



BANK (RECOVERY AND RESOLUTION) (SEPARATION OF FUNCTIONS) REGULATIONS 2020

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Statutory Document No. 2020/0528



Bank (Recovery and Resolution) Act 2020

BANK (RECOVERY AND RESOLUTION) (SEPARATION OF FUNCTIONS) REGULATIONS 2020

Approved by Tynwald: 15 December 2020
Coming into Operation: 4 January 2021

The Isle of Man Financial Services Authority makes the following Regulations under section 6(2) of the Bank (Recovery and Resolution) Act 2020.

1 Title

These Regulations are the Bank (Recovery and Resolution) (Separation of Functions) Regulations 2020.

2 Commencement

If approved by Tynwald, these Regulations come into operation on 4 January 2021¹.

3 Application

These Regulations apply to the Isle of Man Financial Services Authority.

4 Interpretation

In these Regulations —

“**Act**” means the Bank (Recovery and Resolution) Act 2020;

“**Authority**” means the Isle of Man Financial Services Authority in its capacity as resolution authority;

“**Board**” means the Board of the Isle of Man Financial Services Authority;

“**CEO**” means the Chief Executive of the Isle of Man Financial Services Authority;

“**deposit taker**” means an entity that holds a licence to carry on the regulated activity of deposit taking, as described in the Regulated Activities Order 2011², (also known as Class 1 regulated activity);

¹ Tynwald procedure – approval required

“Regulatory Supervisor” means the Isle of Man Financial Services Authority in its capacity as regulatory supervisor of deposit takers;

“Resolution Committee” means a sub-committee of the Board, as described in regulation 6; and

“staff” means an individual who is an employee and is not a member of the Board.

5 Separation of functions of the Authority and the Regulatory Supervisor

- (1) When the Isle of Man Financial Services Authority is operating as the Authority, its functions must be performed in a manner that is operationally separate from the manner in which it performs its functions as the Regulatory Supervisor.
- (2) For the purposes of (1), the functions of the Regulatory Supervisor relate to regulatory supervision of deposit takers under the Financial Services Act 2008. For the avoidance of doubt, the functions of the Regulatory Supervisor include primary responsibility for oversight of bank recovery planning but do not include the resolution of banks.
- (3) For the purposes of (1), the functions of the Authority relate to the recovery and resolution of banks. For the avoidance of doubt, the functions of the Authority do not include regulatory supervision, or other powers over deposit takers, outside the scope of the Act.
- (4) The Regulatory Supervisor must not be constrained in its functions by the Authority’s role, neither must decisions of the Regulatory Supervisor constrain decisions of the Authority.
- (5) These Regulations must be made available on the website of the Isle of Man Financial Services Authority.

6 Resolution Committee – delegation of functions

- (1) To the extent permitted by paragraph 3 of Schedule 2 to the Statutory Boards Act 1987, the Board may delegate any of its functions under the Act to the Resolution Committee.
- (2) Where the Board retains any function under the Act, the Board must have regard to any recommendation made to it by the Resolution Committee and the resulting decision of the Board must be confirmed in writing to the Resolution Committee.
- (3) The members of the Resolution Committee must be appointed by the Board and must include —
 - (a) two members of the Board, neither of whom shall be the Chair of the Board or the CEO;

² SD 884/11

- (b) one senior member of staff of the Isle of Man Financial Services Authority whose role does not involve carrying out functions of the Regulatory Supervisor; and
- (c) one senior member of staff from, and representing, the Treasury.
- (4) The quorum for the Resolution Committee is three members, at least one of whom must be a member of the Board.
- (5) The functions, responsibilities and operational governance requirements of the Resolution Committee must be specified in writing and approved by the Board.

7 Structural separation of staff carrying out functions

- (1) When carrying out functions of the Authority, staff must report to the CEO otherwise than via staff who carry out functions of the Regulatory Supervisor.
- (2) For the avoidance of doubt, reporting in (1) may be directly to the CEO.
- (3) If a staff member has been carrying out functions of the Authority, but subsequently starts to carry out functions of the Regulatory Supervisor, they must cease to carry out functions of the Authority in order to avoid any conflicts of interest.

8 Resources

The resources available to the Isle of Man Financial Services Authority may be made available to the Authority, subject to —

- (a) Board approval; and
- (b) any constraints regarding conflict of interest.

9 Co-operation between the Authority and the Regulatory Supervisor

These Regulations do not prevent the sharing and exchange of information, or close co-operation between the Regulatory Supervisor and the Authority, for the better carrying out of their respective functions under this Act.

MADE 18 NOVEMBER 2020

K. BADGEROW

Chief Executive of the Isle of Man Financial Services Authority

L. BOYLE

Member of the Isle of Man Financial Services Authority

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe how the Isle of Man Financial Services Authority ('IoMFSA') must perform its functions in the capacity of resolution authority in a manner that is operationally separate from the manner in which it performs its functions in the capacity of regulatory supervisor (as specified in the Financial Services Act 2008).

The Regulations also prescribe how individuals involved in carrying out the functions of the IoMFSA as resolution authority must be, at least, structurally separate from those which carry out the IoMFSA's functions in the capacity of regulatory supervisor.