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Appendix 5: The Bank of England's Statement of Policy on Management, Governance and Communication

1 Background and statutory framework

1.1 This Statement of Policy (SoP) is issued by the Bank of England (the Bank), as UK resolution authority, in accordance with section 3B(9) of the Banking Act 2009 as amended (the Banking Act). The SoP sets out how the Bank expects to use its power under section 3A(2) of the Banking Act to direct a 'relevant person' to take measures to address impediments to resolvability, specifically in relation to their capabilities and arrangements to ensure effective management, governance and communication in resolution.

1.2 A 'relevant person' means:

(a) an institution[1] authorised for the purpose of the Financial Services and Markets Act 2000 (FSMA) by the Prudential Regulation Authority (PRA) or Financial Conduct Authority (FCA);[2]

(a) a parent of such an institution which (i) is a financial holding company or a mixed financial holding company; and (ii) is established in, or formed under the law of any part of, the UK; or

(b) a subsidiary of such an institution or of such a parent which (i) is a financial institution[3] authorised by the PRA or FCA; and (ii) is established in, or formed under the law of any part of, the United Kingdom.

1.3 The intended process around using this direction power is set out in the Bank's SoP on its power to direct institutions to address impediments to resolvability.[4] In short, this process involves the Bank:

(a) determining that there is a substantive impediment to the resolvability of an institution;

(b) where a substantive impediment is identified, notifying the institution of the impediment. The institution will then have four months to make its own proposal to remove the identified impediments; and

(c) if the Bank remains dissatisfied with the measures proposed by the institution, directing the institution to take specific action to remediate the impediment.

1.4 This SoP sets out objectives and principles that firms are expected to meet in order to avoid a determination that they have insufficient capabilities and arrangements to support effective resolution and that these constitute an impediment to resolvability.

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1 For the purposes of this SoP the term 'institution' means UK-incorporated banks, UK-incorporated building societies and those UK-incorporated investment firms that are required to hold initial capital of €730,000, in particular those that deal as principal. References to 'institution' shall be taken to also include 'relevant persons'.

2 The PRA and FCA are the UK competent authorities. According to Article 2 of the Bank Recovery and Resolution Directive (2014/59/EU) and Article 4 of the Capital Requirements Regulation (EU No. 575/2013), as amended by Regulation (EU No. 2019/876), 'competent authority' means a public authority or body officially recognised by national law, which is empowered by national law to supervise institutions as part of the supervisory system in operation in the Member State concerned.

3 The term 'financial institution' has the meaning given by article 4 (1) (26) of Regulation 575/2013/EU.

4 Bank of England (2015) 'The Bank of England's power to direct institutions to address impediments to resolvability' available at: https://www.bankofengland.co.uk/paper/2015/the-boes-power-to-direct-institutions-to-address-impediments-to-resolvability-sop.

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1.5 Not meeting these objectives and principles may constitute a barrier to resolvability and may result in the Bank directing firms to improve their capabilities to ensure resolvability.

1.6 In considering these objectives and principles, firms should have regard to their size, business model, and preferred resolution strategy.[1] Firms are encouraged to consider how capabilities and arrangements developed for other purposes may be leveraged to comply with this SoP, given the substantial overlap with existing business-as-usual practices and requirements.

2 Policy scope

2.1 This SoP applies to:

(a) institutions notified by the Bank that their preferred resolution strategy is Bank-led bail-in[2] or partial-transfer (i.e. the bank would expect the strategy to involve the use of its stabilisation powers); and

(b) institutions notified by the Bank that they are a 'material subsidiary' of an overseas-based banking group for the purposes of setting internal MREL in the UK, as determined in accordance with the criteria set out in the Bank of England's approach to setting a minimum requirement for own funds and eligible liabilities (MREL SoP).[3]

2.2 Hereafter, references to 'firms' should only be taken to include those institutions that meet the criteria set out in paragraphs 2.1(a) and (b).

2.3 Firms should ensure that the principles set out in this section are also met in respect of all subsidiaries in its group,[4] where prior consideration of management, governance and communication in resolution would be needed to ensure the orderly resolution of the firm's group as a whole. At a minimum this should include all subsidiaries that meet the criteria for 'material subsidiaries' set out in the Bank's Statement of Policy on its approach to setting minimum requirements for own funds and eligible liabilities.[5]

2.4 For the purposes of this SoP, the capabilities of a firm's subsidiaries shall be considered as capabilities of the firm itself provided that they are applicable to the firm's group and would be available to the firm in the event of resolution.

2.5 Material subsidiaries should consider this SoP within the context of the Statement of Policy: *The Bank of England's Approach to Assessing Resolvability* (Approach to Assessing Resolvability SoP), in particular paragraph 2.5-2.6.

2.6 The principles set out in the SoP are only applicable to firms to the extent that they are relevant in the context of the firm's preferred resolution strategy. In particular, aspects of principle 2 regarding changes to governance arrangements upon entry into resolution are only relevant to firms whose preferred resolution strategy is Bank-led bail-in or involves the use of a comparable resolution tool in their home jurisdiction. Furthermore, aspects of principles 2 and 3 regarding the role of the Bank and a Bail-in Administrator (BIA) in the management and oversight of a firm in resolution are only relevant to firms whose preferred resolution strategy is Bank-led bail-in.

1 The Bank will notify a firm of its preferred resolution strategy on at least an annual basis.
2 For the purposes of the Statement of Policy, 'Bank-led bail-in' means a resolution in which the Bank uses the bail-in stabilisation option.
3 Bank of England (2018) 'The Bank of England's approach to setting a minimum requirement for own funds and eligible liabilities (MREL)' available at: https://www.bankofengland.co.uk/paper/2018/boes-approach-to-setting-mrel-2018.
4 For the purposes of this SoP, a firm's group should be taken to include the firm and subsidiaries that are directly or indirectly owned by the firm. It does not include the parent entities of the firm or subsidiaries thereof in which the firm does not have an ownership stake.

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3 Objectives

3.1 The overarching objectives of this SoP are that firms are able to co-ordinate and communicate effectively to support orderly resolution. To achieve this, a firm's capabilities should meet the following objectives for management, governance and communication during the execution of a resolution:

(i) Management: the firm's key job roles are suitably staffed and incentivised;

(ii) Governance: the firm's governance arrangements provide effective oversight and timely decision making; and

(iii) Communication: the firm delivers timely and effective communication to staff, authorities and other external stakeholders.

4 Principles

Principle 1: Management in resolution

4.1 Firms should be able to ensure that key job roles would be suitably staffed and incentivised in resolution. They should have regard to the potential extent of turnover in a resolution scenario,[1] the need to replace management deemed responsible for the firm's failure, and the need for the firm's staff to carry out a large number of business-as-usual and resolution-specific actions to support orderly resolution.

Identification of key job roles

4.2 Firms should identify in business-as-usual the job roles that are likely to be key in resolution. For the purposes of this SoP, key job roles are those roles where a vacancy in resolution may present an obstacle to the effectiveness of resolution and any subsequent restructuring. A role would generally be deemed key where it meets both of the following criteria:

(a) **Criteria 1: Significance:** The performance of the role would have a material impact on how effectively the firm undertook the actions needed to support orderly resolution. This includes:

(i) those actions needed in respect of the barriers to resolvability identified in the Approach to Assessing Resolvability SoP;

(ii) business-as-usual activities that would be important to the continuity outcome set out in that publication;

(iii) material decision-making or co-ordination in respect of one or more of these actions.

At the very least, this is likely to include job roles corresponding to senior management functions (SMFs) considered under the Senior Management Functions part of the PRA Rulebook.

(b) **Criteria 2: Non-substitutability:** It is reasonably uncertain that the individual in the role could be replaced[2] at short notice, assuming that no planning had been undertaken prior to resolution. By way of example, this may occur where:

(i) there is likely to be a very limited pool of suitably experienced individuals available to carry out the role;

1 This includes the run-up to resolution, the resolution itself, and any post-stabilisation restructuring.
2 This could include replacement by an existing staff member, a new hire, or a contractor.

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(ii) a role involves relationships with key external stakeholders (such as financial market infrastructures or critical service providers) that would otherwise be difficult to maintain without prior planning; or

(iii) a role requires specific expertise or institutional knowledge that may be otherwise unavailable to the firm.

4.3 Firms should be able to provide an up-to-date list of key job roles at short notice during a resolution event. This list should include all roles that would be key given the particular circumstances of that resolution. To achieve this, firms should consider the extent to which they would need to review their identified roles on an ongoing basis in business-as-usual, taking into account their size and the nature of their business.

4.4 Firms should also be able to rapidly compile and present relevant information on these roles as needed to inform the related actions that may need to be taken in resolution (e.g. dismissal, retention, replacement or changes to responsibilities or incentives). This includes, but is not limited to, information on key responsibilities,[1] remuneration, notice periods, succession plans, and regulatory approvals (both UK and overseas), as well as the assessed risk and impact of a vacancy in the role.

Retention

4.5 Firms should consider how they would retain staff in key job roles in resolution, should retention be necessary. This includes measures that the firm could take at short notice in a stress or resolution scenario to retain staff where needed.

4.6 To the extent consistent with relevant legal and regulatory requirements, firms should seek to avoid including any terms (such as release clauses) in relevant employment contracts whereby the firm's entry into resolution would enable the employee to leave the role at shorter notice than would be the case in business-as-usual.

Succession

4.7 Firms should be able to ensure rapid handover of key job roles to individuals appointed throughout the resolution process. In doing so, firms should ensure that an individual is able to carry out the role effectively as soon as reasonably possible after their appointment.

4.8 Firms should have a robust process in place for preparing robust and up-to-date succession plans for key job roles during pre-resolution contingency planning. These plans should seek to ensure that one or more individual(s) with adequate skills and knowledge would be available to perform a given key job role if the incumbent were to leave or be removed in resolution. Firms may leverage succession planning carried out in business-as-usual for this purpose.[2]

4.9 Firms should also consider how key job roles could be performed should the role become vacant before a suitable internal or external replacement could be appointed in a resolution event.

Responsibilities and incentives

4.10 Firms should consider how they could amend the incentives applicable to key job roles at short notice in a resolution event. This should facilitate the alignment of the individual's incentives with the practical objectives of the resolution.[3] Firms should also consider how they could clarify the

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1 This should include statements of responsibility where required under the Allocation of Responsibilities part of the PRA Rulebook.
2 This includes succession planning carried out to meet expectations under PRA Supervisory Statement SS5/16 'Corporate governance: Board responsibilities', as updated.
3 In a Bank-led bail-in, the Bank envisages that practical objectives would be specified to the firm by the Bank or a by Bail-in Administrator (BIA) acting on the Bank's behalf. These practical objectives would set out the Bank's priorities for what the firm will need to do to support the effective implementation of the resolution (and any subsequent restructuring). These practical objectives would be based on, though not necessarily equivalent to, the special resolution objectives set out in section 4 of the Banking Act. The aims would depend on the particular circumstances at hand.

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responsibilities of individuals in a resolution event where these were different to those applicable in business-as-usual. Firms should ensure that any such changes would be consistent with relevant legal, contractual, and regulatory requirements where applicable.

4.11 Firms should consider the extent to which they would need to develop potential incentive structures and responsibilities for use in resolution, taking into account the size and nature of their business.

Regulatory approvals

4.12 Firms should identify what regulatory approvals would be needed for any changes to management personnel, management responsibilities, and remuneration structures in resolution. Firms should be able to make timely and complete applications for these approvals, including in urgent situations. This could include approvals needed in the UK and overseas.

Principle 2: Governance in resolution

4.13 Firms should be able to ensure that effective decision-making and oversight arrangements will be in place in resolution, considering the need to ensure rapid decision-making in the context of uncertainty, and to account for changes to the firm's governance that may be introduced in resolution. In the case of a Bank-led bail-in, this may involve the appointment of a Bail-in Administrator (BIA) to be responsible for certain strategic decisions and to carry out certain senior roles within the firm.

Strategic objectives

4.14 Firms whose preferred resolution strategy is Bank-led bail-in should consider how they would amend the objectives governing their decision-making at short notice upon entry into resolution. This should facilitate the alignment of the firm's objectives and key decision-making processes with the practical aims of the resolution and any subsequent restructuring. In doing so firms should seek to identify and mitigate any potential legal or practical constraints to amending these objectives.

Decision making and oversight

4.15 Firms should be able to nominate one or more new or existing committees to co-ordinate and oversee the actions that the firm may need to take to support resolution and any associated restructuring. Firms should be able to do this at short notice during the pre-resolution contingency planning period, including by obtaining any necessary delegations or approvals from the firm's board.

4.16 Key responsibilities of these committees should include, but not are not limited to, ensuring that the firm:

(a) devotes sufficient resource and time to resolution-related actions;

(b) engages external stakeholders (including authorities) as necessary and appropriate; and

(c) takes sound decisions on resolution-related matters without undue delay.

4.17 The Bank does not expect firms to establish committees in business-as-usual for this purpose. However, firms should consider what committees might be required in a resolution event, as well as:

(a) what the specific responsibilities of these committees would be;

(b) how these committees would interact with other existing committees and boards;

(c) what membership such committees would need to ensure that there is sufficient expertise, seniority and challenge for the committee to discharge its responsibilities effectively; and

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(d) how to ensure that committee members would have adequate time available to discharge their duties effectively.

4.18 In addition, firms whose preferred resolution strategy is Bank-led bail-in, or involves the use of a comparable tool in their home jurisdiction, should consider how they would ensure that:

(a) decisions are escalated to and taken at the appropriate level in resolution including, as relevant, to the Bank, other authorities, and a BIA (or similar agent appointed by the home resolution authority);

(b) decision-making is expedited in resolution where necessary depending on the urgency of the situation at hand;[1]

(c) ownership, authority and accountability for specific decisions in resolution are clear (for example, through an amended management responsibilities map);[2] and

(d) relevant individuals, boards, committees and, as relevant, the Bank, other authorities and a BIA (or similar agent) will receive the information they need to effectively discharge their decision-making and oversight responsibilities in resolution.

4.19 In particular, firms should consider how these arrangements would apply in cases where they differed from their business-as-usual arrangements.

Dispute resolution

4.20 Firms should ensure that dispute-resolution measures will be available in resolution to address and resolve potential conflicts between the firm's decision-making bodies. This includes, but is not limited to, the boards of the firm and its subsidiaries (including, where relevant, ring-fenced and non-ring-fenced banks, overseas subsidiaries, and non-bank subsidiaries).

4.21 Firms whose preferred resolution strategy is Bank-led bail-in should consider the role a BIA may be given to adjudicate on conflicts in resolution. These firms should also consider where and how applicable legal or regulatory requirements may prevent or delay the firm acting upon a decision taken by the Bank or BIA. Firms should notify the Bank of where these risks may arise in order to inform what mitigating actions could be taken in resolution.

4.22 Paragraphs 4.20 and 4.21 are not applicable to firms whose preferred resolution strategy is partial-transfer (or involves the use of a comparable resolution strategy in the firm's home jurisdiction).

Supporting a BIA

4.23 Firms whose preferred resolution strategy is Bank-led bail-in should consider how they would rapidly familiarise a BIA with the firm so that they are able to carry out their role effectively. These firms should consider how they would identify a team of staff to be responsible for supporting a BIA in carrying out their role. This could include, but is not limited to, staff to support administrative matters, technology and data access, liaison with other areas of the firm, communications, and understanding of the firm's preferred resolution strategy.

Regulatory approvals

4.24 Firms should identify what regulatory approvals would be needed for any changes to their governance arrangements in resolution. Firms should be able to make timely and complete applications

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1 Expedited processes should appropriately balance the need for rapid decision making with the need for relevant challenge and oversight. Decisions should be appropriately recorded, even when made on an expedited basis.
2 This refers to the management responsibility maps required under the Allocation of Responsibilities part of the PRA Rulebook.

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for these approvals, including in urgent situations. This could include approvals required in the UK and overseas.

Principle 3: Communication in resolution

4.25 Firms should be able to plan and deliver effective communication in resolution, considering the extent and sensitivity of communication that will be required to provide confidence to both internal and external stakeholders.

Market communications

4.26 Firms should identify any market communications that may be required under applicable national disclosure regimes. Processes should be in place to ensure that the firm proactively informs authorities (including the Bank and relevant market authorities) where disclosures may unduly impact financial stability or market confidence.

Identifying stakeholders

4.27 Firms should identify groups of relevant stakeholders where communication would be necessary or desirable in resolution. This should include external stakeholders (such as customers, counterparties, investors, FMIs, and providers of outsourced critical services) as well as internal stakeholders (such as staff and contractors). As part of this, firms should consider those stakeholders identified to meet relevant rules and expectations regarding operational continuity, continuity of access to financial market infrastructure, and continuity of financial contracts in resolution.

Communications planning

4.28 Firms should ensure that resolution communication plans could be developed on a timely basis in the pre-resolution contingency planning period.

4.29 For each stakeholder group, firms should identify the:

(a) level of communication that would likely be required;

(b) key messages they would need to communicate to promote that group's confidence in the firm and its resolution; and

(c) communication channels and infrastructure they expect to use to deliver these communications.

4.30 Firms should consider how they would access sufficient communication infrastructure to deliver the extent of communications that may be needed in resolution. This could include infrastructure that is available in business-as-usual as well as additional infrastructure arranged ahead of resolution as needed. This infrastructure should be able to manage any reasonably foreseeable increases in usage resulting from entry into resolution (such as increased call volumes to call centres).

4.31 Firms should determine who would be responsible for delivering various communications and what governance arrangements would apply. Bank-led bail-in firms should ensure that these governance arrangements are able to incorporate the Bank and BIA as appropriate.

Principle 4: Documentation

4.32 Firms should clearly and concisely document their capabilities as needed to demonstrate and ensure effective management, governance and communication in resolution.

4.33 Firms should maintain operational documentation illustrating how their capabilities would be used in a resolution scenario. Documentation should describe:

(a) the processes, frameworks and arrangements in place to meet the principles above;

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(b) roles and responsibilities for deploying these processes and frameworks; and

(c) the timeframes in which this would take place if needed.

4.34 Firms should test and review their operational documentation where appropriate to ensure that it is credible and effective.

4.35 Firms should be able to provide supporting documentation as needed to demonstrate and deploy the capabilities set out above (including documentation maintained for other purposes where relevant). This could include, but is not limited to, the documentation of the firm's:

(a) expected key job roles in resolution, as identified under principle 1 above;

(b) retention and succession plans for key job roles (where maintained in business-as-usual);

(c) governance arrangements (including those in place in business-as-usual and those that may be introduced specifically in resolution);

(d) management responsibilities (including those responsibilities that may be introduced in the event of resolution);

(e) internal and external stakeholders, as identified under Principle 3 above; and

(f) communications content prepared for use in resolution.

4.36 These documents should be readily available, including to the Bank and a BIA where relevant. Documents should be written in a clear and concise manner to enable the reader to rapidly familiarise themselves with a firm's capabilities and arrangements.

5 Timeframe for compliance

5.1 Firms should be compliant with this SoP by 1 January 2022.

5.2 The Bank may on a firm-specific basis set an earlier compliance date, for example where the Bank has concerns about the resolvability of a firm.

5.3 The Bank may also set a firm-specific compliance date where a firm that was not previously within scope becomes within scope of this SoP. This might occur if the preferred resolution strategy applicable to the firm changes, or if the firm becomes 'material' for the purposes of setting internal MREL. In these cases, the Bank will determine the appropriate compliance date on a firm-specific basis, and expects to allow firms at least 18 months for compliance.

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