeal is made; and

(b) the decision of the Authority to take a crisis prevention measure is immediately enforceable and gives rise to a rebuttable presumption that a suspension of its enforcement would be against the public interest.

(4) Where the decision against which an appeal is made is a crisis management measure, the right of appeal under subsection (1)(b) is subject to the following —

(a) the lodging of an appeal does not suspend the effects of the decision; and

(b) the only remedy available is limited to compensation for the loss suffered by the applicant as a result of the decision to act.

(5) On an appeal under this section, the Court may make such interim or final order as it thinks fit.

(6) Subject to subsection (7) —

(a) the revocation of a decision of the Authority does not affect any subsequent administrative acts or transactions concluded by the Authority which were based on the revoked decision; and

(b) the remedies for wrongful decision or action by the Authority are limited to compensation for the loss suffered by the applicant as a result of the decision to act.

(7) Subsection (6) applies only 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 of the application of a resolution tool or the exercise of a resolution power by the Authority.

SCHEDULE

CONSEQUENTIAL AMENDMENTS TO THE PREFERENTIAL PAYMENTS ACT 1908

Section 5(3)

1 Interpretation

In this Schedule, "**the Act**" means the *Preferential Payments Act 1908*.

2 Amendment of section 3 of the Act

[Substituted section 3(1) of the Preferential Payments Act 1908]

3 Amendment of section 3A of the Act

In section 3A of the Act —

(a) [Amended subsection (1)]

(b) [Repealed subsection (2)]

ENDNOTES

Table of Endnote References

[1] ADO – sections 4 and 6 in operation 17/11/2020, sections 3, 5, 7 to 171 and Schedule in operation 04/01/2021 [SD2020/0527].