Continuity of Financial Contracts in Resolution (Stays) Guidance Note

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Glossary of terms

Defined terms are indicated throughout this document as follows:

Bail-in	The mechanism described in Article 65(1) of the Bank (Recovery, Resolution and Depositors' Compensation) (Jersey) Law 2017 for recapitalising a bank or exercise of the write down or conversion power.
Banking Code	Code of Practice for Deposit-taking Business
Banking Law	Banking Business (Jersey) Law 1991
Companies Law	Companies (Jersey) Law 1991
Critical Function	Activities, services, or operations the discontinuance of which is likely to lead to the disruption of services that are essential to the real economy in Jersey or the disruption of financial stability due to the size, market share, external and internal interconnectedness, complexity, or cross-border activities of a bank or bank's group, with particular regard to the substitutability of those activities, services, or operations.
Financial Contracts	Has the meaning given by Article 1 of the Bank (Recovery, Resolution and Depositors' Compensation) (Jersey) Law 2017.
Foreign Law	Means the law of a jurisdiction other than Jersey
Holding Company	Has the meaning given by Article 2(4) of the Companies Law
Home Resolution Authority	The resolution authority in the JIB's home jurisdiction.
ISDA	International Swaps and Derivatives Association
Jersey Bank	A person registered to carry on deposit-taking business in or from within Jersey under the Banking Law
Jersey Branch	The Jersey operations of an Overseas Incorporated Bank.
Jersey DCS	Jersey Bank Depositors Compensation Scheme
Jersey Incorporated Bank (JIB)	A Jersey incorporated company registered to carry on deposit-taking business under the Banking Law.
JRDCA	Jersey Resolution and Depositors Compensation Authority
Resolution Law	Bank (Recovery, Resolution and Depositors' Compensation) (Jersey) Law 2017, as amended
Subsidiary	Shall be construed in accordance with Article 2 of the Companies Law

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1 Background

1.1.1 The JRDCA was established as Jersey's Resolution and Depositors Compensation Authority on 31 January 2022 in accordance with the Bank (Recovery, Resolution and Depositors' Compensation) (Jersey) Law 2017 (the Resolution Law).

1.1.2 Jersey Incorporated Bank's (JIB) entry into resolution may cause early termination of financial contracts or trigger other contractual terms, resulting in significantly negative impact on the stability of the Jersey Bank or the wider financial system (e.g. through contagion).

1.1.3 The Resolution Law includes provisions to ensure that a Jersey Bank's entry into resolution does not, by itself, trigger early termination of financial contracts or other contractual terms. These comprise a general stay, which lasts as long as the Jersey Bank in resolution continues to perform its substantive obligations under the contract, and a temporary stay, whereby the JRDCA can temporarily suspend any payment or delivery obligations of financial contracts. Section 4 of this guidance note provides a summary of these stays (collectively the Jersey Stay Powers).

1.1.4 The following publications have been used to help develop this Guidance Note. JIBs may wish to consult these for additional guidance when developing required capabilities:

1.1.4.1 Section 5 of the Bank of England's Approach to Assessing Resolvability[1];

1.1.4.2 The Prudential Regulation Authority's Policy Statement PS25/15 Contractual stays in financial contracts governed by third-country law[2];

1.1.4.3 Commission Delegated Regulation (EU) 2016/1712[3]; and

1.1.4.4 Section 2.2 of the Single Resolution Board's Expectations for Banks[4].

[1] https://www.bankofengland.co.uk/-/media/boe/files/paper/2021/bank-of-englands-approach-to-assessing-resolvability-sop-may-2021.pdf

[2] https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2015/ps2515

[3] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1712

[4] https://www.srb.europa.eu/system/files/media/document/efb_main_doc_final_web_0_0.pdf

2 Scope

2.1.1 This document sets out guidance for Jersey Banks on the Continuity of Financial Contract (Stay) capabilities they are expected to put in place and maintain as set out in Policy Statement 2023/01 'Resolution Planning and Resolvability' (PS2023/01). It does not set out any additional requirements beyond those set out in PS2023/01[5] .

2.1.2 This Continuity of Financial Contracts Guidance Note is primarily relevant to JIBs with only limited applicability to Jersey branches:

2.1.2.1 Section 5 of this Guidance Note is relevant to JIBs that are performing Critical Functions to the Jersey economy.

2.1.2.2 Section 6 is only relevant to JIBs that do not perform Critical Functions in Jersey.

2.1.3 Section 5.4 includes guidance related to recognition of foreign resolution actions, which may also be relevant to Jersey Branches that perform critical functions in Jersey.

2.1.4 Financial Contracts, as defined in Article 1 of the Resolution Law, comprise, in summary, the following types of contracts and agreements:

2.1.4.1 securities contracts;

2.1.4.2 commodities contracts;

2.1.4.3 futures and forwards; and

2.1.4.4 swap agreements.

3 Objectives

3.1.1 A JIB's entry into resolution may cause early termination of Financial Contracts or trigger other contractual terms, resulting in significantly negative impact on the stability of the Jersey Bank or the wider financial system (e.g. through contagion) thereby leading to disruption of Critical Functions.

3.1.2 To minimise the above risk to resolution, JIBs should:

3.1.2.1 maintain detailed records of financial contracts to be able to quickly identify their counterparties and determine contract values (notional and market) and maturity;

3.1.2.2 be able to demonstrate a clear understanding of the risks posed by early termination of financial contracts, or other contractual terms, on the orderly implementation of the preferred resolution strategy; and

3.1.2.3 take appropriate steps to ensure that counterparties to relevant non-Jersey Law financial contracts agree, in an enforceable manner, to recognise the application of a stay imposed either under the Resolution Law or the resolution regime in the Jersey Bank's home jurisdiction (or, in the case of a Multiple Point of Entry strategy, the jurisdiction in which the Jersey Bank's resolution group is located).

[5] 20240229-PS2023-01-JRA-Approach-to-Resolution-Planning-and-Resolvability-v02.00.pdf

4 Jersey Financial Contract Stays

4.1.1 The Resolution Law provides the JRDCA with powers to impose temporary stays on the exercise of certain contractual rights in Financial Contracts when a Jersey Bank enters resolution. These stays are a key component of Jersey's resolution framework and are intended to support the orderly resolution of a failing Jersey Bank.

4.1.1 The purpose of the Jersey Stay Powers is to prevent the disorderly termination, acceleration or close-out of Financial Contracts solely as a result of a Jersey Bank's entry into resolution. Uncontrolled exercise of such rights could undermine financial stability, disrupt the continuity of Critical Functions, and frustrate the effective implementation of resolution tools.

4.1.2 The Jersey Stay Powers apply only to contractual rights that arise by reason of entry into resolution or the application of resolution measures and are time-limited in nature. They are not intended to permanently restrict counterparties' substantive rights, but to provide the JRDCA with the necessary time and flexibility to implement resolution actions in an orderly manner.

4.1.3 The financial contract stays applicable in Jersey (collectively the Jersey Stay Powers) are summarised below and can be found in the following articles of the Resolution Law:

4.1.3.1 General Stay (Article 75 "Default Event Provisions"); and

4.1.3.2 Temporary Stays (Article 29(1)(s) and (t) "Resolution Powers").

General Stay (Article 75 Default Event Provisions)

4.1.4 Article 75 operates to prevent counterparties from terminating or enforcing certain contractual rights that would otherwise unwind or disrupt contracts, solely by reason of a Jersey Bank (or any member of the bank's group) entering resolution or as a result of resolution actions taken by the JRDCA.

4.1.5 Accordingly, contractual rights—such as termination, acceleration, set-off, or changes to obligations—cannot be exercised on the basis of a resolution action (or related event) taken by the JRDCA, provided that the contract's substantive obligations (including payment, delivery, and collateral requirements) continue to be met. This protection may extend across group entities, including certain subsidiary contracts and guaranteed obligations.

4.1.6 In addition, Article 75 permits a resolution instrument or share transfer order to replicate this effect where the automatic statutory protection would not otherwise apply. Such an instrument or order may specify that resolution actions (and related steps) are not to be treated as triggering events for Default Event Provisions, either entirely or subject to specified exceptions.

Temporary Stay (Article 29(1)(s) and (t))

4.1.7 Article 29(1)(s) and (t) provide the JRDCA with the power to temporarily:

4.1.7.1 suspend the payment or delivery obligations of certain contracts to which a bank in resolution is party; or

4.1.7.2 restrict secured creditors from enforcing security interests of contracts to which a bank in resolution is party.

4.1.8 These temporary stays apply from the time notice is given that the bank is in resolution until midnight at the end of the next business day (effectively up to two business days).

4.1.9 The suspension of payment or delivery obligations does not apply to eligible deposits or payment and delivery obligations owed to payment and securities settlement systems, central counterparties or central banks.

4.1.10 The restriction on secured creditors does not apply to the security interests of payment and securities settlement systems, central counterparties or central banks over assets pledged or provided as margin or collateral by the bank in resolution.

Application and Cross-Border Considerations.

4.1.11 Where Financial Contracts are governed by non-Jersey Law, the effectiveness of Jersey Stay Powers may depend on contractual recognition by counterparties. Expectations in relation to the enforceability of stays for non-Jersey Law Financial Contracts are addressed in Sections 5 and 6 of this Guidance Note.

4.1.12 Whilst the Jersey Stay Powers would apply in respect of any Jersey Bank, given the nature of resolution, these are most relevant to JIBs and, as set out in PS2023/01, we have only applied requirements relating to Continuity of Financial Contracts to JIBs.

4.1.13 In the case of Jersey Branches, the JRDCA may be asked by the relevant Home Resolution Authority to recognise resolution actions it has taken in respect of the Jersey Bank's group. See also Section 5.4 below.

5 Guidance for JIBs that perform Critical Functions

5.1.1 This section sets out the capabilities that JIBs performing Critical Functions should maintain to mitigate risks arising from the early termination of financial contracts and to support the orderly execution of the preferred resolution strategy. JIBs should be able to demonstrate that these risks are clearly understood by senior management and are appropriately reflected in resolution planning, including assumptions underpinning the assessment of resolvability.

5.2 Detailed records of financial contracts (notional, market value, maturity)

Systems and processes (Recordkeeping)

5.2.1 To maintain records of Financial Contracts sufficient to be able to identify counterparties and determine values, JIBs will need to capture key information relating to their financial contracts, including contract values (both notional and market/fair value).

5.2.2 In practice, this means that JIBs should develop appropriate systems and/or processes to capture and be able to report, on a timely basis, the following information in respect of each financial contract:

5.2.2.1 Counterparty name and Legal Entity Identifier, where available;

5.2.2.2 Law governing the financial contract;

5.2.2.3 Notional value;

5.2.2.4 Value of the contract (mark-to-market valuation of the financial contract, or mark-to-model valuation);

5.2.2.5 Currency of the value;

5.2.2.6 Type of the financial contract (e.g. classify the financial contract according to the definition in Article 1 of the Resolution Law);

5.2.2.7 Effective Date (date when obligations under the financial contract come into effect);

5.2.2.8 Maturity date;

5.2.2.9 Termination clauses (if the contract has an early termination clause);

5.2.2.10 Master Agreement type; and

5.2.2.11 Netting arrangements (as defined in Article 1 of the Resolution Law).

5.2.3 The information listed in paragraph 5.2.2 is neither exhaustive nor mandatory, rather it is an indication of the information that the JRDCA considers is likely to be necessary to enable a JIB to meet the requirement of paragraph 5.4.3 of PS2023/01.

5.2.4 JIBs may wish to ensure that relevant processes for recording information on its Financial Contracts are incorporated into its business-as-usual processes so as to maintain accurate record of the JIBs Financial Contracts on an on-going basis.

Quality Assurance and Monitoring

5.2.5 To help ensure on-going accuracy of its records of Financial Contracts, a JIB should ensure relevant processes are subject to appropriate internal risk-based quality assurance and monitoring.

5.3 Risks posed by early termination of financial contracts or other contractual terms

Key risks arising from early termination rights

5.3.1 Early termination rights in financial contracts—including close-out, acceleration, set-off and netting rights—may pose significant risks to the orderly resolution of a failing JIB. Consistent with the FSB Key Attributes of Effective Resolution Regimes, the uncontrolled exercise of such rights upon entry into resolution may trigger a disorderly rush to close-out financial contracts, undermine financial stability, and frustrate the effective implementation of resolution actions, including the continuity of Critical Functions. In particular, such risks may arise through:

5.3.1.1 disorderly asset liquidation and the destruction of a bank's value;

5.3.1.2 acute liquidity depletion and destabilising cash outflows;

5.3.1.3 the impairment of resolution tools, including bail-in and transfer strategies, and the erosion of creditor safeguards; and

5.3.1.4 legal and cross-border uncertainty, including challenges to the enforceability and recognition of resolution actions under foreign law.

Understanding of the risk of early termination

5.3.2 Whilst Jersey Stay Powers are designed to mitigate risks associated with early termination rights. The risks can be further mitigated through contractual terms.

5.3.3 Additionally, JIBs may have Financial Contracts that are not governed by Jersey Law, for which the effectiveness of the Jersey Stay Powers may be in doubt. The extent to which the Jersey Stay Powers may apply to these Financial Contracts will depend on the nature of the contracts and whether the associated jurisdiction, under whose law the contract is governed, has implemented statutory recognition of overseas resolution actions.

5.3.4 Therefore, to support resolvability, JIBs should have a clear understanding of any risk of early termination of non-Jersey Law Financial Contracts. This understanding is important in order for JIBs to know of any significant risk of early termination for their business and the implications of this for the orderly implementation of the preferred resolution strategy. JIBs should therefore be able to identify these financial contracts (including the notional and market value) and assess the risk of early termination.

Assessment and Mitigation of Risks Arising from Non-Jersey Law Financial Contracts

5.3.5 The level of risk arising from non-Jersey Law financial contracts increases where JIBs have a high volume and/or significant aggregate value of such contracts.

5.3.6 The risk may be mitigated where:

5.3.6.1 The preferred resolution strategy for the JIB does not envisage the use of resolution powers at the Jersey level; and

5.3.6.2 The associated Financial Contracts either:

- are governed by the laws of the home jurisdiction; or
- contain contractual provisions recognising equivalent stay powers in the home jurisdiction.

5.3.7 Further risk mitigation may be achieved where Financial Contracts include pre-existing contractual provisions recognising resolution stay or bail-in powers. This may be the case where such contracts are governed by and executed under an International Swaps and Derivatives Association (ISDA) Master Agreement (or another Protocol-covered agreement). Adherence by all parties to the relevant ISDA bail-in protocol can serve as an effective means of recognising bail-in powers.

5.3.8 Similarly, adherence by all parties to the ISDA 2015 Universal Resolution Stay Protocol and/or the relevant modules of the ISDA 2016 Jurisdictional Modular Protocol provides an effective means of recognising resolution stay powers for derivatives or securities financing transactions executed under a Master Agreement covered by those Protocols.

5.3.9 If not, then JIBs may need to ensure the non-Jersey Law Financial Contracts contain contractual clauses to recognise the Jersey Stay Powers.

5.3.10 Therefore, when assessing the level of risk posed by non-Jersey Law Financial Contracts, JIBs that are part of overseas headquartered groups should:

5.3.10.1 engage with their groups to identify the planned approach to implementing the preferred resolution strategy;

5.3.10.2 consider the group approach to implementing equivalent Continuity of Financial Contracts (stay) requirements of the Home Resolution Authority and how these have been applied at the level of the JIB; and

5.3.10.3 engage with the JRDCA to consider the likelihood of the JRDCA being required to apply resolution powers (including Jersey Stay Powers) at the level of the JIB.

5.3.11 Ultimately, if the expected approach to implementing the preferred resolution strategy is uncertain and/or the JIB has not implemented the Home Resolution Authorities stay requirements, the JRDCA is likely to conclude that the JIB will need to implement contractual recognition of the Jersey Stay Powers in non-Jersey Law Financial Contracts.

5.4 Enforceability of financial contract stays for non-Jersey Law contracts

Cross-Border Recognition of Resolution Actions

5.4.1 JIBs should have adequate arrangements in place to ensure the cross-border recognition and effectiveness of Jersey resolution actions. Where necessary on a risk-based approach, for contractual agreements governed by non-Jersey Law, JIBs are expected to include contractual terms that are effective and enforceable in that foreign country to:

5.4.1.1 For derivatives transactions executed under an ISDA Master Agreement (or another Protocol-covered agreement), adherence by all parties to the relevant ISDA bail-in protocol can be one suitable way to achieve such bail-in recognition; and

5.4.1.2 bind the counterparty of a Financial Contract to the restrictions of Jersey Stay Powers, so that crisis prevention measures or crisis management measures including any directly linked events (such as change of control) shall not entitle the counterparty to terminate, suspend, modify, net or set-off contracts or to enforce security rights, including in cross-default constellations and ensure that the contract may be subject to the exercise of suspension powers under Jersey Stay

Powers. Adherence by all parties to a covered agreement to the ISDA 2015 Universal Resolution Stay Protocol and/or the relevant modules under the ISDA 2016 Jurisdictional Modular Protocol can be one suitable way to achieve such resolution stay recognition for derivatives or securities financing transactions executed under a Master Agreement covered by the Protocols.

5.4.2 In addition to ISDA Protocols, national initiatives might be available, or bilateral contract clauses may be inserted to achieve recognition of resolution actions. The JRDCA recognises that the appropriate method of achieving recognition will depend on the materiality, volume, governing law and risk profile of the relevant Financial Contracts.

Recognition of Foreign Resolution Actions

5.4.3 The JRDCA may be requested by a foreign resolution authority to recognise its Financial Contract Stay Powers under Jersey Law in relation to the resolution of a parent entity or wider group of a Jersey Bank (JIBs and Jersey branches). Upon such notification, the JRDCA may decide to recognise, refuse to recognise, or partially recognise the foreign resolution action. The JRDCA may refuse recognition, in whole or in part, where it is satisfied that:

5.4.3.1 Recognition would have an adverse effect on financial stability in Jersey;

5.4.3.2 Local resolution action is required in respect of a Jersey Bank;

5.4.3.3 Creditors in Jersey (in particular depositors) would not receive equivalent treatment, or have comparable legal rights, to creditors in the foreign jurisdiction;

5.4.3.4 Recognition would have material fiscal (financial) implications for Jersey; or

5.4.3.5 Recognition would be unlawful under applicable human rights legislation.

5.4.4 To facilitate the swift and orderly recognition of foreign resolution actions, Jersey Banks should ensure they are operationally and contractually prepared to promptly implement any stay on financial contracts. This may include incorporating appropriate recognition clauses aligned with international standards. Jersey banks should also maintain robust coordination with group entities, regulators, and counterparties to support consistent application, clear communication, and minimal disruption during any stay period. Accordingly, Jersey Banks should work closely with their group to develop and maintain an understanding of their Financial Contracts, including determining whether such contracts are governed by Jersey Law or by foreign law.

6 Guidance for JIBs that do not perform Critical Functions in Jersey

6.1.1 The failure of a JIB that does not perform Critical Functions will have a lesser impact on the stability of the Jersey financial system and, accordingly, JRDCA expectations in relation to Continuity of Financial Contracts are proportionate to this reduced impact. Nevertheless, the failure of such a JIB may still have effects that could impact other Jersey Banks and the wider Jersey financial system.

6.1.2 Unlike JIBs performing Critical Functions, JIBs within scope of this section are not expected to maintain full contractual stay remediation capabilities unless this is necessary to support group resolvability or resolution

6.2 Guidance for JIBs that are part of banking groups and/or entities where the Preferred Resolution Strategy is bail-in or transfer or sale (including partial transfers)

6.2.1 For JIBs that do not perform Critical Functions in Jersey , but which form part of banking groups or legal entities subject to resolution planning requirements at the group or legal entity level (for example, bail-in, sale, and/or transfer resolution strategies), the JRDCA may be required to recognise a foreign resolution action initiated by the home resolution authority. Accordingly, such JIBs should work closely with their group to ensure they have an appropriate understanding of their Financial Contracts, including whether these are governed by Jersey Law or by foreign law.

6.3 Guidance for JIBs where the Preferred Resolution Strategy is bank winding up (or equivalent in the home jurisdiction)

6.3.1 In line with paragraph 6.1.4.4 of PS2023/01, JIBs that are subject to an insolvency (bank winding-up) resolution strategy are required to plan for provision of relevant information to the liquidator. This should include relevant information on all material Financial Contracts.

6.3.2 This information should be sufficiently detailed and readily accessible to enable an appointed liquidator, at short notice, to support an orderly and timely bank winding up.

6.3.3 In addition, and consistent with paragraph 6.1.4.5 of PS2023/01, JIBs subject to an insolvency resolution strategy should undertake a considered self-assessment of any legal, contractual, or operational obstacles to the effective application of the Bank Winding Up process arising from financial contracts. This assessment should form part of the JIB's broader resolvability analysis and be proportionate to the nature, scale, and complexity of the JIB.

6.3.4 JIBs should factor the above considerations into the development of simplified plans, to be completed and in place by **30 June 2027**, to support readiness for a Bank Winding-Up process.

7 Guidance on Self-Assessments

7.1.1 The first self-assessment against Continuity of Financial requirements is due by **30 June 2027** (and thereafter at such intervals as may be considered appropriate and communicated by the JRDCA).

7.1.2 When conducting self-assessments, JIBs are recommended to follow the steps outlined below:

7.1.2.1 First, JIBs should identify and record relevant information relating to their Financial Contracts, and ensure that appropriate policies and procedures are in place to maintain this information on an ongoing basis;

7.1.2.2 Second, JIBs should carry out a risk assessment of their Financial Contracts, with particular focus, where appropriate, on those governed by non-Jersey Law; and

7.1.2.3 Third, based on the outcomes of the risk assessment and taking into account the preferred resolution strategy, JIBs should ensure that non-Jersey law Financial Contracts include contractual provisions recognising Jersey's Stay Powers.

7.1.3 JIBs are expected to provide the JRDCA with a summary of their Financial Contracts, together with the outcomes of their risk assessments. This will enable the JRDCA to determine whether the JIB's proposed approach to contractual recognition is reasonable and appropriate. JIBs should maintain this information in a readily accessible format and be able to share it with the JRDCA upon request.

7.1.4 The JRDCA does not expect JIBs to have fully remediated non-Jersey Law Financial Contracts by June 2027. However, it will assess whether the plans in place to address the associated risks are adequate and proportionate.

7.1.5 When preparing self-assessments against each of the Continuity of Financial Contracts requirements set out in PS2023/01, a tabular format is recommended.