



# **AIFC RECOVERY AND RESOLUTION RULES (RAR) AIFC RULES NO. FR00061 OF 2023**

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**Astana, Kazakhstan**



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### 1. INTRODUCTION

#### 1.1. Overview and purpose

##### 1.1.1. Overview

The AIFC Recovery and Resolution Rules ("RAR") are made pursuant to section 136 of the Financial Services Framework Regulations ("FSFR"), in accordance with the international standards for Recovery and Resolution of financial institutions set out in the "Key Attributes of Effective Resolution Regimes for Financial Institutions" developed by the Financial Stability Board ("FSB") as amended from time to time. The FSB is the international body that monitors and makes recommendations about the global financial system.

##### 1.1.2. Purpose

The purpose of this rulebook is to set out:

- (a) general requirements to Recovery and Resolution Planning;
- (b) criteria for resolvability assessment;
- (c) detailed scope of Resolution Powers;
- (d) detailed description of Resolution Tools;
- (e) provisions for Resolution Safeguards; and
- (f) other provisions related to recovery and Resolution.



**2.1. Application and commencement date**

**2.1.1. Application**

- (1) These Rules apply to an Authorised Person that is authorised by the AFSA under its Licence to carry on any one or more of the following Financial Services:
  - (a) Accepting Deposits;
  - (b) Opening and Operating Bank Accounts;
  - (c) Providing Credit;
  - (d) Dealing in Investments as Principal;
  - (e) Islamic Banking Business;
  - (f) Operating a Clearing House;
  - (g) Effecting Contracts of Insurance;
  - (h) Carrying on Contracts of Insurance;
  - (i) Takaful Business.
- (2) If specified these Rules also apply to a parent or Subsidiary of the Authorised Person, or to another entity in its Group.
- (3) Authorised Person in these Rules means either Authorised Firm or Authorised Market Institution.

**2.1.2. Commencement date**

These Rules commence on 1 July 2023.



### 3. RECOVERY AND RESOLUTION PLANNING

#### 3.1. Recovery planning

##### *Guidance*

In accordance with section 137 of the FSFR, an Authorised Firm or an Authorised Market Institution is required to prepare and submit a Recovery Plan to the AFSA:

- (a) if it is included in a class of Authorised Persons required to prepare and submit such a plan; or
- (b) if it is not included in such a class, it has been given written notice by the AFSA to prepare and submit a plan.

Rule 3.1.1 prescribes the classes of Authorised Persons required to prepare and submit a Recovery Plan.

##### **3.1.1. Classes of Authorised Persons required to prepare Recovery Plan**

An Authorised Person must prepare and submit to the AFSA for review a Recovery Plan if it is authorised under its Licence to carry one or more of the following Financial Services:

- (a) Accepting Deposits;
- (b) Islamic Banking Business;
- (c) Operating a Clearing House.

##### **3.1.2. Submission of Recovery Plan**

- (1) The Recovery Plan for an Authorised Person referred to in Rule 3.1.1 must be submitted to the AFSA:
  - (a) in the case of an Authorised Person that has an authorisation referred to in that Rule on the commencement date, no later than 6 months from the commencement date; or
  - (b) in the case of an Authorised Person that receives such an authorisation after the commencement date, no later than 6 months from the date on which the authorisation is granted.
- (2) If the AFSA gives an Authorised Person written notice under section 137(1)(b) of the FSFR that it must prepare a plan, the Authorised Person must submit the Recovery Plan to the AFSA by no later than the date specified in the notice.
- (3) If the AFSA gives an Authorised Person written notice under section 137(5) of the FSFR requiring it to take measures to rectify any deficiencies in the Recovery Plan, the Authorised Person must submit the rectified Recovery Plan by no later than the date specified in the notice.

##### **3.1.3. General requirements relating to Recovery Plan**

- (1) An Authorised Person must ensure that the Recovery Plan processes and implementation are integrated, and aligned, with its overall governance structure, processes and internal risk management frameworks (including its early warning indicators).



- (2) An Authorised Person must ensure that it has in place appropriate contingency arrangements, which will enable it to continue to operate if it implements Recovery Measures set out in the Recovery Plan.
- (3) The contingency arrangements must include processes relating to IT, access to financial market infrastructure such as clearing and settlement facilities, and the continuation of supplier and employee contracts.

### 3.1.4. Responsibility for Recovery Planning

- (1) An Authorised Person must appoint a Senior Manager who will be responsible for leading, formulating and overseeing the recovery planning process, including providing to the AFSA any information relevant for the review of the Recovery Plan.
- (2) The Authorised Person must notify the AFSA of the appointed Senior Manager.
- (3) Without limiting the generality of the Principles for Approved Individuals and designated Individuals in GEN Rule 4.3, the senior management of an Authorised Person are responsible for the recovery planning of that Authorised Person.

### 3.1.5. Scope of Recovery Plan

A Recovery Plan prepared by an Authorised Person must be prepared on the following basis:

- (a) if the Authorised Person has its head office in the AIFC, the Recovery Plan must cover the recovery of the entire Group;
- (b) if the Authorised Person is a Subsidiary of a Financial Institution that has its head office outside the AIFC, the Recovery Plan must specifically address stress scenarios and triggers for the Authorised Person and adequately cover any downstream operations, as well as including specific recovery options for the AIFC operations; and
- (c) if the Authorised Person is a Branch of a Regulated Financial Institution, the Recovery Plan may generally be part of the Group plan, provided the Recovery Plan adequately covers the AIFC operations.

#### *Guidance*

1. For a Branch with significant AIFC operations, the Recovery Plan should be tailored to the local operations and contain all relevant information. For a Branch with limited operations, the AFSA may accept considerable reliance on a Group plan, provided the Branch can demonstrate how the Recovery Plan options can be effectively applied to address stress scenarios that pose a risk to the Branch's viability.
2. The AFSA will approach the Recovery Plan requirements in a proportionate manner.

### 3.1.6. Content of Recovery Plan

- (1) A Recovery Plan must be commensurate with the nature, complexity, interconnectedness, size and substitutability of the Authorised Person's AIFC operations, and set out the Recovery Measures the Authorised Person can take, as well as how and when it can take them, including these key elements:
  - (a) a range of scenarios for consideration, including both idiosyncratic (specific to the Group or Authorised Person) and market-wide scenarios;
  - (b) the likely causes of severe stress which require Recovery Measures to be considered or activated;



- (c) the actual Recovery Measures, which may include measures to reduce the Authorised Person's risk profile, address capital shortfalls or liquidity pressures, change funding strategy, or change governance structure; and
  - (d) processes to ensure the timely implementation of Recovery Measures in a range of stress scenarios.
- (2) A Recovery Plan must include:
- (a) a summary of the key elements of the plan and a summary of overall recovery capacity;
  - (b) a summary of the material changes to the Authorised Person since the most recently filed Recovery Plan;
  - (c) a communication and disclosure plan outlining how the Authorised Person intends to manage any potentially negative market reactions;
  - (d) a range of capital and liquidity actions required to maintain or restore the viability and financial position of the Authorised Person;
  - (e) indicators which identify the points at which appropriate actions referred to in the Recovery Plan may be taken;
  - (f) an estimate of the timeframe for implementing each material aspect of the Recovery Plan;
  - (g) a detailed description of any material impediment to the effective and timely implementation of the Recovery Plan, including consideration of impact on the rest of the Group, Clients and counterparties;
  - (h) identification of Critical Functions;
  - (i) a detailed description of the processes for determining the value and marketability of the Core Business Lines, operations and assets of the Authorised Person;
  - (j) a detailed description of how recovery planning is integrated into the corporate governance structure of the Authorised Person as well as the policies and procedures governing the approval of the Recovery Plan and identification of the persons in the organisation responsible for preparing and implementing the Recovery Plan;
  - (k) arrangements and measures to conserve or restore the Authorised Person's own funds;
  - (l) arrangements and measures to ensure that the Authorised Person has adequate access to contingency funding sources, including potential liquidity sources, an assessment of available collateral and an assessment of the possibility to transfer liquidity across Group entities and business lines, to ensure that it can continue to carry out its operations and meet its obligations as they fall due;
  - (m) arrangements and measures to reduce risk and leverage;
  - (n) arrangements and measures to restructure liabilities;
  - (o) arrangements and measures to restructure business lines;





- (p) arrangements and measures necessary to maintain continuous access to financial markets infrastructures;
  - (q) arrangements and measures necessary to maintain the continuous functioning of the Authorised Person's operations, including infrastructure and IT services;
  - (r) preparatory arrangements to facilitate the sale of assets or business lines in a timeframe appropriate for the restoration of financial soundness;
  - (s) other management actions or strategies to restore financial soundness and the anticipated financial effect of those actions or strategies;
  - (t) preparatory measures that the Authorised Person has taken or plans to take in order to facilitate the implementation of the Recovery Plan, including those necessary to enable the timely recapitalisation of the Authorised Person; and
  - (u) stress scenarios that consider the FSB's "Guidance on Recovery Triggers and Stress Scenarios", relating them to the Authorised Person's particular business model and specific fragile points which can cause it to become non-viable or fail.
- (3) A Recovery Plan of an AIFC Company, or a Branch of an international Group, must include at least 2 scenarios:
- (a) 1 AIFC entity-specific scenario; and
  - (b) 1 macroeconomic scenario that impacts the AIFC entity.
- (4) The scenarios must be tested to ensure that the Recovery Plan is suitable for use in a range of stress scenarios.

### *Guidance*

1. A Recovery Plan should serve as a guide or a "road map" for the Authorised Person and the AFSA in a recovery scenario, i.e., a situation of distress if there is still a reasonable prospect of recovery, if appropriate Recovery Measures are taken, and the Resolution Conditions have not been met.
2. While the stress scenarios in Recovery Plans need not be the same for all Authorised Persons, they should be realistic and specific to each Authorised Person's business model. The AFSA will check the assumptions used in the scenarios and may require additional scenarios.
3. The AFSA expects a Recovery Plan to adopt the following structure:
  - a. high-level substantive summary of the key recovery strategies;
  - b. the analysis that underlies the key recovery strategies;
  - c. a range of factors indicating that the implementation of Recovery Measures may be necessary (recovery indicators);
  - d. tangible and practical options for Recovery Measures;
  - e. description of preparatory actions to ensure that the Recovery Measures can be implemented effectively and in a timely manner;
  - f. an operational plan for implementation of the Recovery Plan, including sequencing and indication of time needed for implementing each step;



- g. details of any potential material impediments to an effective and timely implementation of the Recovery Plan and how these are being addressed;
  - h. responsibilities for executing the preparatory actions, triggering the implementation of the Recovery Plan and the actual Recovery Measures; and
  - i. internal and external communication and disclosure plan to manage any potential negative market reactions, if applicable.
4. The strategic analysis referred to in paragraph 3.b should include the Authorised Person's analysis and, if relevant, identification of essential and systemically important functions carried out by the Authorised Person, which it should aim to maintain as part of the recovery process. The strategic analysis should also cover:
- a. actions necessary for maintaining operations of, and funding for, those essential and systemically important functions, if such are identified;
  - b. assessment of the viability of any business lines and legal entities which may be subject to separation (sale) in a recovery scenario, as well as the impact of such separation on the remaining Group structure;
  - c. assessment of the likely effectiveness of each material aspect of the Recovery Measures and potential risks related thereto, including potential impact on Clients, counterparties and market confidence;
  - d. underlying assumptions for the preparation of the Recovery Plan; and
  - e. processes for determining the value and marketability of the material business lines, operations, and assets.
5. The recovery indicators referred to in paragraph 3.c. are both quantitative and qualitative metrics that identify points at which an Authorised Person has to decide whether an action referred to in its Recovery Plan should be taken. The types and number of indicators should be appropriately selected to be well-targeted, but not to render the exercise unmanageable. They should be calibrated, and not linked to inherently lagging metrics, and to ensure sufficient notice to decide on the corrective action for the AFSA, so as to begin contingency planning.
6. These quantitative recovery indicators should, as a minimum, be included:
- a. Capital (e.g. CET1, total capital and leverage ratio);
  - b. Liquidity (e.g. LCR (Liquidity Coverage Ratio) or NSFR (Net Stable Funding Ratio), cost of wholesale funding, deposit withdrawal, increased collateral demands);
  - c. Profitability (e.g. return on equity (RoE) or return on assets (RoA), significant operational losses);
  - d. Asset quality (e.g. non-performing loan (NPL) rate, including off-balance sheet (OBS)); and
  - e. Market aspects (e.g. rating downgrades, negative review, credit default swap (CDS) spreads).
7. The qualitative recovery indicators could include, for example, difficulties in issuing liabilities at current market rates, an unexpected loss of senior management, adverse court rulings, negative market press and significant reputational damage to franchise.
8. The recovery indicators should be closely connected with the Authorised Person's early warning indicators, which should form part of its internal risk management. They should be



designed to prevent undue delays in the eventual implementation of Recovery Measures.

9. The expected result of one of several indicators occurring should lead to an appropriate, and clearly described in the Recovery Plan, internal escalation procedure to the senior management and the Board, without, however, leading to an automatic activation of the Recovery Plan.
10. The Recovery Measures can include a host of actions to be taken by the Authorised Person alone or in combination, depending on the circumstances and the business model of the Person. The Authorised Person should consider each situation on a case-by-case basis.
11. The Recovery Measures may include, among other things:
  - a. actions to strengthen the capital profile through capital raising or capital conservation measures such as suspension of dividends and payments of variable remuneration;
  - b. restructuring business lines with a view to permitting carrying out of sales of downstream entities and spin-off of business units, sales of assets or loan portfolios;
  - c. voluntary restructuring of liabilities (e.g. through debt-to-equity conversion);
  - d. liquidity improvement options through, for example, securing via various techniques such as improved valuation of available collateral, repurchase agreements (repo), bonds issuance, monetisation of unencumbered assets; and
  - e. reduction of RWAs (Risk Weighted Assets) or leverage.
12. In terms of contingency funding sources, while it is conceivable that parental financial support would, in many cases, be the most credible recovery option, Authorised Persons are expected to consider all funding options available, at the level of the AIFC entity, and set them out in the Recovery Plan.
13. The Recovery Plan of an Authorised Market Institution should be consistent with CPSS-IOSCO Principles for Financial Market Infrastructures (including Principle 3, key consideration 4) and take into account the guidance in the CPMI-IOSCO report on Recovery of financial market infrastructures.
14. Recovery Plans of insurers should be developed on the basis of severe stress scenarios that combine adverse systemic and idiosyncratic conditions. They need to take into account insurance specificities such as the longer pay-out duration and the liquidity profile of insurers.
15. Insurers should identify possible Recovery Measures and the necessary steps and time needed to implement such measures and assess the associated risks of implementation. The range of possible Recovery Measures could include:
  - a. actions to strengthen the capital situation, for example, recapitalisations after extraordinary losses, capital conservation measures such as suspension of dividends and payments of variable remuneration;
  - b. triggering of contingent capital instruments;
  - c. possible sales of subsidiaries, portfolios of insurance contracts, or spin-off of business units;
  - d. changes to the reinsurance programme;
  - e. changes to the investment strategy and hedging programme;
  - f. changes to business mix, sales volumes and product designs, including options to close books of business to new sales or business;



- g. changes to underwriting and claims handling practices; and
  - h. modifications to contract terms and conditions, the level of charges, fees and surrender payments, the amount and timing of any discretionary benefits and the operation of discretionary incentives to renew contracts (such as 'no-claims discounts' or contract renewals without new underwriting).
16. An insurer in solvent run-off should be required to have a scheme of operations plan that sets out how all liabilities to Policyholders will be met in full as they fall due and should include, for example, details on how expenses can be reduced as business volumes fall.
17. For Takaful/Retakaful companies the above guidance may be applied to the extent it does not conflict with their business model or Shariah principles.

### 3.2. Resolution planning

#### *Guidance on the AFSA's general approach to resolution planning*

1. The AFSA will aim to approach resolution planning proportionally, taking into account its Resolution Objectives, including the systemic importance of the Authorised Person or its Group, the need to maintain Critical Functions, protect depositors, Policyholders and Client Assets as well as, more broadly, the impact on and the reputation of the AIFC.
2. Proportionality also implies that the AFSA's approach will take account of the nature, complexity, interconnectedness, level of substitutability, size and extent of crossborder operations of the Authorised Person.
3. The AFSA will consider all potential, credible and feasible options for a Resolution strategy for an Authorised Person, including, if possible, options with respect to the position of the Authorised Person in its Group Resolution Plan prepared by the home Resolution Authority, provided its relevant parts are available to the AFSA.
4. The AFSA will cooperate, to the extent possible, with the home Resolution Authority and any other relevant Resolution Authorities.
5. The AFSA will consider Resolution Plans prepared by other Resolution Authorities in light of its Resolution Objectives and whether the position of the AIFC entity has been adequately taken into account:
  - a. If the AFSA considers that the preferred Resolution strategy, as set out in the Group Resolution Plan, and the outcome for the AIFC, are indeed consistent with its Resolution Objectives and the position of the AIFC entity has been sufficiently taken into account, it may limit its resolution planning to anticipating actions and expressing acceptance of the Group Resolution Plan. This would often imply that, in the event of Resolution, the AFSA would aim to take measures in the AIFC consistent with the home Resolution Authority's actions taken in line with the Group Resolution Plan.
  - b. If the AFSA is not satisfied that the Group Resolution Plan meets or is consistent with its Resolution Objectives, it will consider whether it is necessary to pursue alternative or independent strategies as the preferred resolution strategy in the AIFC. The AFSA will attempt to ensure, as far as it is possible, that the AIFC Resolution Plan is as consistent as possible with the Group Resolution Plan.
6. The AFSA will consider these matters in preparing a Resolution Plan for an Authorised Market Institution:
  - a. scenarios when some or all existing loss allocation arrangements between participants under the Authorised Market Institution rules have been fully or partially put into effect or not implemented;



- b. scenarios when there may be no existing alternative provider to which the Critical Functions of an Authorised Market Institution can be transferred in the short term;
  - c. potential technical and legal barriers to a transfer of Authorised Market Institution functions;
  - d. if necessary to ensure continuity of the Authorised Market Institution's legal and technical arrangement and support the transfer of its functions, provision of advance agreement with other Authorised Market Institutions or relevant service providers;
  - e. the legal mechanism by which collateral is provided, including whether collateral is provided as a security interest or pledge or by way of title transfer, the status of that collateral in insolvency (that is, whether it could be considered "bankruptcy remote"), and the implications of that status for the extent to which losses can be imposed under loss allocation rules of the Authorised Market Institution and the exercise of statutory powers;
  - f. whether assets pledged or available to the Authorised Market Institution would in fact be available for use in Resolution or whether such use or the transfer of functions could be hampered or prevented by residual interests of direct and indirect participants in those assets;
  - g. if Resolution measures would split netting sets, the impact of that splitting on liquidity and collateral requirements;
  - h. how providers of liquidity to the Authorised Market Institution before and during Resolution will be repaid;
  - i. the structure of the Authorised Market Institution, for example, whether it is part of a broader group of Authorised Market Institutions, and the different legal and regulatory regimes under which it operates;
  - j. any need to maintain links with other Authorised Market Institutions (both domestic and in another jurisdiction) that are necessary for the continuity of critical Authorised Market Institution services in any relevant jurisdiction; and
  - k. the impact on direct and indirect participants.
7. The Resolution Plan for an Authorised Market Institution should include:
- a. draft transition agreements that would allow the Authorised Market Institution to continue to provide uninterrupted critical services on behalf of a purchaser or institution using existing staff and infrastructure or, if it is not possible to develop such draft agreements in advance, an issues list and the information necessary to draw up such an agreement at short notice; and
  - b. key information on the critical operations, IT procedures, creditors and list of key staff and service providers necessary to facilitate the continued operation of Critical Functions in Resolution or the transfer of some or all of the operations to another Authorised Market Institution or institution.

### **3.2.1. Resolution planning**

- (1) The AFSA may, if it considers it necessary and practicable to do so, prepare a Resolution Plan pursuant to section 138 of the FSFR for an Authorised Person.
- (2) The AFSA may, in preparing a Resolution Plan:
  - (a) create the Resolution Plan, or parts thereof, itself;



- (b) amend or accept a Resolution Plan, or parts thereof, created or provided by the Authorised Person or any other person (such as a Resolution Authority in another jurisdiction); or
  - (c) prepare the Resolution Plan using a combination of (a) and (b).
- (3) If it has prepared a Resolution Plan, the AFSA may review and update it:
  - (a) on a regular basis; or
  - (b) after material changes to the legal or organisational structure of the Authorised Person, or to its business or financial position, which could have a material effect on the effectiveness of the Resolution Plan.
- (4) The Resolution Plan may set out any relevant matters, including:
  - (a) financial and economic functions for which continuity is critical;
  - (b) the Resolution strategy and the Resolution Powers or Resolution Tools which the AFSA would plan to take if the Authorised Person concerned met the Resolution Conditions, particularly in view of preserving Critical Functions;
  - (c) options for exercising Resolution Powers and applying Resolution Tools in the context of the potential Resolution scenarios;
  - (d) data requirements for the Authorised Person's operations, structures and Critical Functions;
  - (e) potential barriers to effective Resolution and actions to mitigate these;
  - (f) actions to protect depositors, Policyholders and for the prompt return of Client Assets; and
  - (g) actions or principles for exit from Resolution.
- (5) The Resolution Plan for insurers must contain the relevant matters set out in the subrule above, as appropriate to insurers in general and to the type of insurer, and include in particular:
  - (a) identification of Policyholders that are protected by a Policyholder protection scheme and Policyholders that are not eligible for benefits from such schemes;
  - (b) the actuarial assumptions used for calculating insurance liabilities and an independent actuarial valuation of the technical provisions (Policyholder liabilities);
  - (c) review of asset quality and concentration issues;
  - (d) preparation of insurance portfolio transfers to the best extent possible, including a determination of the acceptability of assets to be transferred to any insurer assuming liabilities in a portfolio transfer;
  - (e) sources of funding;
  - (f) provision for continuity or an orderly winding down of any derivatives portfolio;
  - (g) details on a transfer of reinsurance, if any, and impact on coverage;



- (h) operational and practical arrangements for ensuring continuity of coverage and payment under insurance policies, and, if appropriate, a restructuring or termination of insurance policies;
- (i) identification of major counterparties and their interconnectedness with the insurer, and the impact that the failure of a major counterparty would likely have on the insurer;
- (j) a communications and coordination strategy with insurance policy holder protection schemes and other authorities with a role in the Resolution of an insurer; and
- (k) participation in financial market infrastructures.

### *Guidance*

Under section 138(4) of the FSFR, if the AFSA decides to prepare a Resolution Plan for an Authorised Person it may require the Authorised Person to provide information or assistance.

### **3.2.2. Obligation to provide information for Resolution Plan**

The information which the AFSA may by written notice require an Authorised Person to provide for the purposes of preparing, amending or reviewing a Resolution Plan, may include:

- (a) a detailed description of the Authorised Person's organisational structure including a list of all legal entities in its Group ("legal entities");
- (b) the direct holders, and the percentage, of voting and nonvoting rights of each legal entity;
- (c) the location, jurisdiction of incorporation, licensing and key management associated with each legal entity;
- (d) a mapping of the Authorised Person's Critical Functions and Core Business Lines including material asset holdings and liabilities relating to such operations and business lines, by reference to legal entities;
- (e) a detailed description of the components of the Authorised Person's and all its legal entities' liabilities, separating, at a minimum, by types and amounts of short term and long-term debt, secured, unsecured and subordinated liabilities;
- (f) details of liabilities of the Authorised Person that are Eligible Liabilities;
- (g) processes needed to determine to whom the Authorised Person has pledged collateral, the person that holds the collateral and the jurisdiction in which the collateral is located;
- (h) a description of the off-balance sheet exposures of the Authorised Person and its legal entities, including a mapping to its Critical Functions and Core Business Lines;
- (i) the material hedges of the Authorised Person including a mapping to legal entities;
- (j) identification of the major or most critical counterparties of the Authorised Person and entities in its Group as well as an analysis of the impact of the failure of major counterparties on the Authorised Person's financial situation;
- (k) each system on which the Authorised Person conducts a material number or value amount of trades, including a mapping to legal entities, Critical Functions and Core Business Lines;



- (l) each payment, clearing or settlement system of which the Authorised Person is directly or indirectly a member, including a mapping to the legal entities, Critical Functions and Core Business Lines;
- (m) a detailed inventory and description of the key Management Information Systems, including those for risk management, accounting and financial and regulatory reporting used by the Authorised Person including a mapping to legal entities, Critical Functions and Core Business Lines;
- (n) the owners of the systems identified in (m), service level agreements related thereto, and any software and systems or licences, including a mapping to their legal entities, Critical Functions and Core Business Lines;
- (o) the legal entities in the Group and the interconnections and interdependencies among the different legal entities such as:
  - (i) common or shared personnel, facilities and systems;
  - (ii) capital, funding or liquidity arrangements;
  - (iii) existing or contingent credit exposures;
  - (iv) cross guarantee agreements, cross-collateral arrangements, cross-default provisions and cross-affiliate netting arrangements;
  - (v) risks transfers and back-to-back trading arrangements; and
  - (vi) service level agreements;
- (p) the Senior Manager appointed under subrule 3.2.3 as well as those responsible, if different, for the different legal entities, Critical Functions and Core Business Lines;
- (q) a description of the arrangements that the Authorised Person has in place to ensure that, in the event of Resolution, the AFSA will have all the necessary information, as determined by the AFSA, for exercising a Resolution Power or applying a Resolution Tool;
- (r) all the agreements entered into by the Authorised Person and their legal entities with third parties the termination of which may be triggered by a decision to exercise a Resolution Power and apply a Resolution Tool and whether the consequences of termination may affect the exercise of the Resolution Power or application of the Resolution Tool;
- (s) a description of possible liquidity sources for supporting Resolution; and
- (t) information on asset encumbrance, liquid assets, off-balance sheet activities, hedging strategies and booking practices.

### *Guidance*

1. To approach resolution planning on a proportionate basis, and to alleviate the burden on an Authorised Person, the AFSA will:
  - a. consider the actual scope of information required based on the preferred Resolution strategy chosen for the Authorised Person in the AFSA's discretion;
  - b. not require all data to be provided immediately, or from all Authorised Persons. The AFSA will consider the information required in terms of scope and granularity. As the





Authorised Person will be individually contacted by the AFSA, a large majority can expect to be asked to provide, at first, high level core data, and only some would be asked for supplementary information; and

- c. will make use of the information already available to it, e.g. through prudential returns.
2. The process for requesting, and submission of, information, may require several exchanges between the AFSA and the Authorised Person and, in many instances, a continual dialogue before the AFSA is satisfied with the information. On this basis, the AFSA may request relevant information from the Authorised Person or its senior management in writing, as frequently as reasonably necessary, setting out appropriate deadlines to satisfy the request. On site visits may also be carried out.

### 3.2.3. Person responsible for providing information relevant to resolution planning

- (1) An Authorised Person must appoint a Senior Manager who is responsible for providing the AFSA with the information for preparing, amending or reviewing a Resolution Plan upon receipt of the written notice sent by the AFSA pursuant to subrule 3.2.2.
- (2) The Authorised Person must notify the AFSA of the appointed Senior Manager.

#### *Guidance*

The AFSA considers that it may make sense for an Authorised Person, from an operational and resourcing perspective, to appoint the same Senior Manager who is responsible for recovery planning under subrule 3.1.5 as the person responsible under subrule 3.2.3 for providing information relevant to resolution planning.

### 3.3. Resolvability assessment

#### *Guidance*

1. The AFSA may under section 139(1) of the FSFR conduct a Resolvability Assessment to determine if there are any impediments that may prevent or affect the Resolvability of an Authorised Person.
2. The AFSA may consider a range of matters when it conducts a Resolvability Assessment and to identify whether it is feasible and credible for an Authorised Person to be subject to Resolution. For example, it may consider any one or more of these:
  - a. the extent to which the Authorised Person is able to map Core Business Lines and Critical Functions to legal persons;
  - b. the extent to which legal and corporate structures are aligned with Core Business Lines and Critical Functions;
  - c. the extent to which there are arrangements in place to provide for essential staff, infrastructure, funding, liquidity and capital to support and maintain the Core Business Lines and the Critical Functions;
  - d. the extent to which the service agreements that the Authorised Person maintains are fully enforceable in the event of the Resolution of the Authorised Person;
  - e. the extent to which the governance structure of the Authorised Person is adequate for managing and ensuring compliance with the Authorised Person's internal policies with respect to its service level agreements;
  - f. the extent to which the Authorised Person has a process for transitioning the services provided under service level agreements to third parties in the event of the separation



- of Critical Functions or of Core Business Lines;
- g. the extent to which there are contingency plans and measures in place to ensure continuity in access to Authorised Market Institutions, Regulated Exchanges, payment systems, Central Counterparties, Securities Settlement Systems and Central Securities Depositories;
  - h. the adequacy of the Management Information Systems in ensuring that the AFSA is able to gather accurate and complete information regarding the Core Business Lines and Critical Functions so as to facilitate rapid decision making;
  - i. the capacity of the Management Information Systems to provide the information essential for the effective Resolution of the Authorised Person at all times even under rapidly changing conditions;
  - j. the extent to which the Authorised Person has tested its Management Information Systems under stress scenarios;
  - k. the extent to which the Authorised Person can ensure the continuity of its Management Information Systems both for the affected Authorised Person and the new institution in the case that the Critical Functions and Core Business Lines are separated from the rest of the operations and business lines;
  - l. the extent to which the Authorised Person has established adequate processes to ensure that it provides the AFSA with the information necessary to identify depositors and Policyholders;
  - m. if the Authorised Person's Group uses intragroup financial support, the extent to which those guarantees are provided at market conditions and to which the risk management systems concerning those guarantees are robust;
  - n. if the Authorised Person or the Authorised Person's Group engages in back-to-back transactions, the extent to which those transactions are performed at market conditions and to which the risk management systems concerning those transactions practices are robust;
  - o. the extent to which the use of intragroup financial support or back-to-back booking transactions increases contagion across the Authorised Person's Group;
  - p. the extent to which the legal structure of the Authorised Person or its Group inhibits the application of a Resolution Tool as a result of the number of legal persons, the complexity of the Group structure or the difficulty in aligning business lines to the Group entities;
  - q. the existence and robustness of service level agreements;
  - r. the amount and type of Eligible Liabilities of the Authorised Person;
  - s. the extent to which the Resolution of the Authorised Person could have a negative impact on its Group, if applicable;
  - t. whether Resolution Authorities in the other jurisdictions in which the Authorised Person's Group operates have the power to apply a Resolution Tool necessary to support Resolution Actions by the AFSA and the extent to which there is scope for cooperation between such Resolution Authorities and the AFSA;
  - u. the feasibility of applying a Resolution Tool in such a way which meets the Resolution Objectives, given the tools available and the Authorised Person's structure;
  - v. the extent to which the structure of the Authorised Person's Group allows the



- Resolution Authorities of the Group entities to resolve the whole Group or one or more of its Group entities without causing a significant direct or indirect adverse effect on the financial system, market confidence or the financial services industry in the AIFC and with a view to maximising the value of the Group as a whole including the AIFC Branch/es and Subsidiaries;
- w. the arrangements and means through which Resolution could be facilitated in the cases of Groups that have subsidiaries established in different jurisdictions;
  - x. the arrangements and means by which Resolution could be hampered due to collateral arrangements being established in different jurisdictions;
  - y. the credibility of applying a Resolution Tool in such a way which meets the Resolution Objectives, given possible impacts on creditors, counterparties, Clients, clearing participants and employees and possible actions that third-country authorities may take;
  - z. the extent to which the impact of the Authorised Person's Resolution on the financial system in the AIFC and on financial markets confidence can be adequately evaluated;
  - aa. the extent to which the Resolution of the Authorised Person could have a significant direct or indirect adverse effect on the financial system, market confidence or on the AIFC;
  - bb. the extent to which contagion to other Authorised Persons or to the financial markets could be contained through the exercise of a Resolution Power and application of a Resolution Tool; and
  - cc. the extent to which the Resolution of the Authorised Person could have a significant effect on the operation of Authorised Market Institutions, Regulated Exchanges, payment systems, Central Counterparties, Securities Settlement Systems or Central Securities Depositories.
3. For the purposes of the Guidance in subparagraph 2(cc) when conducting a resolvability assessment of an Authorised Market Institution, the AFSA should assess in particular the feasibility and credibility of implementing the Resolution strategy and operational Resolution Plan developed for the Authorised Market Institution, by assessing in particular:
- a. the likely implications for resolution (including the availability of funds to repay liquidity providers) of the implementation of the Authorised Market Institution's Recovery Plan, including any rules and procedures for loss allocation or for the allocation of contracts;
  - b. technical and legal barriers to the transfer of the Critical Functions of the Authorised Market Institution to another entity, including those arising from the bespoke nature of the risk management and technical processes of individual Authorised Market Institutions;
  - c. if the Resolution Plan provides for transfer of the critical Authorised Market Institution functions to another entity or institution, the robustness of any arrangements in place to facilitate the transfer and to maintain continuity, including of the legal and technical arrangements, such as delivery-versus-payments arrangements;
  - d. the impact of Resolution strategies and measures set out in the operational Resolution Plan on Authorised Market Institution participants and on any linked Authorised Market Institutions, including the ability of participants and those linked Authorised Market Institutions to retain continuous access to the Authorised Market Institution's Critical Functions during the Resolution;



- e. the ability of the Authorised Market Institution in Resolution or of a successor entity or institution to which critical Authorised Market Institution functions have been transferred to maintain access to the services of any linked Authorised Market Institutions and other service providers during the Resolution;
  - f. the rights and obligations of linked Authorised Market Institutions in the event of the failure of one of those Authorised Market Institutions that could affect the conduct of Resolution and the ability to maintain enforcement rights over collateral; and
  - g. any interoperability agreements and cross-margining or loss-sharing arrangements with other Authorised Market Institutions.
4. For the purposes of the Guidance in paragraph 2:
- a. the feasibility test involves looking at whether the preferred Resolution strategy can be implemented effectively and in a timely manner; and
  - b. the credibility test checks the impact of the preferred Resolution strategy and its ability to mitigate risks which have been identified against the Resolution Objectives.
5. In practice, if the AFSA prepares or updates a Resolution Plan, the Resolvability Assessment will typically be done concurrently.
6. The AFSA will exercise its power under section 140 of the FSFR to require measures it considers reasonably necessary to remove impediments to, or improve, the resolvability of an Authorised Person in a proportionate and priority-driven manner. The AFSA will target the removal of the most important impediments first. It will also inform other relevant Resolution Authorities, if applicable, of its intentions to formally require the removal of the impediments.

### 3.4. Loss-Absorbing Capacity Requirement

#### *Guidance*

Under section 141 of the FSFR, the AFSA may by written notice require an Authorised Person to hold and maintain a minimum amount of financial resources which will be available during Resolution to absorb losses and recapitalize it so that it can continue to perform Critical Functions while Resolution is ongoing (Loss Absorbing Capacity).

#### 3.4.1. Loss-Absorbing Capacity Requirement

- (1) This Rule applies if the AFSA by written notice under section 141 of the FSFR requires an Authorised Person to hold and maintain a minimum amount of Loss Absorbing Capacity (LAC).
- (2) The AFSA will issue a LAC requirement only in relation to an Authorised Person that is not a Branch.
- (3) The Authorised Person must maintain the specified amount of LAC at all times from the date specified by the AFSA in the notice.
- (4) The LAC requirement:
  - (a) must include the Authorised Person's own funds and Eligible Liabilities, whether issued externally or internally within its Group;
  - (b) may be applied on an unconsolidated balance sheet basis to an individual entity or on a consolidated balance sheet basis to 2 or more entities that the AFSA groups together;



- (c) may specify criteria that must be met by Debentures or other instruments issued for the purpose of complying with the requirement; and
- (d) may require eligible instruments to contain contractual terms designed to promote recognition of their loss-absorbing characteristics and their eligibility to be the subject of the exercise of the Bail-In Tool.

### *Guidance*

1. The AFSA will calibrate the LAC requirement according to the existing level of capitalisation of the Authorised Person and having regard to its business model and the other relevant parameters such as the Resolution strategy, situation of other Group or sub-Group entities and macro-prudential considerations.
2. The LAC requirement will be based on the Total Loss-Absorbing Capacity Standard issued by the FSB, or any relevant document relating to loss-absorbing capacity issued by an international standard-setting body, which will be given effect in whole or in part and subject to any modifications that the AFSA thinks fit, having regard to the prevailing circumstances in the AIFC.
3. A LAC requirement may be imposed concurrently or separately to the resolution planning process regarding the Authorised Person, and will have regard to the Resolution strategy adopted for the Authorised Person.
4. The AFSA will set reasonable deadlines for the Authorised Person to meet the LAC requirement, which may include staggered build-up toward the target amount of the LAC.



## 4. RESOLUTION

### 4.1. Valuation

#### 4.1.1. Eligibility criteria for independent valuer

A person is eligible to be appointed as an independent valuer under section 145 of the FSFR if that person:

- (a) has suitable qualifications, skills and experience to be able to carry out such valuation; and
- (b) is independent and free of conflicts of interest in respect of the valuation.

#### 4.1.2. Powers of an independent valuer

- (1) An independent valuer may do anything necessary or desirable for the purpose of, or in connection with, the performance of the independent valuer's functions under these Rules.
- (2) The independent valuer has, without limiting (1), the powers to:
  - (a) require any member of the management of an Authorised Person to attend an interview at a specified time and place and answer questions;
  - (b) require an Authorised Person to produce at a specified time and place any specified documents or information;
  - (c) require an Authorised Person to provide such assistance as the independent valuer may require; and
  - (d) enter the business premises of an Authorised Person during normal business hours for the purposes of inspecting and copying documents on such premises.
- (3) The AFSA may confer on an independent valuer such ancillary powers as it considers necessary for the purpose of, or in connection with, the independent valuer exercising its functions under these Rules.

#### 4.1.3. Pre-Resolution Valuation

- (1) An independent valuer must carry out a Pre-Resolution Valuation:
  - (a) in the case of an Authorised Person that is not a Branch, on the assets and liabilities of the Authorised Person; or
  - (b) in the case of an Authorised Person that is a Branch, on the business of the Branch.
- (2) The purposes of a Pre-Resolution Valuation are:
  - (a) to inform the decision of whether the Resolution Conditions are met;
  - (b) if the Resolution Conditions are met, to inform the decision on the application of a Resolution Tool;
  - (c) if the Bail-In Tool is applied, to inform the decision on the extent of the write down or conversion of Eligible Liabilities;



- (d) if the Write Down or Conversion Power is exercised, to inform the decision on the extent of the cancellation or dilution of Shares and the extent of the write down or conversion;
  - (e) if the Sale of Business Tool must be applied, to inform the decision on the rights, assets, liabilities or Shares to be transferred and to inform the AFSA's understanding of what constitutes commercial terms for the purpose of the application of the tool; and
  - (f) in all cases, to ensure that any losses on the assets of the Authorised Person are fully recognised at the moment a Resolution Tool is applied or the Write Down or Conversion Power is exercised.
- (3) The independent valuer carrying out the Pre-Resolution Valuation must:
- (a) make prudent, realistic and credible assumptions of the market value of the assets and liabilities of the entity, including as to the rates of defaults and severity of losses, recognised as of the date of entry into Resolution, relevant market conditions and expected stakeholder reactions;
  - (b) disregard any potential future provision of extraordinary public financial support, wherever available; and
  - (c) take into account the fact that if any Resolution Tool is applied the AFSA may recover any reasonable expenses properly incurred from the Authorised Person in accordance with section 152 of the FSFR.
- (4) A Pre-Resolution Valuation must be supplemented by the following information as appearing in the accounting books and records of the Authorised Person (or, in the case of a Branch, the Regulated Financial Institution of which it is a Branch):
- (a) a balance sheet, as at the date of the Pre-Resolution Valuation, of:
    - (i) in the case of an Authorised Person that is not a Branch, the Authorised Person; or
    - (ii) in the case of a Branch, the business of the Branch;
  - (b) a report on the financial position of the Authorised Person;
  - (c) an analysis and estimate of the accounting value of:
    - (i) in the case of an Authorised Person that is not a Branch, the assets of the Authorised Person; or
    - (ii) in the case of a Branch, the property and rights of the Regulated Financial Institution which form part of the business of the Branch;
  - (d) if required to inform a decision relating to the Sale of Business Tool, an analysis and estimate of the market value of:
    - (i) in the case of an Authorised Person that is not a Branch, the assets and liabilities of the Authorised Person; or
    - (ii) in the case of a Branch, the business of the Branch;
  - (e) a list of outstanding liabilities (including any off-balance sheet liabilities) of:
    - (i) in the case of an Authorised Person that is not a Branch, the Authorised Person; or



- (ii) in the case of a Branch, the Regulated Financial Institution of which it is a Branch, with the creditors subdivided into classes according to the hierarchy their claims have under insolvency proceedings; and
- (f) an estimate of the amount each class of creditors and shareholders might be expected to receive if:
  - (i) in the case of an Authorised Person that is not a Branch, the Authorised Person must be wound up under insolvency proceedings; or
  - (ii) in the case of a Branch, the Regulated Financial Institution in its home jurisdiction went into non-AIFC insolvency proceedings.

#### 4.1.4. Provisional Valuation

- (1) The AFSA may, under section 146(2) of the FSFR, appoint an independent valuer to carry out a Provisional Valuation of:
  - (a) in the case of an Authorised Person that is not a Branch, the assets and liabilities of the Authorised Person; or
  - (b) in the case of a Branch, the business of the Branch.
- (2) If a Provisional Valuation is carried out:
  - (a) the independent valuer must comply with subrules 4.1.3(3) and 4.1.3(4) so far as it is reasonable to do so in the circumstances;
  - (b) the Provisional Valuation must make provision in respect of additional losses by the Authorised Person that are reasonably foreseeable; and
  - (c) the Provisional Valuation is a valid basis on which the AFSA may exercise a Resolution Power or apply a Resolution Tool.
- (3) For the purpose of carrying out a Provisional Valuation, the independent valuer may rely on accounts drawn up by the Authorised Person.

#### 4.1.5. Definitive Valuation

- (1) If the AFSA has caused a Provisional Valuation to be carried out under subrule 4.1.4, the AFSA must appoint an independent valuer to carry out, as soon as practicable, a Definitive Valuation of:
  - (a) in the case of an Authorised Person that is not a Branch, the assets and liabilities of the Authorised Person; or
  - (b) in the case of a Branch, the business of the Branch.
- (2) The purposes of the Definitive Valuation are:
  - (a) to ensure that:
    - (i) in the case of an Authorised Person that is not a Branch, the full extent of any losses on the assets of the Authorised Person is recognised in the accounting records of the Authorised Person; or





- (ii) in the case of a Branch, the full extent of any losses on the property and rights of the Regulated Financial Institution of which it is a Branch is recognised in the accounting records of the Authorised Person; and
- (b) to inform a decision by the AFSA as to whether:
  - (i) additional consideration must be paid by a purchaser for any property, rights, liabilities or Shares transferred under a Sale of Business Tool; or
  - (ii) to increase or reinstate any liability which has been reduced or cancelled by the exercise of a Resolution Power or application of a Resolution Tool.
- (3) An independent valuer must comply with subrule 4.1.2 in respect of the Definitive Valuation.
- (4) A person who acts as the independent valuer in a Provisional Valuation of an Authorised Person may be the same person who acts as the independent valuer for the purpose of carrying out a Definitive Valuation of that Authorised Person.

#### **4.1.6. Consequences of a higher valuation being produced by Definitive Valuation**

If a Definitive Valuation produces a higher valuation of the net asset value of an Authorised Person than the Provisional Valuation, the AFSA may:

- (a) instruct a purchaser to pay additional consideration for any rights, assets, liabilities or Shares transferred under the Sale of Business Tool; or
- (b) modify any liability of:
  - (i) an Authorised Person, if it is not a Branch; or
  - (ii) in the case of a Branch, the Regulated Financial Institution of which it is a branch, which has been reduced, deferred or cancelled pursuant to the Write Down or Conversion Power or the exercise of a Resolution Power or application of a Resolution Tool so as to increase or reinstate that liability.

##### *Guidance*

A Pre-Resolution Valuation or Definitive Valuation should be carried out in accordance with any technical standards specified by the AFSA or otherwise in accordance with applicable accounting standards.

## **4.2. Resolution Powers**

##### *Guidance*

1. This section covers some of the Resolution Powers set out in section 147 of the FSFR. The powers can be used in any combination or in connection with a Resolution Tool and different powers may be exercised in relation to the Authorised Person and entities in its Group. The conditions and limitations for the use of certain powers are explained below.
2. The choice of Resolution Powers that are exercised with regard to an Authorised Market Institution should take into account:
  - a. the type of Authorised Market Institution and the Critical Functions that it provides;
  - b. the risk profile of the Authorised Market Institution, including its exposure to credit, liquidity and general business risks and, in particular, whether it takes credit risk



- through exposures to its participants as principal;
- c. the Authorised Market Institution's capital structure, available assets, default resources and loss allocation arrangements;
  - d. any Recovery Measures taken by the Authorised Market Institution;
  - e. in the case of an Authorised Market Institution that has rules-based loss allocation procedures, the extent to which those procedures have not been exhausted before entry into Resolution;
  - f. the type of the stress (for example, credit losses or liquidity shortfalls) and its source (for example, stress arising from participant default or from other causes, such as, business, operational or other structural weaknesses); and
  - g. the market structure in which it operates (for example, the existence of alternative providers).
3. The choice of Resolution Powers may also take into account the expected impact of those powers on direct and indirect Authorised Market Institution participants, any linked Authorised Market Institutions and third parties, regardless of where they are located, and the expected impact on financial markets more widely.
4. The choice of Resolution Powers that are exercised with regard to insurers should take into account:
- a. prohibition of transfer of the insurer's assets without supervisory approval;
  - b. withdrawal of the license to write new business and putting all or part of the insurance business contracts into run-off;
  - c. restructuring, limiting or writing down liabilities (including insurance liabilities), and allocating losses to creditors and Policyholders, where applicable and in a manner consistent with the liquidation claims hierarchy;
  - d. terminating, continuing or transferring certain types of contracts, including insurance contracts;
  - e. transferring or selling the whole or part of the assets and liabilities of the insurer to a solvent insurer or third party;
  - f. transferring any reinsurance associated with transferred insurance policies without the consent of the reinsurer;
  - g. temporarily restricting or suspending the Policyholders' rights of withdrawing their insurance contracts;
  - h. staying rights of the reinsurers of the ceding insurer in Resolution to terminate or not reinstate coverage relating to periods after the commencement of Resolution; and
  - i. imposing a temporary suspension of payments to unsecured creditors and a stay on creditor actions to attach assets or otherwise collect money or property from the insurer.

### 4.2.1. Power to require provision of services and facilities

If the AFSA exercises the power to require an Authorised Person in Resolution, or any of its Group entities, to provide any services or facilities, those services and facilities must be provided on these terms:



- (a) if the services and facilities are provided under an agreement to the Authorised Person in Resolution immediately before the Resolution Action is taken and for the duration of that agreement, on the same terms; and
- (b) if there is no agreement for provision of the services and facilities or if the agreement has expired, on reasonable terms.

#### **4.2.2. Power to suspend certain obligations**

- (1) If the AFSA exercises the power under section 147(1)(p) of the FSFR to suspend any payment or delivery obligations the suspension will take effect from when notice under that section is given of the suspension (as an action the AFSA intends to take) until midnight at the end of the second business day after the notice is given, except that:
  - (a) if a payment or delivery obligation is due during the suspension period the payment or delivery obligation will be due immediately upon expiry of the suspension period; and
  - (b) if 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.
- (2) A suspension does not apply to:
  - (a) Deposits of an Eligible Depositor; or
  - (b) payment and delivery obligations owed to an Authorised Market Institution, payment system, Central Counterparty, Securities Settlement System, Central Securities Depository or the central bank.

##### *Guidance*

The AFSA will, when exercising its power under section 147(1)(p) of the FSFR, have regard to the impact the exercise of the power might have on the orderly functioning of financial markets.

#### **4.2.3. Power to restrict enforcement of security interests**

- (1) If the AFSA exercises its power under section 147(1)(q) of the FSFR to restrict secured creditors of an Authorised Person in Resolution from enforcing security interests in relation to any assets of the Authorised Person, the suspension has effect from when notice under that section is given, of that restriction (as an action the AFSA intends to take) until midnight at the end of the second business day after the giving of the notice.
- (2) A restriction does not apply to restrict secured creditors in relation to any security interest of a payment system, Central Counterparty, Securities Settlement System, Central Securities Depository or the central bank over assets pledged or otherwise provided by way of margin or collateral by the Authorised Person in Resolution.

##### *Guidance*

The AFSA will, when exercising its power under section 147(1)(q) of the FSFR, have regard to the impact the exercise of the power might have on the orderly functioning of financial markets.

#### **4.2.4. Power to temporarily suspend termination rights**

- (1) If the AFSA exercises its power to suspend the termination rights under section 147(1)(k) of the FSFR of any party to a contract with an Authorised Person in Resolution, the suspension has effect from when notice under that section is given, until midnight at the



end of the second business day after the notice is given, provided that the payment and delivery obligations and the provision of collateral continue to be performed by the Authorised Person in Resolution.

- (2) A suspension does not apply to payment and delivery obligations owed to payment systems, Central Counterparties, Securities Settlement Systems, Central Securities Depositories or the central bank.
- (3) A person may exercise a termination right under a contract before the end of the period referred to in (1) if that person receives notice from the AFSA that the rights, assets or liabilities covered by the contract will not be:
  - (a) transferred to another entity; or
  - (b) subject to write down or conversion on the application of the Bail-In Tool.
- (4) If the AFSA exercises the power to suspend termination rights, and if no notice has been given under (3) those rights may be exercised on the expiry of the period of suspension, if the rights, assets or liabilities covered by the contract:
  - (a) remain with the Authorised Person in Resolution and the AFSA has not applied the Bail-In Tool; or
  - (b) have been transferred to another entity, only on the occurrence of any continuing or subsequent enforcement event.

### *Guidance*

The AFSA will, when exercising its power under section 147(1)(k) of the FSFR, have regard to the impact the exercise of the power might have on the orderly functioning of financial markets.

#### **4.2.5. Write Down or Conversion Power**

- (1) The AFSA may in writing down or converting any instrument or liability relating to an Authorised Person:
  - (a) reduce, including reducing to zero, the principal amount of, or outstanding amount due, in respect of Eligible Liabilities of the Authorised Person;
  - (b) cancel Debentures issued by the Authorised Person, except secured liabilities;
  - (c) reduce, including reducing to zero, the nominal amount of Shares of the Authorised Person and cancel the Shares; or
  - (d) require the Authorised Person to issue new Shares or other capital instruments, including preference Shares and contingent convertible instruments.
- (2) A Pre-Resolution Valuation or a Provisional Valuation (as the case may be) may 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 the relevant capital instruments in order to recapitalize the Authorised Person.
- (3) The AFSA may exercise the Write Down or Conversion Power:
  - (a) independently of any other Resolution Action; or
  - (b) in combination with a Resolution Action.



- (4) The AFSA may exercise the Write Down or Conversion Power in relation to relevant capital instruments issued by an Authorised Person in Resolution, if one or more of the following circumstances apply:
  - (a) the AFSA determines that unless the Write Down or Conversion Power is exercised in relation to relevant capital instruments, the Authorised Person will no longer be viable;
  - (b) in the case of relevant capital instruments issued by an Authorised Person that is a subsidiary or another entity in its Group, the AFSA determines that unless the Write Down or Conversion Power is exercised the Authorised Person will no longer be viable; or
  - (c) in the case of relevant capital instruments issued by an Authorised Person that is a parent, the AFSA determines that unless the Write Down or Conversion Power is exercised the Authorised Person's Group will no longer be viable.
- (5) In complying with (4), the AFSA must exercise the Write Down or Conversion Power in accordance with the hierarchy of claims that would apply if the Authorised Person in Resolution must be wound up under the AIFC Insolvency Regulations.
- (6) If the principal amount of a relevant capital instrument is written down:
  - (a) the reduction of that principal amount is permanent;
  - (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
  - (c) no compensation is paid to any holder of the relevant capital instruments other than in accordance with (7) and (8).
- (7) In order to effect a conversion of relevant capital instruments, the AFSA may require an Authorised Person to issue instruments to the holders of the relevant capital instruments.
- (8) The relevant capital instruments may only be converted if these conditions are met:
  - (a) the instruments are issued by the Authorised Person with the agreement of the AFSA;
  - (b) the instruments are awarded and transferred without delay after the exercise of the Write Down or Conversion Power; and
  - (c) the Conversion Rate that determines the number of instruments that are provided in respect of each relevant capital instrument complies with these Rules.

### **4.3. Sale of Business Tool**

#### **4.3.1. Application of Sale of Business Tool**

- (1) The AFSA must ensure that a transfer made by applying the Sale of Business Tool is made on commercial terms having regard to the particular circumstances.
- (2) The AFSA must take reasonable measures to specify, on the basis of a Pre-Resolution Valuation or Provisional Valuation, commercial terms for the transfer made under the Sale of Business Tool.



- (3) Except as provided in section 152 of the FSFR, the net proceeds of consideration paid by the purchaser on the transfer made under the Sale of Business Tool under this Rule must be applied for the benefit of:
  - (a) the owners of the Shares, if the Sale of Business Tool has been effected by transferring Shares issued by the Authorised Person in Resolution from the holders of those Shares or instruments to the purchaser subject to first reimbursing any creditor of the Residual Institution ranking higher in the hierarchy whose instruments have been written down, to the extent reasonably practicable; and
  - (b) the Authorised Person in Resolution, if the Sale of Business Tool has been effected by transferring some or all of:
    - (i) in the case of an Authorised Person that is not a Branch, the assets or liabilities of the Authorised Person to the purchaser; or
    - (ii) in the case of a Branch, the business of the Branch.
- (4) When applying the Sale of Business Tool to an Authorised Person, the AFSA may exercise its transfer power more than once in order to make supplemental transfers of:
  - (a) in the case of an Authorised Person that is not a Branch, any rights, assets or liabilities of or Shares issued by the Authorised Person; or
  - (b) in the case of a Branch, the business of the Branch.
- (5) A written notice under section 147 of the FSFR relating to the application of the Sale of Business Tool to an Authorised Person has effect according to its terms.

#### **4.3.2. Power to transfer rights, assets, liabilities or Shares back to Authorised Person in Resolution or to original owners**

- (1) After applying the Sale of Business Tool, the AFSA may, with the consent of the purchaser, transfer:
  - (a) the rights, assets, or liabilities transferred to the purchaser back to the Authorised Person in Resolution; or
  - (b) the Shares back to their original owners.
- (2) The Authorised Person in Resolution or the original owners must take back any such rights, assets, liabilities or Shares.

#### **4.3.3. Rights of Authorised Person in Resolution under Sale of Business Tool**

If an Authorised Person is not a Branch, and a transfer under the Sale of Business Tool is effected by way of a transfer of Shares of the Authorised Person in Resolution, the Authorised Person may exercise any rights after the transfer that it was entitled to exercise before the transfer.

#### **4.3.4. Rights of purchaser under Sale of Business Tool**

- (1) If a transfer under the Sale of Business Tool results in the purchaser acquiring activities or services that require it to be an Authorised Person, the purchaser may, subject to it satisfactorily complying with any other regulatory requirements, continue to operate the business for a period not exceeding six months, within which period the purchaser must apply for authorisation in the AIFC.



- (2) If a transfer under the Sale of Business Tool has been effected by a transfer of rights, assets and liabilities, the purchaser:
  - (a) is entitled to exercise any such rights after the transfer that the Authorised Person in Resolution was entitled to exercise before the transfer;
  - (b) is subject to all such liabilities, (including membership rights and access to Authorised Market Institutions, Regulated Exchanges, payment systems, Central Counterparties, Securities Settlement Systems and Central Securities Depositories) and rights; and
  - (c) Is subject to liabilities between such entities and the purchaser, provided that the purchaser meets the criteria for such membership or participation in such systems.
- (3) Shareholders and creditors of an Authorised Person in Resolution and other third parties whose rights, assets and liabilities are not transferred under the Sale of Business Tool do not have any rights over or in relation to the rights, assets or liabilities transferred.

#### **4.3.5. Marketing of rights, assets, liabilities or Shares**

- (1) Except as provided in (4) and subrule 4.3.6, if the AFSA applies the Sale of Business Tool to an Authorised Person, the AFSA:
  - (a) must market or arrange for the marketing of the rights, assets, liabilities or Shares that the AFSA intends to transfer; and
  - (b) may market separately pools of rights, assets, liabilities or Shares.
- (2) The AFSA must ensure that marketing:
  - (a) involves good faith efforts not to materially misrepresent the rights, assets, liabilities, or Shares that the AFSA intends to transfer, having regard to the circumstances and in particular the need to maintain financial stability;
  - (b) does not unduly favour or discriminate between identified potential purchasers;
  - (c) is free from conflicts of interest;
  - (d) does not confer any unfair advantage on a potential purchaser;
  - (e) takes account of the need to effect a rapid Resolution Action; and
  - (f) aims to maximise, as far as possible, the sale price for the rights, assets, liabilities or Shares involved.
- (3) The requirements in (2) do not prevent the AFSA from soliciting particular potential purchasers.
- (4) The AFSA may apply the Sale of Business Tool to an Authorised Person without complying with the requirement to market under (1)(a):
  - (a) if the AFSA determines that compliance with such requirements is likely to undermine one or more of the Resolution Objectives; and
  - (b) in particular, if the AFSA considers that complying with the requirement is likely to undermine the effectiveness of the Sale of Business Tool in addressing the failure or likely failure identified under section 144(2) of the FSFR or achieving the Resolution Objectives.



#### 4.3.6. Residual Institution to be Wound Up

If the Sale of Business Tool has been used to transfer Critical Functions or the viable business of an Authorised Person to a private sector purchaser, the Residual Institution must be wound up under insolvency proceedings, within an appropriate timeframe, having regard to any need for the Residual Institution to provide services or support to enable the purchaser to carry on the activities or services acquired by virtue of that transfer.

#### 4.4. Bail-In Tool

##### 4.4.1. Application of Bail-In Tool

- (1) The AFSA may exercise one or more Resolution Powers, in particular the Write Down or Conversion Power in order to apply the Bail-In Tool to an Authorised Person.
- (2) The Bail-In Tool may be applied in respect of a capital instrument or liability of an Authorised Person (Eligible Liability), provided that the liability is not excluded from the scope of the Bail-In Tool.
- (3) The AFSA must not exercise the Write Down or Conversion Power in relation to the following liabilities (whether they are governed by Acting Law of the AIFC or by the law of another jurisdiction):
  - (a) 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, but this exclusion does not prevent the write down of any liability in respect of net sum after close out of a Derivative in accordance with subrule 4.4.5;
  - (b) a Deposit of an Eligible Depositor;
  - (c) any liability that arises by virtue of the holding of Client Assets, to the extent such Client Assets are protected under Acting Law of the AIFC;
  - (d) any liability that arises by virtue of a fiduciary relationship between the Authorised Person (as fiduciary) and another person (as beneficiary) provided that such beneficiary's interests are protected under Acting Law of the AIFC;
  - (e) unsecured liabilities to other financial institutions excluding entities that are part of the same Group, with an original maturity of less than 7 days;
  - (f) liabilities owed to payment systems, Central Counterparties, Securities Settlement Systems, Central Securities Depositories, or their operators or their participants and arising from the participation in any such system; or
  - (g) a liability to:
    - (i) an employee, in relation to accrued salary, pension benefits or other fixed remuneration, except for the variable component of remuneration;
    - (ii) a commercial or trade creditor arising from the provision to the Authorised Person 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; or
    - (iii) any tax and social security authority or scheme in Kazakhstan.





- (4) In exceptional circumstances, if the Bail-In Tool is applied, the AFSA may exclude or partially exclude certain liabilities from the application of the Write Down or Conversion Power if:
  - (a) it is not possible to bail-in that liability within a reasonable time despite the reasonable efforts of the AFSA;
  - (b) the exclusion is strictly necessary and is proportionate to meet the Resolution Objectives;
  - (c) the exclusion is strictly necessary and proportionate to avoid giving rise to widespread contagion, that severely disrupts the functioning of financial markets, including financial market infrastructures, in a manner that may cause broader financial instability; or
  - (d) the application of the Bail-In Tool to those liabilities may cause a destruction of value such that the losses borne by other creditors will be higher than if those liabilities were excluded from bail-in.
- (5) If the AFSA decides to exclude or partially exclude an Eligible Liability or class of Eligible Liabilities under (4), the level of write down or conversion applied to other Eligible Liabilities may be increased to take account of such exclusions, provided that the level of write down or conversion applied to other Eligible Liabilities is consistent with the Resolution Objectives.
- (6) If the AFSA decides to apply the Bail-In Tool, the AFSA must set out in the written notice given under section 147 of the FSFR the type and amount of liabilities owed by the Authorised Person in Resolution that is subject to the Bail-In Tool and state whether the liabilities are:
  - (a) cancelled (i.e. written down to zero);
  - (b) modified (as far as their terms or the effects of the terms therein are concerned); or
  - (c) caused to change their form by converting from a form or a class to a different one, replacing the existing instrument with one of another form or class or creating a new security.
- (7) A written notice under section 147 of the FSFR relating to the application of the Bail-In Tool has effect according to its terms.

### *Guidance*

1. The AFSA may apply the Bail-In Tool if there is a reasonable prospect that applying the tool together with other relevant measures can, in addition to achieving the relevant Resolution Objectives, restore the Authorised Person to financial soundness and long-term viability. The Bail-In Tool may also be applied in connection with the Sale of Business Tool.
2. In exercising its discretion under subrule 4.4.1(4), the AFSA will consider:
  - a. the need not to apply any bail-in to a netting set before such netting is completed;
  - b. the need to avoid disruption to Authorised Market Institutions, Regulated Exchanges, payment systems, Central Counterparties, Securities Settlement Systems and Central Securities Depositories;
  - c. the principle that losses must be borne first by shareholders and subsequently by



creditors of the Authorised Person in Resolution in order of preference in light of the Resolution Objectives;

- d. the level of LAC that remains in the Authorised Person in Resolution if the liability or class of liabilities were excluded; and
- e. the need to maintain adequate resources for Resolution financing.

#### **4.4.2. Assessment of amount of bail-in**

- (1) In applying the Bail-In Tool the AFSA must assess for the purposes of (2), on the basis of the Pre-Resolution Valuation or Provisional Valuation, the aggregate of:
  - (a) if applicable, the amount by which capital instruments and Eligible Liabilities must be written down in order to ensure that the net asset value of the Authorised Person in Resolution is equal to zero; and
  - (b) if applicable, the amount by which capital instruments and Eligible Liabilities must be converted into Shares or other types of capital instruments in order to restore the CET1 Capital ratio of the Authorised Person in Resolution.
- (2) The purpose of the assessment is to establish the amount by which Eligible Liabilities need to be written down or converted in order:
  - (a) to restore the CET1 Capital ratio of the Authorised Person in Resolution;
  - (b) to sustain sufficient market confidence in the Authorised Person in Resolution; and
  - (c) to enable the Authorised Person to continue, for at least 12 months, to satisfy the requirements for authorisation and to carry on the activities or services for which it is authorised.
- (3) If capital instruments have been written down in accordance with the Write Down or Conversion Power under subrule 4.2.5, the Bail-In Tool has been applied, and the level of write down based on the Pre-Resolution Valuation is found to exceed requirements if assessed against the Definitive Valuation, a write up mechanism may be applied to reimburse creditors and then shareholders to the extent necessary.

#### **4.4.3. Treatment of shareholders in bail-in**

- (1) In applying the Bail-In Tool, the AFSA must take, in respect of shareholders of the Authorised Person in Resolution, one or both of these actions:
  - (a) cancel existing Shares or transfer them to bailed-in creditors; or
  - (b) if, in accordance with the Pre-Resolution Valuation (or Provisional Valuation, if applicable), the Authorised Person in Resolution has a positive net value, dilute existing shareholders as a result of the conversion into Shares of:
    - (i) relevant capital instruments; or
    - (ii) Eligible Liabilities, issued by the Authorised Person in Resolution.
- (2) The AFSA must take the action referred to in (1) in respect of shareholders if the Shares were issued or conferred in these circumstances:
  - (a) pursuant to the conversion of Debentures to Shares in accordance with the contractual terms of the original Debentures, on the occurrence of an event that



- preceded or occurred at the same time as the assessment by the AFSA that the Authorised Person met the Resolution Conditions; or
- (b) pursuant to the conversion of relevant capital instruments to CET1 Capital instruments, under the Write Down or Conversion Power.
- (3) In considering which action to take in accordance with (1), the AFSA will have regard to:
- (a) the Pre-Resolution Valuation (or Provisional Valuation, if applicable);
  - (b) the amount by which the AFSA has assessed that CET1 Capital 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 AFSA under subrule 4.4.2(1).

#### 4.4.4. Sequence of bail-in

- (1) Subject to any exclusions set out in subrule 4.4.1(3) and (4), in exercising the Write Down or Conversion Power when applying the Bail-In Tool, the AFSA applies the following sequence to write down or conversion:
- (a) the AFSA must reduce the CET1 items in accordance with subrule 4.4.3;
  - (b) if the total reduction is less than the sum of the amounts referred to in subrule 4.4.3(3)(b) and (c) (the “threshold amount”), the AFSA must reduce the principal amount of AT1 Capital instruments to the extent required and to the extent of their capacity;
  - (c) if the total reduction pursuant to (a) and (b) is less than the threshold amount, the AFSA must reduce the principal amount of T2 Capital instruments to the extent required and to the extent of their capacity;
  - (d) if the total reduction of AT1 and T2 Capital instruments pursuant to (a), (b) and (c) is less than the threshold amount, the AFSA must reduce to the extent required the principal amount of Eligible Liabilities in accordance with the ranking of claims that apply to the Authorised Person under the AIFC Insolvency Regulations, in conjunction with the write down pursuant to (a), (b) and (c) to produce the threshold amount; and
  - (e) if the total reduction of AT1 and T2 Capital instruments and Eligible Liabilities pursuant to (a) to (d) is less than the threshold amount, the AFSA must reduce to the extent required the principal amount of, or outstanding amount payable in respect of, the rest of Eligible Liabilities in accordance with the ranking of claims that will apply to the Authorised Person under the AIFC Insolvency Regulations, in conjunction with the write down pursuant to (a) to (d) to produce the threshold amount.
- (2) When applying the Write Down or Conversion Power, the AFSA must allocate the losses represented by the threshold amount 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 if a different allocation of losses amongst liabilities of the same rank is allowed in the circumstances specified in subrule 4.4.1(4).
- (3) Before applying the Write Down or Conversion Power, the AFSA must convert or reduce the principal amount of instruments referred to in (1)(b), (c) (d) and (e) if those instruments have not been fully converted and contain either of 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, viability, solvency or levels of Capital Resources of the Authorised Person; or
  - (b) terms that provide for the conversion of the instrument to Shares on the occurrence of any such event.
- (4) If the principal amount of an instrument has been reduced, but not reduced to zero, in accordance with terms referred to in (3)(a) before the application of the bail-in pursuant to (1), the AFSA must apply the Write Down or Conversion Power to the residual amount.
- (5) In deciding on whether liabilities must be written down or converted into Shares, the AFSA must not convert one class of liabilities while a class of liabilities that is subordinated to that class remains substantially unconverted into Shares or not written down, unless otherwise permitted under subrule 4.4.1(4) and (5).

### 4.4.5. Derivative

- (1) The AFSA may exercise the Bail-In Tool in relation to a liability arising from a Derivative only to the extent it is an unsecured liability and if, upon or after closing-out that Derivative, there is a net liability which is an Eligible Liability.
- (2) The AFSA may terminate and close out any Derivative upon an Authorised Person's entry into Resolution for the purpose of realising an Eligible Liability that must be subject to the Bail-In Tool.
- (3) The AFSA may, if an Eligible Liability under a Derivative has been excluded from the application of the Bail-In Tool, terminate and close out the Derivative.
- (4) If a Derivative is subject to a netting agreement, the value of the Eligible Liability for the purpose of the Pre-Resolution Valuation (or Provisional Valuation, if applicable) must be determined on a net basis in accordance with the terms of the agreement.
- (5) The AFSA must determine the value of Eligible Liabilities arising from a Derivative on the basis of appropriate methodologies.

### 4.4.6. Conversion Rate

If the Write Down or Conversion Power is exercised, the AFSA may apply a different Conversion Rate to different classes of capital instruments and Eligible Liabilities provided that if different Conversion Rates are applied, the Conversion Rate applicable to liabilities that are considered to be senior under AIFC Insolvency Regulations must be higher than the Conversion Rate applicable to subordinated liabilities.

### 4.4.7. Business Reorganisation Plan

- (1) A Business Reorganisation Plan must, if the Bail-In Tool has been applied to recapitalise an Authorised Person, be prepared and implemented for that Authorised Person in accordance with this Rule.
- (2) The AFSA may require persons to be appointed (under its powers over an Authorised Person in Resolution under section 147 of the FSFR) to be responsible for preparing and implementing the Business Reorganisation Plan.
- (3) The management of the Authorised Person must, within 1 month after the application of the Bail-In Tool to that Authorised Person, draw up and submit to the AFSA a Business Reorganisation Plan that satisfies the requirements in (6).



- (4) If the Bail-In Tool is applied to 2 or more Group entities, including if a Recognition Order has been made, a Group level Business Reorganisation Plan may be accepted by the AFSA for the purposes of this Rule.
- (5) The AFSA may, in exceptional circumstances, and if it is necessary for achieving the Resolution Objectives, extend the period of 1 month up to a maximum of 2 months from the date of the application of the Bail-In Tool.
- (6) A Business Reorganisation Plan must contain at least:
  - (a) a detailed diagnosis of the factors and problems that caused the Authorised Person to fail or to be likely to fail and the circumstances that led to its difficulties;
  - (b) a description of the measures aiming to restore the long-term viability of the Authorised Person or parts of its business that must be adopted, on the basis of realistic assumptions as to the economic and financial market conditions under which the Authorised Person will operate; and
  - (c) a timescale for the implementation of those measures.
- (7) The AFSA must, within 1 month of the submission of the Business Reorganisation Plan by the Authorised Person, assess the likelihood that the Business Reorganisation Plan, if implemented, is likely to restore the long-term viability of the Authorised Person.
- (8) If after its assessment, the AFSA is satisfied that the Business Reorganisation Plan is likely to restore the long-term viability of the Authorised Person, the AFSA must approve the plan.
- (9) If after its assessment, the AFSA is not satisfied that the Business Reorganisation Plan is likely to restore the long-term viability of the Authorised Person, the AFSA must notify the management of the Authorised Person or appointed persons of its concerns and require the Business Reorganisation Plan to be amended in a way that will address those concerns.
- (10) The management of the Authorised Person or appointed persons must, within 2 weeks of receiving a notification by the AFSA under (9), submit an amended Business Reorganisation Plan to the AFSA for approval.
- (11) The AFSA must, within 1 week of receipt of the amended Business Reorganisation Plan, assess the amended Business Reorganisation Plan and notify the management of the Authorised Person or appointed persons as to whether the AFSA is satisfied that the amended Business Reorganisation Plan addresses the concerns notified or whether further amendment is required.
- (12) The management of the Authorised Person or appointed persons must implement the Business Reorganisation Plan as approved by the AFSA.
- (13) The management of the Authorised Person or appointed persons must submit a report to the AFSA on the progress of the implementation of the Business Reorganisation Plan at least every six months or until the AFSA, in writing, specifies otherwise.
- (14) A Business Reorganisation Plan may be further amended after its initial implementation if the AFSA is of the view that changes to the plan are required to achieve the long-term viability of the Authorised Person.

### *Guidance*

1. Measures aiming to restore the long-term viability of the Authorised Person under subrule



4.4.7(6) may include:

- a. the reorganisation of the activities of the Authorised Person;
  - b. changes to the operational systems and infrastructure within the Authorised Person;
  - 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.
2. The Business Reorganisation Plan must take account of, amongst other things, the current state and future prospects of the financial markets, reflecting best-case and worst-case assumptions, including a combination of events allowing the identification of the Authorised Person's main vulnerabilities. Assumptions must be compared with appropriate sector-wide benchmarks.

#### **4.4.8. Ancillary provisions relating to bail-in**

- (1) If the AFSA exercises the Write Down or Conversion Power in conjunction with the application of the Bail-In Tool, the write down or conversion takes effect and is immediately binding on the Authorised Person in Resolution and its creditors and shareholders.
- (2) The AFSA may complete, or cause the completion, of all administrative and procedural tasks necessary to give effect to the Write Down or Conversion Power including, effecting amendments to all relevant registers and listing rules applicable.
- (3) If the AFSA 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, rights or claims arising in relation to it that are not accrued at the time when the power is exercised are fully discharged for all purposes in relation to the Authorised Person in Resolution or any successor entity in any subsequent winding up.
- (4) If the AFSA reduces in part, but not in full, the principal amount of, or outstanding amount payable in respect of, a liability by means of the Write Down or Conversion Power:
  - (a) the liability, and the counterparty's corresponding claim, 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 AFSA might make by means of the Write Down or Conversion Power or other powers under section 147 of the FSFR.
- (5) The AFSA is not prevented from exercising a Resolution Power or applying a Resolution Tool because of any procedural impediments to the conversion of Eligible Liabilities to Shares by virtue of the instrument of incorporation or of any other AIFC Acts, including pre-emption rights for shareholders or requirements for the consent of shareholders to an increase in capital.

#### **4.4.9. Contractual recognition of bail-in**

- (1) The AFSA may, subject to (2), require that Authorised Person must include in its contractual documents a contractual term by which the creditor or party to an agreement



creating an Eligible Liability recognises that that liability may be subject to the Write Down or Conversion Power and agrees to be bound by any reduction of the principal or outstanding amount due, conversion or cancellation that is effected by the exercise of that power by the AFSA, provided that such liability is:

- (a) not excluded under subrule 4.4.1(4);
  - (b) governed by the law of another jurisdiction; and
  - (c) issued or entered into after the date on which these Rules come into force.
- (2) If the AFSA determines that the Eligible Liability referred to in (1) can be subject to Write Down or Conversion Powers by the Resolution Authority of another jurisdiction or pursuant to a binding agreement concluded with that other jurisdiction, (1)(a) will not apply.
- (3) A failure to include the terms referred to in (1) does not prevent the AFSA from exercising the Write Down or Conversion Power in relation to that liability.
- (4) The AFSA may require the Authorised Person to provide independent legal opinions on the enforceability and effectiveness of the contractual bail-in recognition provisions.

### **4.5. Temporary Administrator**

#### **4.5.1. Temporary Administrator**

If the AFSA appoints a Temporary Administrator for an Authorised Person, the Temporary Administrator's powers are exercised under the control of the AFSA. The AFSA may set limits on the actions the Temporary Administrator may take or require the AFSA's prior consent to any action.

#### **4.5.2. Terms of appointment of the Temporary Administrator**

The AFSA must set out in writing the terms of appointment of the Temporary Administrator including the requirement that the Temporary Administrator report regularly to the AFSA on the progress of the Temporary Administrator's activities, the budget, forecasts and other relevant matters concerning the Authorised Person.

##### *Guidance*

1. The AFSA will, when appointing a Temporary Administrator to an Authorised Person in Resolution that is a Group entity, consider whether it is appropriate to appoint the same Temporary Administrator that has been appointed to another entity.
2. The AFSA when appointing a Temporary Administrator to an Authorised Market Institution should take reasonable effort to ensure the continued provision of the Critical Functions of an Authorised Market Institution in Resolution and to fulfil the Authorised Market Institution's payment and settlement obligations on time, including on the day that the Authorised Market Institution enters into Resolution, until the Authorised Market Institution is restored to viability or those functions are transferred, replaced by another provider or wound down in an orderly manner.

### **4.6. Resolution Safeguards**

##### *Guidance*

Under section 151(b) of the FSFR, the AFSA may prescribe safeguards that the AFSA should aim to meet if it exercises a Resolution Power or applies a Resolution Tool. This section prescribes a



number of safeguards that are in addition to the safeguard specified in section 151(a) of the FSFR.

The ranking of claims applied in insolvency proceedings will apply *pari-passu* to Resolution. In particular, creditors and Clients of the same class shall be treated the same way as other members of the class.

#### 4.6.1. Procedural requirements after exercise of a Resolution Power or Resolution Tool

The AFSA must, as soon as is reasonably practicable after the exercise of a Resolution Power or application of a Resolution Tool (including in conjunction with a Recognition Order), publish or arrange for the publication of a copy of a notice summarising the key terms of its Resolution Action by:

- (a) publishing it on the websites of both the AFSA and the Authorised Person in Resolution; and
- (b) if Securities issued by the Authorised Person in Resolution have been admitted to trading on an Authorised Market Institution or on an exchange in a Recognised Jurisdiction, by means of a relevant regulatory information service used on that exchange.

#### 4.6.2. Safeguard for counterparties in partial transfers

(1) If the AFSA:

- (a) transfers some but not all of the rights, assets or liabilities of an Authorised Person in Resolution to another entity; or
- (b) exercises the power to cancel or modify the terms of a contract to which the Authorised Person in Resolution is a party or substitute a recipient as a party

the AFSA must protect the arrangements specified in (2) and the counterparties of such arrangements.

(2) The arrangements protected are as follows:

- (a) collateral arrangements, including title transfer collateral arrangements;
- (b) set-off arrangements under which 2 or more claims or obligations owed between the Authorised Person in Resolution and a counterparty can be set off against each other;
- (c) netting arrangements;
- (d) collateral and default fund contributions provided to payment systems, Central Counterparties, Securities Settlement Systems and Central Securities Depositories; and
- (e) any transfer or obligation that is subject to irrevocable settlement finality protections under applicable AIFC Acts.

(3) The arrangements are protected irrespective of the number of parties involved in the arrangements or whether the arrangements:

- (a) are created by contract, deed, 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.





- (4) The protections in subrules 4.6.3, 4.6.4 and 4.6.5 also apply to arrangements under this Rule.

**4.6.3. Protection for title transfer collateral arrangements and set-off and netting arrangements**

If the AFSA makes a transfer referred to in subrules 4.6.2(1)(a), the AFSA must not transfer some, but not all, of any rights, assets and liabilities that form part of arrangements protected under subrule 4.6.2(2) between the Authorised Person and another entity, party or a counterparty.

**4.6.4. Protection for security arrangements**

The AFSA must not, in respect of liabilities secured under the collateral arrangements referred to in subrules 4.6.2(2)(a) that are not title transfer collateral arrangements:

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

**4.6.5. Protection of trading, clearing and settlement systems**

- (1) The AFSA must take reasonable steps to ensure that the application of a Resolution Tool does not affect the operation of an Authorised Market Institution, Regulated Exchange, payment system, Central Counterparty, Securities Settlement System or Central Securities Depository if it:
  - (a) transfers some but not all of the rights, assets or liabilities of an Authorised Person in Resolution to another entity; or
  - (b) exercises its Resolution Power to cancel or modify the terms of a contract to which the Authorised Person in Resolution is a party or to substitute a recipient as a party.
- (2) The AFSA must take reasonable steps to ensure that the exercise of Resolution Powers does not affect continuity of settlement finality rules in Resolution of an Authorised Market Institution.
- (3) The AFSA must take reasonable steps to ensure that the exercise of Resolution Powers to an Authorised Market Institution:
  - (a) does not result in automatic revocation of any licenses, authorisations, recognitions and legal designations of a (domestic or foreign) Authorised Market Institutions that are necessary for the continued performance of the Authorised Market Institution's Critical Functions in Resolution, including its recognition for the purpose of the application of relevant settlement finality rules, solely as a result of entry into Resolution under either domestic or foreign law; and
  - (b) allows those licences, authorisations, recognitions and legal designations to remain effective to the extent necessary to allow for continuity of the Critical Functions of the Authorised Market Institution in Resolution.



- (4) The AFSA must take reasonable steps to ensure that the exercise of Resolution Powers to an Authorised Market Institution does not lead automatically to the restriction, suspension or termination of its participation in, or link with, other Authorised Market Institutions (wherever located). Authorised Market Institutions must not be prevented (including by law or regulations) from maintaining its participation of, or link with, another Authorised Market Institution that is in Resolution provided that the Authorised Market Institution in Resolution continues:
  - (a) to meet its payment and delivery obligations when due; and
  - (b) to comply with any other applicable obligations under the rules of the Authorised Market Institution.
  
- (5) The AFSA must take reasonable steps to ensure that the application of Sale of Business Tool to an Authorised Market Institution:
  - (a) does not affect continuity of the Authorised Market Institution's legal and technical arrangements, such as delivery-versus-payments arrangements, domestic or cross-border links with other Authorised Market Institutions or other critical service providers and relevant contractual arrangements;
  - (b) envisages transfer or application of any licenses, authorisations, recognitions and legal designations of the Authorised Market Institution necessary for the continued performance of those functions in Resolution, including recognition for the purpose of the application of relevant settlement finality rules;
  - (c) envisages transfer of Client Assets that the Authorised Market Institution holds as a custodian without affecting the ownership rights or entitlements of the relevant Clients to those assets.



**5. MISCELLANEOUS**

**5.1. Management Information Systems**

**5.1.1. Management Information Systems (MIS)**

An Authorised Person must:

- (a) maintain in the AIFC a detailed inventory of appropriate computer-based systems and procedures which gather, process, present and store information supporting the activities of an Authorised Person (“Management Information Systems” or “MIS”) including those relating to accounting, financial, prudential and market information;
- (b) demonstrate to the AFSA that it is able to obtain and produce at short notice the information derived from its MIS in normal times, for the purposes of preparing or implementing a Recovery Plan or a Resolution Plan, for the purpose of a Resolvability Assessment, or in the course of Resolution;
- (c) maintain, in the AIFC, information which is essential and specific to the Authorised Person and other vital business relationships which are essential to access by the AFSA for the above purposes; and
- (d) identify and address any legal constraints related to the flow of management information to the Authorised Person from other parts of its Group in normal times and in crisis situations.