

Appendix 2

This Appendix is a proposed new module of the DFSA Rulebook.
As the text is all new text it is not underlined.



The DFSA Rulebook

Recovery and Resolution

(RAR)

Contents

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1. APPLICATION AND INTERPRETATION

1.1 Application

- 1.1.1** (1) Part 5A of the Regulatory Law and this Module (RAR) apply to an Authorised Firm that is authorised under its Licence to carry on any one or more of the following Financial Services:
- (a) Accepting Deposits;
 - (b) Providing Credit,
 - (c) Dealing in Investments as Principal; or
 - (d) Managing a Profit-Sharing Investment Account where that account is received on an unrestricted basis (a PSIAu).
- (2) Where specified these Rules also apply to a Parent or Subsidiary of the Authorised Firm or to another entity in its Group.

1.2 Definitions

Guidance

1. Set out under Rule 1.2.1 are a number of mainly technical definitions used solely in RAR. The definitions do not also appear in GLO unless they are used elsewhere in the Rulebook. GLO also contains definitions of abbreviations, terms and phrases used in RAR and those are also included in 1.2.1 for convenience purposes where such definitions are embedded in RAR specific definitions. Commonly used definitions such as “Authorised Firms” and “Financial Services” appear only in GLO.
2. In accordance with the interpretation provisions in the Regulatory Law, a reference to legislation includes a reference to the legislation as amended or re-enacted from time to time.

- 1.2.1** In this module, the terms and abbreviations listed in the table below have the following meanings:

Affected Creditor	A creditor whose claim relates to a liability that is reduced or converted to Shares by the exercise of the Write Down or Conversion Power pursuant to the application of the Bail-in Tool.
AT1 Capital	Has the meaning given in PIB Rule 1.2.1.
Bail-In Tool	The Resolution Tool provided for in Article 84N(1)(h) of the Regulatory Law, and described in Article 84P(1) of the Regulatory Law and RAR section 3.4.
Business Reorganisation Plan	A plan drawn up in accordance with RAR Rule 3.4.7.
CET1 Capital	Has the meaning given in PIB Rule 1.2.1.
Conversion Rate	The ratio that determines the number of Shares into

	which a liability of a specific class will be converted, by reference either to a single instrument of the class or to a specified unit of value of a debt claim.
Commencement Date	The day on which Rule-Making Instrument No. [] of 2020 comes into force.
Core Business Lines	Business lines and associated services which represent material sources of revenue, profit or franchise value for an Authorised Firm or its Group.
Critical Functions	<p>Activities, services or operations the discontinuance of which is likely to lead to:</p> <ol style="list-style-type: none"> 1. the disruption of services that are essential to the economy in the DIFC or relevant to Authorised Firms operating in the DIFC; or 2. the disruption of financial stability due to the size, market share, external or internal interconnectedness, complexity, or cross-border activities of an Authorised Person or its Group, <p>with particular regard to the substitutability of those activities, services or operations.</p>
Debt Instrument	Bonds and other forms of transferable debt, instruments creating or acknowledging debt and an instrument giving rights to acquire such instruments.
Definitive Valuation	A valuation carried out, or intended to be carried out, pursuant to RAR Rule 3.1.5.
Derivative Contract	A contract for or with respect to a Derivative.
Eligible Liabilities	Liabilities and capital instruments that do not qualify as CET1 Capital instruments, AT1 Capital instruments or T2 Capital instruments of an Authorised Firm that are not excluded from the exercise of the Write Down or Conversion Power under RAR Rules 3.4.1(7) or (8).
LAC	Means the Loss-Absorbing Capacity as defined in Article 84H of the Regulatory Law.
Pre-Resolution	A valuation carried out, or intended to be carried out,

Valuation	pursuant to Article 84M(1) of the Regulatory Law and RAR Rule 3.1.3.
Provisional Valuation	A valuation carried out, or intended to be carried out, to Article 84M(2) of the Regulatory Law and RAR Rule 3.1.4.
Recognition Order	Has the meaning given in Article 84T(4) of the Regulatory Law.
Recovery Measures	The measures, set out in the Recovery Plan, which may or are to be taken for the restoration of the financial position of an Authorised Firm.
Recovery Plan	Has the meaning given in Article 84D(1) of the Regulatory Law.
Residual Institution	In circumstances where part of the business of an Authorised Firm has been sold to a private sector purchaser using the Sale of Business Tool, the non-sold or non-transferred part of the Authorised Firm and the legal entity in which any related assets, liabilities or business resides.
Resolution	The process of resolving an Authorised Firm, including the stabilisation and restructuring of that Authorised Firm through the exercise of or application of one or more Resolution Powers or Resolution Tools
Resolution Action	The exercise of a Resolution Power or application of a Resolution Tool and any activity connected with that exercise or application.
Resolution Conditions	Has the meaning given in Article 84K(1) of the Regulatory Law.
Resolution Objectives	The DFSA's aims or considerations set out in Article 8(3B) and 8(3C) of the Regulatory Law.
Resolution Plan	Has the meaning given in Article 84E(1) of the Regulatory Law.
Resolution	The Safeguards provided for in Article 84R of the

Safeguards	Regulatory Law, as well as the specific safeguards set out in RAR section 3.7.
Resolution Tool	The Sale of Business Tool or Bail-In Tool referred to in Article 84O and 84P respectively.
Sale of Business Tool	The Resolution Tool provided for in Article 84N(1)(g) of the Regulatory Law, and described in Article 84O of the Regulatory Law and RAR section 3.3.
Secured Liability	A liability where the right of the creditor to payment or other form of performance is secured by a collateral arrangement.
Temporary Administrator	The person appointed under Article 84Q of the Regulatory Law.
T2 Capital	Has the meaning given in PIB Rule 1.2.1.
Write Down or Conversion Power	The Resolution-related power provided for in Article 84N(1)(h) and described in Article 84P(2) of the Regulatory Law and RAR section 3.2.5.

2. RECOVERY AND RESOLUTION PLANNING

2.1 Recovery Planning

Recovery Plan obligations

- 2.1.1** (1) An Authorised Firm that is authorised under its Licence to carry on the Financial Service of Accepting Deposits, or Managing a Profit-Sharing Investment Account where that account is received on an unrestricted basis (a PSIAu), shall prepare and submit to the DFSA a Recovery Plan for review.
- (2) The Recovery Plan shall be submitted to the DFSA:
- (a) for an Authorised Firm in operation on the commencement day, no later than two months from the commencement day; or
 - (b) for an Authorised Firm licensed after the commencement day, two months from the date of authorisation.
- 2.1.2** (1) An Authorised Firm not referred to in Rule 2.1.1, shall prepare and submit to the DFSA a Recovery Plan for review, only if it is given notice in writing by the DFSA requiring it to do so.
- (2) The Recovery Plan shall be submitted to the DFSA by the date specified in the notice.
- 2.1.3** An Authorised Firm shall ensure that the Recovery Plan processes and implementation are integrated, and aligned, with their overall governance structure and processes and internal risk management frameworks, such as early warning indicators.
- 2.1.4** An Authorised Firm shall ensure that it has in place appropriate contingency arrangements, which enable it to continue to operate as it implements Recovery Measures set out in the Recovery Plan and such arrangements shall include internal processes including IT, access to financial market infrastructure such as clearing and settlement facilities, and the continuation of supplier and employee contracts.
- 2.1.5** Where the DFSA gives a written notice to an Authorised Firm under Article 84D(5) of the Regulatory Law requiring it to take measures to rectify any deficiencies in the Recovery Plan, the Authorised Firm shall submit the rectified Recovery Plan by the date specified in the notice.

Responsibility for Recovery Planning

- 2.1.6** (1) An Authorised Firm shall designate a Senior Manager who will be responsible for leading, formulating and overseeing the Recovery Planning process, including providing to the DFSA any information relevant for the review of a Recovery Plan.
- (2) The Authorised Firm shall notify the DFSA of the Senior Manager designated under (1).

- (3) Without limiting the generality of the Principles for Authorised Individuals in GEN Rule 4.4, the senior management of an Authorised Firm are responsible for the Recovery Planning of that Authorised Firm.

Content of the Recovery Plan

2.1.7 A Recovery Plan shall be commensurate with the nature, complexity, interconnectedness, size and substitutability of the Authorised Firm's DIFC operations, and set out the Recovery Measures the Authorised Firm can take, as well as how and when it can take them, including the following key elements:

- (a) considering a range of scenarios including both idiosyncratic (Group- or Authorised Firm-specific) and market-wide scenarios, likely to cause severe stress which will require Recovery Measures to be considered or activated;
- (b) the actual Recovery Measures, which may include measures to reduce the Authorised Firm's risk profile, address capital shortfalls or liquidity pressures, change funding strategy, or change governance structure; and
- (c) processes to ensure the timely implementation of Recovery Measures in a range of stress situations.

2.1.8 A Recovery Plan prepared by an Authorised Firm shall be prepared on the following basis:

- (a) for an Authorised Firm that has its head office in the DIFC, the Recovery Plan shall cover the recovery of the entire Group including all of its downstream operations;
- (b) for an Authorised Firm that is a Subsidiary of a financial institution that has its head office outside the DIFC, the Recovery Plan shall specifically address stress scenarios and triggers for the Authorised Firm and adequately cover any downstream operations, as well as including specific recovery options for the DIFC operations; and
- (c) for an Authorised Firm that 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 DIFC operations.

Guidance

1. For a Branch with significant DIFC operations, the Recovery Plan should be tailored to the local operations and contain all relevant information. For a Branch with limited operations, the DFSA 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 events that pose a risk to the Branch's viability.
2. The DFSA will approach the Recovery Plan requirements in a proportionate manner.

2.1.9 (1) A Recovery Plan shall 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 Firm since the most recently filed Recovery Plan;
- (c) a communication and disclosure plan outlining how the Authorised Firm 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 Firm;
- (e) an estimation of the timeframe for executing each material aspect of the Recovery Plan;
- (f) a detailed description of any material impediment to the effective and timely execution of the Recovery Plan, including consideration of impact on the rest of the Group, customers and counterparties;
- (g) identification of Critical Functions;
- (h) a detailed description of the processes for determining the value and marketability of the Core Business Lines, operations and assets of the Authorised Firm;
- (i) a detailed description of how recovery planning is integrated into the corporate governance structure of the Authorised Firm 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;
- (j) arrangements and measures to conserve or restore the Authorised Firm's own funds;
- (k) arrangements and measures to ensure that the Authorised Firm 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;
- (l) arrangements and measures to reduce risk and leverage;
- (m) arrangements and measures to restructure liabilities;
- (n) arrangements and measures to restructure business lines;
- (o) arrangements and measures necessary to maintain continuous access to financial markets infrastructures;
- (p) arrangements and measures necessary to maintain the continuous functioning of the Authorised Firm's operational processes, including infrastructure and IT services;
- (q) preparatory arrangements to facilitate the sale of assets or business lines in a timeframe appropriate for the restoration of financial soundness;
- (r) other management actions or strategies to restore financial soundness and the anticipated financial effect of those actions or strategies;

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- (s) preparatory measures that the Authorised Firm 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 Firm;
 - (t) a framework of indicators which identifies the points at which appropriate actions referred to in the Recovery Plan may be taken; and
 - (u) stress scenarios in consideration of the Financial Stability Board (FSB) *Guidance on Recovery Triggers and Stress Scenarios*, relating them to the Authorised Firm's particular business model and specific fragile points which can cause it to become non-viable or fail.
- (2) The Recovery Plan of a DIFC Company, or a Branch of an international Group, shall include at least two scenarios:
- (a) one DIFC entity-specific scenario; and
 - (b) one macroeconomic scenario that impacts the DIFC entity,
- and the scenarios are to be tested to ensure that the Recovery Plan is suitable for use in a range of various types of stress.

Guidance

1. The Recovery Plan should serve as a guide or a "road map" for the Authorised Firm and the DFSA in a recovery scenario, i.e., a situation of distress where 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 Firms, they should be realistic and specific to each Authorised Firm's business model. The DFSA will check the assumptions used in the scenarios and may require additional scenarios.
3. The DFSA expects a Recovery Plan to adopt a structure, as follows:
 - a. 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 execution of the Recovery Plan and how these are being addressed;
 - h. responsibilities for executing the preparatory actions, triggering the

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- 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 3b. should include the Authorised Firm's analysis and, where relevant, identification of essential and systemically important functions carried out by the Authorised Firm, 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 customers, 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 3c. are both quantitative and qualitative metrics that identify points at which an Authorised Firm 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 DFSA, so as to begin contingency planning.
 6. A number of quantitative recovery indicators should, as a minimum, be included:
 - a. Capital (e.g., CET1, total capital and leverage ratio);
 - b. Liquidity (e.g., LCR or NSFR (as defined in PIB), 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 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 Firm'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,
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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 Firm alone or in combination, depending on the circumstances and the business model of the firm. The Authorised Firm should consider each situation on a case-by-case basis. Any actions in reaction to the recovery indicators should be discussed with the DFSA.
11. The Recovery Measures can include, but need not be limited to:
 - 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 funding via various techniques such as improved valuation of available collateral, repurchase agreements (“repo”), bonds issuance, monetisation of unencumbered assets; and
 - e. reduction of RWA (as defined in PIB) 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 Firms are expected to consider all funding options available, at the level of the DIFC entity, and set them out in the Recovery Plan.

2.2 Resolution Plan

Guidance

1. The DFSA may, where it considers it necessary and practicable to do so, prepare a Resolution Plan for an Authorised Firm.
2. The DFSA 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 Firm 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. Where it has prepared a Resolution Plan, the DFSA may review and update it:
 - a. on a regular basis; or
 - b. after material changes to the legal or organisational structure of the Authorised Firm, or to its business or financial position, which could have a material effect on the effectiveness of the Resolution Plan.

Content of the Resolution Plan

4. The Resolution Plan may set out any relevant matters, including the following:
 - a. financial and economic functions for which continuity is critical;
 - b. the resolution strategy and the Resolution Powers or Resolution Tools which the DFSA would plan to take if the Authorised Firm 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 Firm's operations, structures and Critical Functions;
 - e. potential barriers to effective Resolution and actions to mitigate these;
 - f. actions to protect depositors, and for the prompt return of Client Assets; and
 - g. actions or principles for exit from Resolution.

DFSA's general approach to resolution planning

5. The DFSA will aim to approach resolution planning proportionally, taking into account its Resolution Objectives, including the systemic importance of the Authorised Firm or its Group, the need to maintain Critical Functions, protect depositors and Client Assets as well as, more broadly, the impact on and the reputation of the DIFC. Proportionality also implies that the DFSA's approach will take account of the nature, complexity, interconnectedness, level of substitutability, size and extent of cross-border operations of the Authorised Firm.
6. The DFSA will consider all potential, credible and feasible options for a Resolution strategy for an Authorised Firm, including, where possible, options with respect to the position of the Authorised Firm in its Group Resolution Plan prepared by the home Resolution Authority, provided its relevant parts are available to the DFSA.
7. The DFSA will cooperate, to the extent possible, with the home Resolution Authority and relevant host Resolution Authorities.
8. The DFSA will consider Resolution Plans prepared by other Resolution Authorities in light of our Resolution Objectives and whether the position of the DIFC entity has been adequately taken into account:
 - a. if the DFSA considers that the preferred Resolution strategy, as set out in the Group Resolution Plan, and the outcome for the DIFC, are indeed consistent with its Resolution Objectives and the position of the DIFC 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 DFSA would aim to take measures in the DIFC consistent with the home Resolution Authority's actions taken in line with the Group Resolution Plan.
 - b. if the DFSA 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 DIFC. The DFSA will attempt to ensure, as far as it is possible, that the DIFC Resolution Plan is as consistent as possible with the Group Resolution Plan.

Obligation to provide information for Resolution Plan

- 2.2.1** The DFSA may, by written notice, require an Authorised Firm to provide information within a specified period for the purposes of preparing, amending or reviewing a Resolution Plan, including but not limited to:
- (a) a detailed description of the Authorised Firm's organisational structure including a list of all legal entities in its Group ("legal entities");
 - (b) identifying the direct holders and the percentage of voting and non-voting 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 Firm'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 Firm'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 Firm that are Eligible Liabilities;
 - (g) identifying processes needed to determine to whom the Authorised Firm 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 Firm and its legal entities, including a mapping to its Critical Functions and Core Business Lines;
 - (i) the material hedges of the Authorised Firm including a mapping to legal entities;
 - (j) identification of the major or most critical counterparties of the Authorised Firm as well as an analysis of the impact of the failure of major counterparties in the Authorised Firm's financial situation;
 - (k) each system on which the Authorised Firm conducts a material number or value amount of trades, including a mapping to legal entities in the Group, Critical Functions and Core Business Lines;
 - (l) each payment, clearing or settlement system of which the Authorised Firm is directly or indirectly a member, including a mapping to the legal entities in the Group, 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 Firm including a mapping to legal entities in the Group, Critical Functions and Core Business Lines;

- (n) identifying the owners of the systems identified in paragraph (m), service level agreements related thereto, and any software and systems or licenses, including a mapping to their legal entities, Critical Functions and Core Business Lines;
- (o) identifying and mapping 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 designated under Rule 2.1.6 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 Firm has in place to ensure that, in the event of Resolution, the DFSA will have all the necessary information, as determined by the DFSA, for exercising a Resolution Power and applying a Resolution Tool;
- (r) all the agreements entered into by the Authorised Firm and their legal entities with third parties the termination of which may be triggered by a decision of the authorities to exercise a Resolution Power and apply a Resolution Tool and whether the consequences of termination may affect the exercise of the Resolution Powers and 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. In approaching resolution planning on a proportionate basis, and to alleviate the burden on the Authorised Firm:
 - a. The DFSA will consider that the actual scope of information required will depend on the preferred resolution strategy chosen for the Authorised Firm in the DFSA's discretion.
 - b. Not all data would need to be provided immediately, or from all Authorised Firms. The DFSA will consider the information required in terms of scope and granularity. As the Authorised Firm will be individually contacted by the

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

Person responsible for providing information relevant to resolution planning

- 2.2.2**
- (1) An Authorised Firm shall designate a Senior Manager who will be responsible for providing the DFSA with the information relevant for the review or preparation of a Resolution Plan.
 - (2) The Authorised Firm shall notify the DFSA of the Senior Manager designated under (1).

Guidance

The DFSA considers that it may make sense for an Authorised Firm, from an operational and resourcing perspective, for the same Senior Manager designated for recovery planning pursuant to Rule 2.1.6 to also be designated for resolution planning pursuant to 2.2.2.

2.3 Resolvability Assessment

Guidance

- 1. The DFSA may consider the following matters in respect of a Resolvability Assessment conducted pursuant to Article 84F(1) of the Regulatory Law, to identify whether it is feasible and credible for an Authorised Firm to be either liquidated in an ordinary insolvency proceeding or be subject to Resolution:
 - a. the extent to which the Authorised Firm 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 Firm maintains are fully enforceable in the event of the Resolution of the Authorised Firm;
 - e. the extent to which the governance structure of the Authorised Firm is adequate for managing and ensuring compliance with the Authorised Firm's internal policies with respect to its service level agreements;
 - f. the extent to which the Authorised Firm has a process for transitioning the services provided under service level agreements to third parties in the event

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- 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 payment and securities settlement systems, Central Securities Depositories, Clearing Houses, Exchanges and Recognised Bodies;
 - h. the adequacy of the management information systems in ensuring that the DFSA 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 Firm at all times even under rapidly changing conditions;
 - j. the extent to which the Authorised Firm has tested its management information systems under stress scenarios as defined by the DFSA;
 - k. the extent to which the Authorised Firm can ensure the continuity of its management information systems both for the affected Authorised Firm 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 Firm has established adequate processes to ensure that it provides the DFSA with the information necessary to identify depositors;
 - m. where the Authorised Firm'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. where the Authorised Firm or the Authorised Firm'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 Firm's Group;
 - p. the extent to which the legal structure of the Authorised Firm 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 Firm;
 - s. the extent to which the Resolution of the Authorised Firm could have a negative impact on its Group, where applicable;
 - t. whether Resolution Authorities in the other jurisdictions in which the Authorised Firm's Group operates have the power to apply a Resolution Tool necessary to support Resolution Actions by the DFSA and the extent to which there is scope for cooperation between such Resolution Authorities and the DFSA;
 - u. the feasibility of applying a Resolution Tool in such a way which meets the Resolution Objectives, given the tools available and the Authorised Firm's
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- structure;
- v. the extent to which the structure of the Authorised Firm'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 economy in the DIFC and with a view to maximising the value of the Group as a whole including the DIFC 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 through which Resolution could be hampered in the cases of Recognised Bodies that have clearing members or collateral arrangements 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, customers, clearing participants and employees and possible actions that third-country authorities may take;
 - z. the extent to which the impact of the Authorised Firm's Resolution on the financial system in the DIFC and on financial markets confidence can be adequately evaluated;
 - aa. the extent to which the Resolution of the Authorised Firm could have a significant direct or indirect adverse effect on the financial system, market confidence or the economy in the DIFC;
 - bb. the extent to which contagion to other Authorised Firms 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 Firm could have a significant effect on the operation of payment and securities settlement systems, Central Securities Depositories, Clearing Houses, Exchanges and Recognised Bodies.
2. For the purposes of the Guidance in item 1:
- (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.
3. In practice, when the DFSA prepares or updates a Resolution Plan, the Resolvability Assessment will typically be done concurrently.
4. The DFSA will exercise its power in Article 84G to require measures it considers reasonably necessary to remove impediments to, or improve, the resolvability of an Authorised Firm in a proportionate and priority-driven manner. The DFSA will target the removal of the most important impediments first. It will also inform other relevant Resolution Authorities of its intentions to formally require the removal of the impediments.

2.4 Loss-Absorbing Capacity Requirement

- 2.4.1**
- (1) The DFSA may exercise its power under Article 84H of the Regulatory Law to require an Authorised Firm to hold a minimum amount of Loss Absorbing Capacity (LAC) only in relation to an Authorised Firm that is not a Branch.
 - (2) The LAC shall include the Authorised Firm's own funds and Eligible Liabilities, whether issued externally or internally within its Group.
 - (3) The LAC requirement may be imposed concurrently or separately to the resolution planning process regarding the Authorised Firm, and will have regard to the resolution strategy adopted for the Authorised Firm.
 - (4) The LAC requirement may be applied on an unconsolidated balance sheet basis to an individual entity or on a consolidated balance sheet basis to two or more entities grouped together by the DFSA.
 - (5) The DFSA will calibrate the LAC requirement according to the existing level of capitalisation of the Authorised Firm 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.
 - (6) The Authorised Firm subject to a LAC requirement shall maintain the prescribed amount of LAC at all times.
 - (7) The written notice in Article 84H(1) of the Regulatory Law may specify criteria to be met by Debt Instruments issued for complying with LAC requirements.
 - (8) The LAC eligible instruments issued for complying with the LAC requirements shall 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.
 - (9) The DFSA will set reasonable deadlines for the Authorised Firm to meet the LAC requirement, which may include staggered build-up toward the target amount of the LAC.
 - (10) The DFSA may vary or revoke a LAC requirement.

Guidance

The LAC requirement will be based on the Total Loss-Absorbing Capacity (TLAC) Standard issued by the Financial Stability Board (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 DFSA thinks fit, having regard to the prevailing circumstances in the DIFC.

3. RESOLUTION

3.1 Valuation

Eligibility criteria for independent valuer

3.1.1 A person is eligible to be appointed as an independent valuer under Article 84L of the Regulatory Law where 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.

Powers of an independent valuer

3.1.2 (1) An independent valuer may, subject to the Resolution Safeguards, do anything necessary or desirable for the purposes of, or in connection with, the performance of the independent valuer's functions under these Rules.

- (2) The independent valuer has, without limitation, the power to:
 - (a) require any member of management of an Authorised Firm to attend an interview at a specified time and place and answer questions;
 - (b) require an Authorised Firm to produce at a specified time and place any specified documents or information;
 - (c) require an Authorised Firm to provide such assistance as the independent valuer may require; or
 - (d) enter the business premises of an Authorised Firm during normal business hours for the purpose of inspecting and copying documents on such premises.

(3) The DFSA may confer on an independent valuer such ancillary powers as the DFSA thinks necessary for the purposes of, or in connection with, the exercise of the independent valuer's functions under these Rules, or the exercise or performance of any power or duty conferred or imposed on the independent valuer under these Rules.

Pre-Resolution Valuation

3.1.3 (1) An independent valuer shall carry out a Pre-Resolution Valuation:

- (a) in the case of an Authorised Firm that is not a Branch, on the assets and liabilities of the Authorised Firm; and
- (b) in the case of an Authorised Firm that is a Branch, on the business of that Branch.

(2) The purpose of a Pre-Resolution Valuation is:

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- (a) to inform the decision of whether the Resolution Conditions are met;
 - (b) if the Resolution Conditions are met, to inform the decision on which Resolution Tool will be applied;
 - (c) if the Bail-in Tool is to be applied, to inform the decision on the extent of the write down or conversion of Eligible Liabilities;
 - (d) if the conditions for the Write Down or Conversion Power are met, 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 is to be applied, to inform the decision on the rights, assets, liabilities or Shares to be transferred and to inform the DFSA'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 Firm 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 shall:
- (a) make prudent, realistic and credible assumptions of the real value of the assets and liabilities of the entity (i.e. 'market value'), 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 DFSA may recover any reasonable expenses properly incurred from the Authorised Firm in accordance with Article 84S of the Regulatory Law.
- (4) A Pre-Resolution Valuation shall be supplemented by the following information as appearing in the accounting books and records of the Authorised Firm (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 Firm that is not a Branch, the Authorised Firm; and
 - (ii) in the case of a Branch, the business of the Branch;
 - (b) a report on the financial position of the Authorised Firm;
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- (c) an analysis and estimate of the accounting value of:
 - (i) in the case of an Authorised Firm that is not a Branch, the assets of the Authorised Firm; and
 - (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) where 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 Firm that is not a Branch, the assets and liabilities of the Authorised Firm; and
 - (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 Firm that is not a Branch, the Authorised Firm; and
 - (ii) in the case of a Branch, the Regulated Financial Institution which form part of the business of the Branch,

with the creditors subdivided into classes according to the priority their claims will have under insolvency proceedings;
 - (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 Firm that is not a Branch, the Authorised Firm were to be wound up under insolvency proceedings; and
 - (ii) in the case of a Branch, the Regulated Financial Institution went into non-DIFC insolvency proceedings; and
 - (g) an estimate of the amount that will be payable to creditors and shareholders, if the entity were to be wound up under DIFC insolvency proceedings.

Provisional Valuation

- 3.1.4** (1) The DFSA may, pursuant to Article 84M(2) of the Regulatory Law, appoint an independent valuer to carry out a Provisional Valuation of:
- (a) in the case of an Authorised Firm that is not a Branch, the assets and liabilities of the Authorised Firm; and
 - (b) in the case of a Branch, the business of the Branch.
- (2) Where a Provisional Valuation is carried out:

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- (a) the independent valuer shall comply with Rules 3.1.3(3) and (4) so far as it is reasonable to do so in the circumstances;
 - (b) the Provisional Valuation shall make provision in respect of additional losses by the Authorised Firm that are reasonably foreseeable; and
 - (c) the Provisional Valuation is a valid basis on which a decision to exercise a Resolution Power or apply a Resolution Tool may be taken.
- (3) For the purposes of carrying out a Provisional Valuation, the independent valuer may rely on accounts drawn up by the Authorised Firm.

Definitive Valuation

- 3.1.5** (1) Where the DFSA has caused a Provisional Valuation to be carried out under Rule 3.1.4, the DFSA shall appoint an independent valuer to carry out, as soon as practicable, a Definitive Valuation of:
- (a) in the case of an Authorised Firm that is not a Branch, the assets and liabilities of the Authorised Firm; and
 - (b) in the case of a Branch, the business of the Branch.
- (2) The purpose of the Definitive Valuation is to:
- (a) ensure that:
 - (i) in the case of an Authorised Firm that is not a Branch, the full extent of any losses on the assets of the Authorised Firm is recognised in the accounting records of the Authorised Firm;
 - (ii) in the case of a Branch, the full extent of any losses on the property and rights of the Regulated Financial Institution which formed part of the business of the Branch is recognised in the accounting records of the Authorised Firm; and
 - (b) inform a decision by the DFSA as to whether:
 - (i) additional consideration will 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 apply a Resolution Tool.
- (3) An independent valuer shall comply with Rules 3.1.3 in respect of the Definitive Valuation.
- (4) A Definitive Valuation may be carried out separately from the Difference of Treatment Valuation or simultaneously with it, and by, the same

independent valuer who carries out the Difference of Treatment Valuation, but the Definitive Valuation and the Difference of Treatment Valuation shall be distinct from each other.

- (5) A person who acts as the independent valuer in a Provisional Valuation of an Authorised Firm may be the same person who acts as the independent valuer for the purpose of carrying out a Definitive Valuation of that Authorised Firm.

Consequences of a higher valuation being produced by Definitive Valuation

- 3.1.6** (1) Where a Definitive Valuation produces a higher valuation of the net asset value of an Authorised Firm than the Provisional Valuation, the DFSA 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 Firm, where it is not a Branch; and
 - (ii) in the case of a Branch, the Regulated Financial Institution of which that Branch forms a legally dependent part,

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.

- (2) A power under (1):
- (a) is not to be exercised so as to increase the value of the liability beyond the value it would have had if the Resolution Power or Resolution Tool which reduced, cancelled or deferred it had not been exercised; and
 - (b) is to be exercised by the DFSA on the exercise of a Resolution Power or Resolution Tool (whether or not the exercise of that Resolution Power or Resolution Tool contains any other provisions authorised by this paragraph (2), or paragraph (1)).

Guidance

The DFSA may set or adopt standards for the purpose of a Pre-Resolution Valuation or Definitive Valuation. A Pre-Resolution Valuation or Definitive Valuation must be carried out in accordance with any such technical standards set or adopted by the DFSA and otherwise in accordance with applicable accountancy standards.

3.2 Resolution Powers

Guidance

This section covers some of the Resolution Powers set out in Article 84N of the Regulatory Law. The powers can be used in any combination, in connection with the use of Resolution Tools and different powers can apply in relation to a different part of the Authorised Firm or its Parent. The conditions and limitations for the use of certain powers is explained below.

Power to require the provision of services and facilities

- 3.2.1** (1) Where the DFSA exercises the power to require an Authorised Firm in Resolution, or any of its Group Entities, to provide any services or facilities, those services and facilities is to be provided on the following terms:
- (a) where the services and facilities were provided under an agreement to the Authorised Firm in Resolution immediately before the Resolution Action was taken and for the duration of that agreement, on the same terms; and
 - (b) where there is no agreement for provision of the services and facilities or where the agreement has expired, on reasonable terms.

Power to suspend certain obligations

- 3.2.2** (1) Where the DFSA exercises the power under Article 84N(1)(o) of the Regulatory Law to suspend any payment or delivery obligations the suspension will have effect from the time notice is given, of that suspension (as an action the DFSA intends to take) until midnight at the end of the second business day following the giving of the notice, except that:
- (a) where 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) where a payment or delivery obligation has been suspended the payment and delivery obligations of the counterparty under the contract will also be suspended for the same period.
- (2) Any suspension under this provision will not apply to:
- (a) Deposits; or
 - (b) payment and delivery obligations owed to payment and securities settlement systems, Central Securities Depositories, Clearing Houses, Recognised Bodies or the Central Bank.
- (3) When exercising this power, the DFSA will have regard to the impact the exercise of the power might have on the orderly functioning of financial markets.

Power to restrict enforcement of security interests

- 3.2.3**
- (1) Where the DFSA exercises its power under Article 84N(p) of the Regulatory Law to restrict secured creditors of an Authorised Firm in Resolution from enforcing security interests in relation to any assets of that Authorised Firm, the suspension will have effect from the time notice is given, of that restriction (as an action the DFSA intends to take) until midnight at the end of the second business day following that notice.
 - (2) The DFSA will not exercise the power to restrict secured creditors in relation to any security interest of payment and securities settlement systems, Central Securities Depositories, Clearing Houses, Recognised Bodies or the Central Bank over assets pledged or otherwise provided by way of margin or collateral by the Authorised Firm in Resolution.
 - (3) The DFSA will, when exercising the power, have regard to the impact the exercise of that power might have on the orderly functioning of financial markets.

Power to temporarily suspend termination rights

- 3.2.4**
- (1) Where the DFSA exercises its power to suspend the termination rights under Article 84N(1)(j) of the Regulatory Law of any party to a contract with an Authorised Firm in Resolution, the suspension will have effect from the time notice is given, until midnight at the end of the second business day following that notice, provided that the payment and delivery obligations and the provision of collateral continue to be performed by the Authorised Firm in Resolution.
 - (2) A suspension will not apply to payment and delivery obligations owed to payment and securities settlement systems, Central Securities Depositories, Clearing Houses, Recognised Bodies 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 DFSA 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) Where the DFSA exercises the power specified in (1) to suspend termination rights, and where no notice has been given 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 Firm in Resolution and the DFSA has not applied the Bail-in Tool, a counterparty may exercise termination rights in accordance with the terms of that contract on the expiry of the suspension period under (1);

- (b) have been transferred to another entity, a counterparty may exercise termination rights in accordance with the terms of that contract only on the occurrence of any continuing or subsequent enforcement event.
- (5) When exercising the power of temporary suspension the DFSA will have regard to the impact that the exercise of the power might have on the orderly functioning of financial markets.

Write down or Conversion Power

- 3.2.5** (1) Subject to (2), the DFSA may exercise the power to issue a mandatory reduction instrument to write down or convert relevant capital instruments or other liabilities of an Authorised Firm in Resolution into Shares of the Authorised Firm including the power:
- (a) to reduce (including to zero) the principal amount of, or outstanding amount due, in respect of Eligible Liabilities of an Authorised Firm in Resolution;
 - (b) to cancel the Debt Instruments issued by an Authorised Firm in Resolution except secured liabilities;
 - (c) to reduce, including reducing to zero, the nominal amount of Shares of an Authorised Firm in Resolution and to cancel such Shares;
 - (d) to require an Authorised Firm in Resolution to issue new Shares or other capital instruments, including preference Shares and contingent convertible instruments.
- (2) The DFSA may only exercise the Write Down or Conversion Power after carrying out a Pre-Resolution Valuation or a Provisional Valuation (if applicable).
- (3) A Pre-Resolution Valuation or a Provisional Valuation (as the case may be) shall, for the purpose of (2), 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 Firm.
- (4) The DFSA may exercise the Write Down or Conversion Power:
- (a) independently of any other Resolution Action; or
 - (b) in combination with a Resolution Action, where the Resolution Conditions are met.
- (5) The DFSA may exercise the Write Down or Conversion Power in accordance with this Rule without delay in relation to relevant capital instruments issued by an Authorised Firm in Resolution, when one or more of the following circumstances apply:
- (a) the determination has been made that the Resolution Conditions have been met, before any Resolution Action has been taken;
 - (b) the DFSA determines that unless the Write Down or Conversion Power is exercised in relation to relevant capital instruments, the Authorised Firm will no longer be viable;
 - (c) in the case of relevant capital instruments issued by an Authorised Firm that is a subsidiary or another entity in its Group, and where those relevant capital instruments are recognized for the purposes of meeting any minimum

- requirement for own funds and Eligible Liabilities, the DFSA determines that unless the Write Down or Conversion Power is exercised the Authorised Firm will no longer be viable; or
- (d) in the case of relevant capital instruments issued by an Authorised Firm that is a parent, and where those relevant capital instruments are recognized for the purposes of meeting any minimum requirement for own funds and Eligible Liabilities, the DFSA determines that unless the Write Down or Conversion Power is exercised the Authorised Firm's Group will no longer be viable.
- (6) In complying with the requirements under (5), the DFSA shall exercise the Write Down or Conversion Power in accordance with the priority of claims that will apply if the Authorised Firm in Resolution were to be wound up under the DIFC Insolvency Law.
- (7) Where the principal amount of a relevant capital instrument is written down:
- (a) the reduction of that principal amount will be permanent;
- (b) no liability to the holder of the relevant capital instrument will remain under or in connection with that amount of the instrument which has been written down, except for any liability already accrued and any liability for damages that may arise as a result of an appeal against the exercise of the Write Down or Conversion Power;
- (c) no compensation is paid to any holder of the relevant capital instruments other than in accordance with (8).
- (8) In order to effect a conversion of relevant capital instruments under (6), the DFSA may require an Authorised Firm to issue instruments to the holders of the relevant capital instruments and the relevant capital instruments may only be converted where the following conditions are met:
- (a) the instruments are issued by the Authorised Firm with the agreement of the DFSA;
- (b) the instruments are awarded and transferred without delay following 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.

3.3 The Sale of Business Tool

Application of the Sale of Business Tool

- 3.3.1** (1) Subject to the Resolution Safeguards, the DFSA may apply the Sale of Business Tool to an Authorised Firm without:
- (a) the consent of the shareholders of the Authorised Firm or any third party other than the purchaser; and
- (b) complying with any procedural requirements under DIFC Companies Law or the constitutional documents of the

Authorised Firm other than those procedural requirements specified in Part 9 of the Regulatory Law or these Rules.

- (2) The DFSA shall ensure that a transfer made by applying the Sale of Business Tool under this Rule is made on commercial terms having regard to the circumstances.
- (3) The DFSA shall take reasonable measures to specify, on the basis of a Pre-Resolution Valuation, commercial terms for the transfer made under the Sale of Business Tool under this Rule.
- (4) Subject to Article 84S of the Regulatory Law, the net proceeds of consideration paid by the purchaser on the transfer made under the Sale of Business Tool under this Rule shall be applied for the benefit of:
 - (a) the owners of the Shares, where the Sale of Business Tool has been effected by transferring Shares issued by the Authorised Firm 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 which has been written down or bailed-in, where and to the extent reasonably practicable; and
 - (b) the Authorised Firm in Resolution, where the Sale of Business Tool has been effected by transferring some or all of:
 - (i) in the case of an Authorised Firm that is not a Branch, the assets or liabilities of the Authorised Firm to the purchaser; and
 - (ii) in the case of a Branch, the business of the Branch.
- (6) When applying the Sale of Business Tool to an Authorised Firm, the DFSA may exercise its transfer power more than once in order to make supplemental transfers of:
 - (a) in the case of an Authorised Firm that is not a Branch, any rights, assets or liabilities of or Shares issued by the Authorised Firm; and
 - (b) in the case of a Branch, the business of the Branch.
- (7) A transfer made under the Sale of Business Tool is subject to the Resolution Safeguards.
- (8) The DFSA shall notify any other competent authority of the non-compliance with any procedural requirements under (2)(b).

Power to transfer rights, assets, liabilities or Shares transferred to the purchaser back to the Authorised Firm in Resolution or to original owners

- 3.3.2** Subject to the Resolution Safeguards, after the application of the Sale of Business Tool, the DFSA may, with the consent of the purchaser, transfer:

- (a) the rights, assets, or liabilities transferred to the purchaser back to the Authorised Firm in Resolution; or
- (b) the Shares back to their original owners,

and the Authorised Firm in Resolution or the original owners is obliged to take back any such rights, assets, liabilities or Shares.

Rights of the Authorised Firm in Resolution under the Sale of Business Tool

- 3.3.3** In the case of an Authorised Firm that is not a Branch, where a transfer under the Sale of Business Tool is effected by way of a transfer of Shares of the Authorised Firm in Resolution, the Authorised Firm in Resolution may exercise any rights following the transfer that it was entitled to exercise prior to the transfer.

Rights of the purchaser under the Sale of Business Tool

- 3.3.4** (1) Where a transfer under the Sale of Business Tool results in the purchaser's acquisition of activities or services that require authorisation, the purchaser may, subject to the satisfactory compliance with any other regulatory requirements, continue to operate such business without complying with the requirements of authorisation, under the Regulatory Law to undertake such business for a period not exceeding six months, within which period the purchaser shall make an application for authorisation under the Regulatory Law.
- (2) Where a transfer under the Sale of Business Tool has been effected by way of a transfer of rights, assets and liabilities, the purchaser is entitled to exercise any such rights following the transfer that the Authorised Firm in Resolution was entitled to exercise prior to the transfer and is subject to all such liabilities, including membership rights and access to payment and securities settlement systems, Central Securities Depositories, Clearing Houses, Exchanges, Recognised Bodies and rights and liabilities between such entities and the purchaser, provided that the purchaser meets the criteria for such membership or participation in such systems.
- (3) Without prejudice to the Resolution Safeguards, shareholders and creditors of an Authorised Firm in Resolution and other third parties whose rights, assets and liabilities are not transferred under the Sale of Business Tool will not have any rights over or in relation to the rights, assets or liabilities transferred.

Marketing of rights, assets, liabilities or Shares

- 3.3.5** (1) Subject to the exceptions in (4) and Rule 4.3.6, the DFSA shall, when applying the Sale of Business Tool to an Authorised Firm:
- (a) market or make arrangements for the marketing of the rights, assets, liabilities or Shares that the DFSA intends to transfer; and
 - (b) pools of rights, assets, liabilities or Shares may be marketed separately under (a).

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- (2) Marketing under (1) will:
 - (a) involve good faith efforts not to materially misrepresent the rights, assets, liabilities, or Shares that the DFSA intends to transfer, having regard to the circumstances and in particular the need to maintain financial stability;
 - (b) not unduly favour or discriminate between identified potential purchasers;
 - (c) be free from conflicts of interest;
 - (d) not confer any unfair advantage on a potential purchaser;
 - (e) take account of the need to effect a rapid Resolution Action; and
 - (f) aim at maximising, as far as possible, the sale price for the rights, assets, liabilities or Shares involved.
 - (3) Subject to (2)(b), the principles in (2) do not prevent the DFSA from soliciting particular potential purchasers.
 - (4) The DFSA may apply the Sale of Business Tool to an Authorised Firm without complying with the requirement to market under (1)(a) if the DFSA determines that compliance with such requirements is likely to undermine one or more of the Resolution Objectives and, in particular, if the DFSA considers that compliance with the requirements is likely to undermine the effectiveness of the Sale of Business Tool in addressing the failure or likely failure identified under Article 84K(2) or achieving the Resolution Objectives.

Residual Institution to be Wound Up

- 3.3.6** If the Sale of Business Tool has been used to transfer Critical Functions or the viable business of an Authorised Firm, to a private sector purchaser, the Residual Institution shall 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.

3.4 The Bail-In Tool

Application of Bail-in Tool

- 3.4.1** (1) The DFSA may, where the Resolution Conditions are met, apply the Bail-in Tool in relation to an Authorised Firm that is not a Branch to recapitalise that Authorised Firm to the extent sufficient to restore the Authorised Firm's ability to comply with the authorisation requirements as applicable and:
- (a) to continue to carry out the activities for which the Authorised Firm is authorised; or
 - (b) to continue operating in a sustainable fashion and attract sufficient market confidence in the Authorised Firm for the purpose of, or in combination with the Sale of Business Tool.
- (2) The DFSA may use one or more Resolution Powers, in particular the power to convert to Shares or reduce the principal amount of claims or Debt Instruments in accordance with the Write Down and Conversion

Power set out in 3.2.5 in order to apply the Bail-in Tool to an Authorised Firm that is not a Branch.

- (3) The DFSA may apply the Bail-in Tool for the purposes referred to in (1) only if there is a reasonable prospect that the application of the Bail-in Tool together with other relevant measures will, in addition to achieving the relevant Resolution Objectives, restore the Authorised Firm to financial soundness and long-term viability.
- (4) Where there is no such reasonable prospect as referred to in (3), the DFSA may apply the Bail-in Tool for the purposes referred to in (1) together with Sale of Business Tool.
- (5) The Bail-in Tool may be applied in respect of any liability of an Authorised Firm (Eligible Liability), provided that the liability is not excluded from the scope of the Bail-in Tool under (6) or (7).
- (6) The DFSA may not exercise the Write Down or Conversion Power in relation to the following liabilities whether they are governed by DIFC law or by the law of another jurisdiction:
 - (a) secured liabilities, but this exclusion does not prevent the write down of any liability in respect of net sum following close out of a Derivative Contract, to the extent it is an unsecured liability;
 - (b) any liability that arises by virtue of the holding of Client Assets, to the extent such Client Assets are protected under DIFC law;
 - (c) any liability that arises by virtue of a fiduciary relationship between the Authorised Firm (as fiduciary) and another person (as beneficiary) provided that such beneficiary's interests are protected under DIFC law;
 - (d) unsecured liabilities to other financial institutions excluding entities that are part of the same Group, with an original maturity of less than seven days;
 - (e) liabilities owed to payment and securities settlement systems, Central Securities Depositories, Clearing Houses, or their operators or their participants and arising from the participation in any such system; or
 - (f) a liability to any one of the following:
 - (i) an employee, in relation to accrued salary, pension benefits or other fixed remuneration, except for the variable component of remuneration;
 - (ii) a commercial or trade creditor arising from the provision to the Authorised Firm 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 the

UAE.

- (7) In exceptional circumstances, where the Bail-in Tool is applied, the DFSA may exclude or partially exclude certain liabilities from the application of the Write Down or Conversion Power where:
 - (a) it is not possible to bail-in that liability within a reasonable time despite the reasonable efforts of the DFSA;
 - (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, which will severely disrupt the functioning of financial markets, including financial market infrastructures, in a manner that could cause broader financial instability; or
 - (d) the application of the Bail-in Tool to those liabilities will 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.

- (8) Where the DFSA decides to exclude or partially exclude an Eligible Liability or class of Eligible Liabilities under (7), 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.

- (9) In exercising its discretion under (7), the DFSA will give due consideration to:
 - (a) the need not to apply any bail-in to a netting set prior to such netting being completed;
 - (b) the need to avoid disruption to payment and securities settlement systems, Central Securities Depositories, Clearing Houses and Recognised Bodies;
 - (c) the principle that losses shall be borne first by shareholders and subsequently by creditors of the Authorised Firm in Resolution in order of preference in light of the Resolution Objectives;
 - (d) the level of LAC that will remain in the Authorised Firm in Resolution if the liability or class of liabilities were excluded; and
 - (e) the need to maintain adequate resources for Resolution financing.

- (10) Where the decision is to apply the Bail-In Tool, the DFSA shall in the notice of the decision required under 84K(6) also set out the type and amount of liabilities owed by the Authorized Firm in Resolution that will be subject to the Bail-In Tool and whether they are:
 - (a) cancelled (i.e. written down to zero);

- (b) modified (as far 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.

Assessment of amount of bail-in

- 3.4.2** (1) In applying the Bail-in Tool under Rule 3.4.1, the DFSA shall assess for the purposes of (2), on the basis of the Pre-Resolution Valuation, the aggregate of:
- (a) where applicable, the amount by which Eligible Liabilities is to be written down in order to ensure that the net asset value of the Authorised Firm in Resolution is equal to zero; and
 - (b) where applicable, the amount by which Eligible Liabilities is to be converted into Shares or other types of capital instruments in order to restore the CET1 Capital ratio of the Authorised Firm in Resolution.
- (2) The assessment referred to in (1) will establish the amount by which Eligible Liabilities need to be written down and converted in order:
- (a) to restore the CET1 Capital ratio of the Authorised Firm in Resolution;
 - (b) to sustain sufficient market confidence in the Authorised Firm in Resolution; and
 - (c) to enable the Authorised Firm to continue, for at least twelve months, to satisfy the requirements for authorisation and to carry on the activities or services for which it is authorised.
- (3) Where capital has been written down in accordance with the Write Down or Conversion Power under Rule 3.5.1, the Bail-in Tool has been applied, and the level of write down based on the Pre-Resolution Valuation is found to exceed requirements when assessed against the Definitive Valuation, a write up mechanism may be applied to reimburse creditors and then Shareholders to the extent necessary.

Treatment of shareholders in bail-in, write down or conversion

- 3.4.3** (1) When applying the Bail-in Tool or the Write Down or Conversion Power, the DFSA shall take, in respect of shareholders of the Authorised Firm in Resolution, one or both of the following actions:
- (a) cancel existing Shares or transfer them to bailed-in creditors; or
 - (b) provided that, in accordance with the Pre-Resolution Valuation (or Provisional Valuation, if applicable), the Authorised Firm 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 Firm in Resolution.
- (2) The DFSA shall take the action referred to in (1) in respect of shareholders where the Shares were issued or conferred in the following circumstances:
- (a) pursuant to the conversion of Debt Instruments to Shares in accordance with the contractual terms of the original Debt Instruments, on the occurrence of an event that preceded or occurred at the same time as the assessment by the DFSA that the Authorised Firm that is not a Branch 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 DFSA will have regard to:
- (a) the Pre-Resolution Valuation (or Provisional Valuation, if applicable);
 - (b) the amount by which the DFSA has assessed that CET1 Capital items are to be reduced and relevant capital instruments are to be written down or converted pursuant to the Write Down or Conversion Power; and
 - (c) the aggregate amount assessed by the DFSA under Rule 3.4.2(1).

Sequence of write down or conversion

- 3.4.4** (1) Subject to any exclusions set out in Rule 3.4.1(7) and (8), in exercising the Write Down or Conversion Power when applying the Bail-in Tool, the DFSA shall apply the following sequence to write down or conversion:
- (a) the DFSA shall reduce the CET1 items in accordance with Rule 3.4.3;
 - (b) if the total reduction under (a) is less than the sum of the amounts referred to in Rule 3.4.3(3)(b) and (c), the DFSA shall 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 sum of the amounts referred to in Rule 3.4.3(3)(b) and (c), the DFSA shall reduce the principal amount of T2 Capital instruments to the extent required and to the extent of their capacity;

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- (d) if the total reduction of T1 and T2 Capital instruments pursuant to (a), (b) and (c) is less than the sum of the amounts referred to in Rule 3.4.3(3)(b) and (c), the DFSA shall reduce to the extent required the principal amount of subordinated debt in accordance with the hierarchy of claims that will apply to the Authorised Firm under the DIFC Insolvency Law, in conjunction with the write down pursuant to (a), (b) and (c) to produce the sum of the amounts referred to in Rule 3.4.3(3)(b) and (c); and
 - (e) if the total reduction of T1 and T2 Capital instruments and Eligible Liabilities pursuant to (a) to (d) is less than the sum of the amounts referred in Rule 3.4.3(3)(b) and (c), the DFSA shall 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 hierarchy of claims that will apply to the Authorised Firm under the DIFC Insolvency Law, in conjunction with the write down pursuant to (a) to (d) to produce the sum of the amounts referred to in Rule 3.4.3(3)(b) and (c).
- (2) When applying the Write Down or Conversion Power, the DFSA shall allocate the losses represented by the sum of the amounts referred to in Rule 3.4.3(3)(b) and (c) equally between Shares and Eligible Liabilities of the same rank by reducing the principal amount of, or outstanding amount payable in respect of, those Shares and Eligible Liabilities to the same extent pro rata to their value, except where a different allocation of losses amongst liabilities of the same rank is allowed in the circumstances specified in Rule 3.4.1(8).
 - (3) Before applying the Write Down or Conversion Power, the DFSA shall convert or reduce the principal amount of instruments referred to in (1)(b), (c) (d) and (e) when those instruments contain the following terms and have not been fully converted:
 - (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 Firm; or
 - (b) terms that provide for the conversion of the instrument to Shares on the occurrence of any such event.
 - (4) Where 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 DFSA shall apply the Write Down or Conversion Power to the residual amount of that principal amount in accordance with (1).
 - (5) In deciding on whether liabilities are to be written down or converted into Shares, the DFSA shall 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 Rule 3.4.1(7) and (8).

Derivatives

- 3.4.5** (1) The DFSA may exercise the Write Down or Conversion Power in relation to a liability arising from a Derivative Contract only when, upon or after closing-out that Derivative Contract, there is a net liability which is an Eligible Liability.
- (2) The DFSA may terminate and close out any Derivative Contract upon an Authorised Firm's entry into Resolution for the purpose of realising an Eligible Liability that is to be subject to the Write Down or Conversion Power under (1).
- (3) The DFSA is not under any obligation, where an Eligible Liability under a Derivative Contract has been excluded from the application of the Bail-in Tool pursuant to Rule 3.4.1(8), to terminate or close out the Derivative Contract.
- (4) Where a Derivative Contract is subject to a netting agreement, the value of the Eligible Liability for the purposes of the Pre-Resolution Valuation (or Provisional Valuation, if applicable) is to be determined on a net basis in accordance with the terms of the agreement.
- (5) The DFSA shall determine the value of Eligible Liabilities arising from Derivative Contracts in accordance with the following:
- (a) appropriate methodologies for determining the value of classes of Derivative Contracts, including Derivative Contracts that are subject to netting agreements;
 - (b) principles for establishing the relevant point in time at which the value of a derivative position is established; and
 - (c) appropriate methodologies for comparing the destruction of value that will arise from the close out and bail-in of Derivative Contracts with the amount of losses that will be borne by Derivative Contracts in a bail-in.

Conversion Rate

- 3.4.6** When the Write Down or Conversion Power is exercised, the DFSA may apply a different Conversion Rate to different classes of capital instruments and Eligible Liabilities in accordance with one or both of the following principles and having regard to the Resolution Safeguards:
- (a) the Conversion Rate shall represent appropriate compensation to the Affected Creditor for any loss incurred by virtue of the exercise of the Write Down or Conversion Power; and
 - (b) when different Conversion Rates are applied, the Conversion Rate applicable to liabilities that are considered to be senior under DIFC insolvency law shall be higher than the Conversion Rate applicable to subordinated liabilities.

Business Reorganisation Plan

- 3.4.7** (1) A Business Reorganisation Plan shall, where the Bail-in Tool has been used to recapitalise an Authorised Firm, be drawn up and implemented for that Authorised Firm in accordance with this Rule.
- (2) The implementation of a Business Reorganisation Plan may include the appointment by the DFSA of persons (pursuant to its general power to exercise control over an Authorised Firm in Resolution under Article 84N of the Regulatory Law) for the purpose of drawing up and implementing the Business Reorganisation Plan.
- (3) The management of the Authorised Firm shall, within one month after the application of the Bail-in Tool to that Authorised Firm, draw up and submit to the DFSA a Business Reorganisation Plan that satisfies the requirements in (6).
- (4) Where the Bail-in Tool is applied to two or more Group entities, including where a Recognition Order has been made, a Group level Business Reorganisation Plan may be accepted by the DFSA for the purpose of this Rule.
- (5) The DFSA may, in exceptional circumstances, and if it is necessary for achieving the Resolution Objectives, extend the period in (3) up to a maximum of two months from the date of the application of the Bail-in Tool.
- (6) A Business Reorganisation Plan shall contain at least the following:
- (a) a detailed diagnosis of the factors and problems that caused the Authorised Firm 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 Firm or parts of its business that are to be adopted, on the basis of realistic assumptions as to the economic and financial market conditions under which the Authorised Firm will operate; and
 - (c) a timescale for the implementation of those measures.
- (7) The DFSA shall, within one month of the submission of the Business Reorganisation Plan by the Authorised Firm, assess the likelihood that the Business Reorganisation Plan, if implemented, is likely to restore the long-term viability of the Authorised Firm.
- (8) Pursuant to an assessment under (7), if the DFSA is satisfied that the Business Reorganisation Plan is likely to restore the long-term viability of the Authorised Firm, the DFSA may approve the plan.
- (9) Pursuant to an assessment, if the DFSA is not satisfied that the Business Reorganisation Plan is likely to restore the long term viability of the Authorised Firm, the DFSA shall notify the management of the Authorised Firm or persons appointed under (2) of its concerns and require the amendment of the Business Reorganisation Plan in a way

that will address those concerns.

- (10) The management of the Authorised Firm or persons appointed under (2) shall, within two weeks of receiving a notification by the DFSA under (9), submit an amended Business Reorganisation Plan to the DFSA for approval.
- (11) The DFSA shall, within one week of receipt of the amended Business Reorganisation Plan submitted under (10), assess the amended Business Reorganisation Plan and notify the management of the Authorised Firm or persons appointed under (2) as to whether the DFSA is satisfied that the amended Business Reorganisation Plan addresses the concerns notified or whether further amendment is required.
- (12) The management of the Authorised Firm or persons appointed under (2) shall implement the Business Reorganisation Plan as approved by the DFSA.
- (13) The management of the Authorised Firm or persons appointed under (2) shall submit a report to the DFSA on the progress of the implementation of the Business Reorganisation Plan at least every six months or until the DFSA, in writing, specifies otherwise.
- (14) A Business Reorganisation Plan may be further amended following its initial implementation if the DFSA is of the view that changes to the plan are required to achieve the long-term viability of the Authorised Firm.

Guidance

1. Measures aiming to restore the long-term viability of the Authorised Firm under (6) may include:
 - (a) the reorganisation of the activities of the Authorised Firm;
 - (b) changes to the operational systems and infrastructure within the Authorised Firm;
 - (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 items, 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 Institution's main vulnerabilities. Assumptions must be compared with appropriate sector-wide benchmarks.

Ancillary provisions relating to bail-in

- 3.4.8**
- (1) Where the DFSA exercises the Write Down or Conversion Power, such write down or conversion will take effect and be immediately binding on the Authorised Firm in Resolution and Affected Creditors and shareholders of the Authorised Firm in Resolution.
 - (2) The DFSA may complete or cause the completion of all administrative

and procedural tasks necessary to give effect to the Write Down or Conversion Power including, but not limited to, effecting amendments to all relevant registers and listing rules applicable.

- (3) Where the DFSA 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 discharged for all purposes, and are not provable in any subsequent proceedings in relation to the Authorised Firm in Resolution or any successor entity in any subsequent winding up.
- (4) Where the DFSA 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) such 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 DFSA might make by means of the Write Down or Conversion Power or the powers under Article 84M of the Regulatory Law.
- (5) The DFSA may not be prevented from the exercise of a Resolution Power or application of 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 DIFC law, including pre-emption rights for shareholders or requirements for the consent of shareholders to an increase in capital.

Contractual recognition of bail-in

- 3.4.9**
- (1) Subject to (2), the DFSA may require an Authorised Firm to 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 DFSA, provided that such liability is:
 - (a) not excluded under Rule 3.4.1(7);
 - (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) Where the DFSA determines that the 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 as are referred to under (1) will not prevent the DFSA from exercising the Write Down or Conversion Power in relation to that liability.
- (4) The DFSA may require the Authorised Firm to present independent legal opinions on the enforceability and effectiveness of the contractual bail-in recognition provisions.

3.5 Temporary Administrator

3.5.1 Where a Temporary Administrator is appointed to an Authorised Firm in Resolution, the Temporary Administrator powers are exercised under the control of the DFSA and the DFSA may set limits on the Temporary Administrator's action or require the Temporary Administrator obtain the prior consent of the DFSA.

3.5.2 The DFSA shall, in writing, set out the terms of engagement of the Temporary Administrator including the requirement that the Temporary Administrator report regularly to the DFSA on the progress of the Temporary Administrator's activities, the budget, forecasts and other relevant matters of the Authorised Firm.

3.5.3 The DFSA shall, when appointing a Temporary Administrator to an Authorised Firm 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.

3.5.4 The appointment of a Temporary Administrator shall be for a specified period and may not exceed twelve months but may, in exceptional circumstances where the DFSA considers it appropriate, be renewable for a period of no more than an additional twelve months.

3.6 Resolution Safeguards

Treatment of Shareholders in the case of partial transfers and application of the Bail-In Tool

3.6.1 Where one or more of the Resolution Tools have been applied, the DFSA will be guided by the following principles:

- (a) except where (b) applies, where the DFSA transfers only part of the rights, assets and liabilities of the Authorised Firm in Resolution, the shareholders and creditors whose claims have not been transferred will, to the extent reasonably practicable, receive in satisfaction of their claims at least as much as they would have received if the Authorised Firm in Resolution had been wound up under insolvency proceedings at the time (when the DFSA delivered notice in accordance with Article 84K(6)(b) of the Regulatory Law); and
- (b) where the DFSA applies the Bail-in Tool, the shareholders and creditors whose claims have been written down or converted to Shares will, to

the extent reasonably practicable, not incur greater losses than they would have incurred if the Authorised Firm in Resolution had been wound up under insolvency proceedings immediately at the time (when the DFSA delivered notice in accordance with Article 84K(6)(b) of the Regulatory Law).

Difference of Treatment Valuation

- 3.6.2**
- (1) The DFSA may, for the purpose of assessing whether shareholders and creditors would have received better treatment if an Authorised Firm in Resolution had been wound up under insolvency proceedings, appoint an independent valuer to carry out a Difference of Treatment Valuation as soon as practicable after the application of a Resolution Action.
 - (2) A Difference of Treatment Valuation is distinct from a Pre-Resolution Valuation, Provisional Valuation or Definitive Valuation.
 - (3) A Difference of Treatment Valuation will determine:
 - (a) the treatment that shareholders, creditors and depositors would have received if insolvency proceedings in respect of the Authorised Firm in Resolution had commenced at the time when the decision was made to take Resolution Action;
 - (b) the actual treatment that shareholders, creditors and depositors have received; and
 - (c) if there is any difference between the treatment referred to in (a) and (b).
 - (4) A Difference of Treatment Valuation shall:
 - (a) assume that insolvency proceedings in respect of the Authorised Firm in Resolution would have commenced on the date on which the DFSA delivered notice in accordance with Article 84K(6)(b) of the Regulatory Law;
 - (b) assume that the Authorised Firm in Resolution would, if it had entered insolvency proceedings in accordance with (a), been wound up in full on the date on which insolvency proceedings in respect of the Authorised Firm would have commenced; and
 - (c) assume that the Resolution Action has not been effected.
 - (5) The DFSA may set or adopt standards or guidelines for the purpose of a Difference of Treatment Valuation where such a valuation is required or proposed.
 - (6) A Difference of Treatment Valuation shall be carried out in accordance with any such standards set or adopted by the DFSA under (5) and otherwise in accordance with applicable accountancy standards.

Safeguard for shareholders and creditors

- 3.6.3** If the Difference of Treatment Valuation determines that any shareholder,

creditor or depositor had incurred greater losses than it would incur in a winding up under insolvency proceedings, the shareholder or creditor may bring a claim for the payment of the difference.

Procedural requirements after exercise of a Resolution Power or Resolution Tool or an order for the transfer of Shares

3.6.4 The DFSA shall, as soon as is reasonably practicable after the exercise of a Resolution Power or Resolution Tool or an order for the transfer of Shares (including pursuant to a Recognition Order), publish or procure the publication of a copy of a notice summarising the key terms of its Resolution Action by the following means:

- (a) by publishing it on the websites of both the DFSA and the Authorised Firm in Resolution; and
- (b) if securities issued by the Authorised Firm 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.

Safeguard for counterparties in partial transfers

3.6.5 (1) Where the DFSA:

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

the arrangements specified in (2) and the counterparties of such arrangements are, subject to (4), to be protected.

- (2) The arrangements protected under (1) are as follows:
- (a) collateral arrangements, including title transfer collateral arrangements;
 - (b) set-off arrangements under which two or more claims or obligations owed between the Authorised Firm in Resolution and a counterparty can be set off against each other;
 - (c) netting arrangements;
 - (d) collateral and default fund contributions provided to payment and securities settlement systems, Central Securities Depositories, Clearing Houses and Recognised Bodies; and
 - (e) any transfer or obligation that is subject to irrevocable settlement finality protections [under applicable DIFC law].

- (3) (2) shall apply 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 form of protection that is appropriate for the classes of arrangements specified in (2) are as provided in Rules 3.6.6, 3.6.7, or 3.6.8, as the case may be.

Protection for title transfer collateral arrangements and set-off and netting arrangements

3.6.6 To protect the transfer of some, but not all, of the rights, assets and liabilities that are protected under Rule 3.6.5(2) the DFSA may not:

- (a) transfer some, but not all, of the rights, assets and liabilities that are protected under any such arrangement between the Authorised Firm in Resolution and another person; and
- (b) modify or terminate rights, assets and liabilities that are protected under any such arrangement through the exercise of Resolution Powers.

Protection for security arrangements

3.6.7 The DFSA may not, in respect of liabilities secured under the collateral arrangements referred to in Rule 3.6.5(2)(a) which are not title transfer collateral arrangements, permit:

- (a) the transfer of assets against which a liability is secured under any such arrangement, unless that liability and the benefit of the security are also transferred;
- (b) the transfer of a Secured Liability, unless the benefit of the security is also transferred;
- (c) the transfer of the benefit of the security under any such arrangement, unless the Secured Liability is also transferred; or
- (d) the modification or termination of 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.

Protection of trading, clearing and settlement systems

3.6.8 The DFSA shall ensure that the application of a Resolution Tool does not affect the operation of Recognised Bodies, exchanges, clearing houses, payment and securities settlement systems and Central Securities Depositories where the DFSA:

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

4. MISCELLANEOUS

4.1 Management Information Systems (MIS)

4.1.1 An Authorised Firm shall:

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