BANK OF NAMIBIA RESOLUTION POLICY

APRIL 2024

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Definition of Key Concepts

Resolution	The restructuring of an entity by a resolution authority through the use of resolution tools in order to safeguard public interests, including the continuity of the entity's critical functions and financial stability.
Crisis	For the purpose of this policy, a crisis is defined as a risk of a disruption to the financial services resulting from an impairment of all or some parts of the financial system with potential serious consequences to the real economy.
Critical functions	Refers to the activities, services or operations of banking institution, microfinance banking institution or controlling companies, which if discontinued, is likely to lead to the disruption of services that are essential to the real economy or to disrupt financial stability due to the size, market share, external and internal interconnectedness, complexity or cross-border activities of the bank, with particular regard to the substitutability of those activities, services or operations.
Financial system	Is defined as a system, encompassing financial institutions, that facilitates exchange of funds between lenders and borrowers. The financial system in Namibia consists of financial markets, instruments, institutions and infrastructure.
Macroprudential policy	According to the IMF, macroprudential policy refers to the use of prudential tools to limit systemic or system-wide financial risk, thereby minimising the incidence of disruptions in the provision of key financial services that can have serious consequences for the real economy.
Systemic Risk	The risk inherent to the entire market or an entire market segment that causes a major shock to the market or leads to the collapse of the entire market. Systemic risk is also called market risk.

Introduction

The Bank of Namibia ("the Bank") has been given enhanced resolution powers ("resolution powers")[1] under the Banking Institutions Act, 2023 (Act No. 13 of 2023) ("the Act"). The Bank's powers are designed to enable the Bank to mitigate the risks posed by the failure of a banking institution.[2] These resolution powers are designed to be in line with the international standards set by the Financial Stability Board ("FSB") in its Key Attributes of Effective Resolution Regimes for Financial Institutions ("Key Attributes") and reflect international best practices.

Central to the resolution powers under the Act are the resolution options. The Bank may deploy the resolution options to secure the orderly resolution of a failing banking institution by stabilizing its critical financial functions that are essential to the functioning of the economy. There are several resolution tools available under the Act with respect to a banking institution, microfinance banking institutions or controlling company or an affiliate or associate of the banking institution, microfinance banking institution or controlling company (collectively referred to as "banking institution"). These are, amongst others: (i) sales and transfer of a failing entity or some or all of its business to a purchaser; (ii) transfer of a failing entity or some or all of its business to a bridge bank; (iii) bail-in (i.e. a statutory write-off or conversion into equity of bail-in liabilities of a failing bank, in order to absorb losses and restore its capital position), and (iv) liquidation.

This policy document provides guidance on the way the Bank carries out its enhanced powers in managing bank failure. The Policy is divided into three parts. Part 1 sets out the objectives of the resolution regime, its key features, the main strategies the Bank has developed to deal with failing banking institutions and the arrangements for safeguarding the rights of depositors, clients, counterparties, and creditors. Part 2 describes the process of implementing these resolution strategies, while Part 3 explains the Bank's 'business as usual' responsibilities as a Namibian resolution authority.

[1] The Bank as the supervisory and also responsible for resolution possess a broad range of resolution powers, which include powers to do the following: (i) remove from office a director or officer; (ii) remove and replace the senior management and directors; (iii) assume control of the entire property, business and affairs of the banking institution; (iv) appoint a provisional liquidator, provisional judicial manager, liquidator or judicial manager by the Master of the High Court to the recommendation of the Bank;(v) oblige the Master of the High Court to appoint persons designated by the Bank to assist provisional liquidators, provisional judicial managers, liquidators or judicial managers; (vi) in the event of winding-up of a banking institution, all assets of the banking institution must be made available to meet all deposit liabilities of the banking institution in the order of priority as determined by the Bank; and (vii) effect the closure and orderly wind-down (liquidation) of the whole or part of a failing financial institution with timely pay-out.

[2] "Banking institution" means a public company authorised under the Banking Institutions Act, 2023 (Act No. 13 of 2023) to conduct banking business.

Part 1. Framework for resolution

1. Aims of resolution

(a) The prudential supervision system in Namibia, like all others around the world, cannot guarantee that a banking institution may not fail. A core feature of a stable and competitive financial system is that where banks fail, they can be resolved in an orderly fashion — that is without excessive disruption to the financial system or to the banking services provided, and without unreasonably exposing depositors in general to loss and protecting the taxpayer from state bail-outs.

(b) This principle underpins the Financial Stability Board's (FSB's) international standard for effective resolution regimes (the 'Key Attributes'), agreed by G20 leaders in 2011[3]. The arrangements for the resolution of failing banking institutions in Namibia are designed to comply with the Key Attributes.

(c) The need for a financial system to have an effective resolution framework for financial institutions became clear during the global financial crisis of 2008. At that time many economies had no resolution regimes for its financial systems, more particularly failing banks. Without arrangements that could avoid serious risks to financial stability that would have arisen had some failed banks entered insolvency proceedings, authorities around the world had to resort to 'bailouts'. This meant providing public funds to recapitalise failing banking institutions. The need to avoid the consequences of bankruptcy meant the costs of financial support for failing banks were imposed on public finances rather than on the owners and creditors who had benefited from banks' profits prior to experiencing crisis.

(d) Resolution arrangements change this by enabling losses arising from entity failure to be borne by the shareholders[4] and creditors[5] of failed banking institutions, while ensuring that the critical operations of the banking institution can continue.

[3] The FSB Key Attributes undergone various reviews updates since inception, with the latest update dated 10 October 2023.

[4] Section 70(9) of Banking Institutions Act, No. 13 of 2023

[5] Section 71 and 72 of Banking Institutions Act, No. 13 of 2023

2. Key Features of the Namibian Resolution Regime

2.1 Resolution objectives

The Bank in terms of section 70(5) of the Act, must have due regard to the following public interest considerations (i.e. the resolution objectives) when exercising its resolution powers:

(i) The stability of the Namibian financial system.

(ii) The maintenance of public confidence in the financial system.

(iii) The protection of depositors.

2.2 Institutions within the scope of resolution

The Bank in terms of section 70 of the Act, is granted resolution powers regarding failing banking institutions, microfinance banking institutions and controlling companies. Furthermore, the Bank may, in terms of section 70(2) of the Act, with the concurrence of the Namibia Financial Institutions Supervisory Authority (NAMFISA), exercise resolution options as listed under section 70(3) in respect of non-banking institutions within groups of which a banking institution, microfinance banking institution or controlling companies is an associate or forms part. In an event of resolution of controlling company which holds shares of non-bank financial institutions, the Bank will collaborate with NAMFISA in line with bilateral and tripartite agreements[6] to ensure that such resolution does not comprise the stability of the financial system.

2.3 Conditions for initiating resolution

In line with the provisions of section 69(1) and (2) of the Act, in relation to the definition of failing institutions, resolution takes place if either of the following conditions are met:

(i) a banking institution, microfinance banking institution, controlling company, or non-banking institution within groups of the aforementioned has become a failing institution or is 'failing or likely to fail'- this assessment is conducted on a forward - looking basis i.e the banking institution does not meet minimum prudential requirements related to capital and liquidity, or is not likely to meet minimum prudential requirements related to capital and liquidity, at the levels and for a period (e.g. over the coming 12 months) determined by the Bank.

[6] "Guidelines for Cooperation in The Field of Financial Stability" agreed upon between The Ministry of Finance, Bank of Namibia, and NAMFISA

(ii) it is not reasonably likely that action will be taken to change this, i.e. restore its position to compliance with minimum conditions for authorisation.

(iii) action is necessary to advance the statutory resolution objectives.

2.4 Resolution tools – Sections 70 and 71 of BIA

(i) **Sale or transfer to a private sector purchaser:** the sale or transfer of all or part of a failing institution's business, which can include either its shares or its property (its assets and liabilities), to a willing and appropriately authorized private sector purchaser without need for consent of the failed bank, or its shareholders, customers, or counterparties.

(ii) **Transfer to a bridge bank:** the transfer of all or part of the bank's business to a temporary bank controlled by the Bank. The purpose is to maintain continuity of the failed bank's critical functions until a sale of the bridge bank can be executed (e.g. through an initial public offering or onward transfer of some or all of its business to a private sector purchaser).

(iii) **Bail-in:** write-down of the claims of the banking institution's unsecured creditors (including holders of capital instruments) and conversion of those claims into equity as necessary to restore solvency to the bank.

(iv) **Liquidation:** apply to the High Court for the liquidation of any banking institution.

(i) **any other action:** the Bank may take any other action it considers fit to resolve the failing institution.

2.5 Safeguards

(i) Resolution powers enable the Bank to interfere with the property rights of banks' shareholders, creditors, and counterparties without their consent.

(ii) Therefore, the Bank is conscious that the resolution powers must be used subject to certain safeguards. The Act specifically requires the Bank to protect the integrity of financial contracts and provide certainty to counterparties. More broadly, the Bank's safeguards will be designed to achieve a balance between providing a degree of certainty to creditors about how they would be treated in a resolution and giving the authorities sufficient flexibility to effect an orderly resolution as quickly as necessary.

(iii) Valuations of the banking institution's assets and liabilities will be conducted prior to the use of resolution powers, to inform the choice of resolution tools and assess the treatment of creditors under a counterfactual insolvency scenario.

(iv) The use of resolution powers will avoid undermining certain types of financial arrangements including secured, netting, set-off or capital markets financial arrangements typically given to counterparties of the banking institution in order to provide them with clarity on their treatment in the event of a default by a banking institution.

(v) The treatment of creditors in resolution will be in terms of section 72 of the Act.

(vi) Despite not explicitly stated in the law, the Bank will, consistent with international best practice (Article 5.2 of the FSB Key Attributes), aim to ensure creditors are not left worse off from the use of resolution powers than they would have been had the entity entered insolvency rather than resolution (i.e., a 'no creditor worse off' (NCWO) than liquidation safeguard).

BOX ARTICLE I

<u>Resolution Strategies</u>

The setting of a suitable resolution strategy for banks will depend upon factors specific to a bank. This will include consideration of, amongst other things: (i) the bank's legal entity structure; (ii) the nature of business conducted by the bank; (iii) the scale of the bank's business; (iv) the nature of any operational dependencies on intra-group entities and third parties; and (v) the nature of the bank's funding arrangements.

<u>Transfer all or part of the business to a private sector purchaser:</u> This entails transferring the shares in the bank (full transfer) or a matched book of assets and liabilities (partial property transfer) to a private sector purchaser for a consideration to be determined through an auction process.

<u>Bridge bank:</u> This is the transfer all (share transfer) or part (partial property transfer) of the business of the banking institution, microfinance banking institution or controlling company to a bridge bank that will be established by the Bank of Namibia. The purpose is to take over and continue operating certain critical functions and viable operations of a failed banking institution and to continue to provide essential banking services pending onward sale of the failing banking institution or its winding up.

<u>Bail in:</u> It is generally used for banks that are systemic with critical functions that are too large to be easily acquired. Bail-in as a resolution strategy restores distressed institutions in order to ensure continuity without the need for public support (i,e. to cease the reliance on bailouts). Bail-in entails mandatory restructuring through conversion and/or write-down of unsecured and uninsured liabilities. Bail-in requires the build-up of bank specific loss absorbing capacity (TLAC).

<u>Liquidation:</u> This resolution option deals with ordinary insolvency of the banking institution(s) which is combined with the pay-out of insured deposits by the Namibia Deposit Guarantee Authority (NDGA).

3. Resolution Authority and Governance

(i) The FSB Key Attributes set out a number of attributes that a resolution authority should have, one of which is that a resolution authority should have "operational independence" consistent with its statutory responsibilities, transparent processes, sound governance and adequate resources. It should have the expertise, resources and operational capacity to, amongst other things, conduct resolution planning in preparation for the risk of possible future failure and to implement resolution measures with respect to large and complex firms.

(ii) The FSB Key Attributes Assessment Methodology for the Banking Sector further elaborates that the requirement for a resolution authority to be operationally independent does not mean it can have no functions other than resolution. An authority that carries out resolution functions may also carry out other functions, such as supervision or deposit insurance, provided that adequate governance arrangements are in place to manage any perceived or actual conflicts of interests that may arise from combining those functions within a single authority.

3.1 Operationalization

(i) To effectively carry out this mandate, the Bank has a dedicated team of staff responsible for discharging its resolution mandate.

(ii) The Bank carries out this mandate in line with the Banking Institutions Act, No. 13 of 2023 and guided by international best practices.

(iii) The Resolution Team coordinates closely with relevant departments of the Bank, and there are appropriate gateways in legislation for the proactive sharing of quantitative and qualitative information within the Bank.

(iv) The Resolution Team, guided by the Resolution Committee, will work closely with other relevant authorities in Namibia and internationally as well to ensure effective cross-border cooperation for effective resolution and safeguarding the stability of the financial system.

(v) In the discharge of the functions under the Banking Institutions Act, there is a need for the Bank to have close coordination with banking institutions. In this regard, the Bank will set its preferred resolution strategy for institutions within the regime's scope and engage regularly with them as part of the bilateral resolution planning to identify and remove any barriers to orderly implementation of the preferred resolution strategy well in advance of any crisis. The Bank will work directly with institutions authorised under section 11 of the Banking Institutions Act, No. 13 of 2023. In particular, the Key

Attributes recognise the need for a resolution authority to have unimpeded access to banking institutions where that is material for this purpose.

(vi) In addition, the Bank has explicit information gathering powers which can be deployed in terms of section 4(2)(k) and 4(2)(l) read with section 84 of the Bank of Namibia Act of 2020, for example, to support effective resolution planning and resolvability assessments, as well as policy work in making the resolution regime operational.

3.2 Internal decision-making mechanism

3.2.1 Establishment and Mandate of the Resolution Committee ("ResCo")

The Bank recognizes the importance of a clear internal coordination and decision-making mechanism to ensure that suitably informed decisions related to resolution can be taken swiftly and independently. Internal coordination frameworks will help ensure that key resolution decisions, where perceived or actual conflicts between the Bank's other statutory objectives may arise, are taken independently from other functions of the Bank on a sufficiently informed basis.

A Committee, responsible for resolution matters shall be established within the Bank of Namibia to be seized with resolution planning, and to deliberate on and recommend to the Bank of Namibia Board ("the Board") for approval, matters pertaining to resolution such as policies and the use of the resolution tools, as well as the execution of decisions of the Board. The Resolution Committee (ResCo), therefore will amongst others deliberate on suitable resolution tools to be employed and strategies of failing banking institutions and make recommendations in this regard to the Board for approval. In order to maintain financial stability, preserve continuity in systemically critical or significant functions and protect depositors,

The Resolution Committee is chaired by the Governor or his/her delegate. The chairperson, in executing this role, will be supported by the ResCo, which is mandated to carry out the following functions:

- Policy: Review and recommend to the Board any resolution policies that set resolvability requirements on banks or specify the Bank's wider approach to use the resolution powers in Namibia.
- Resolution planning: Review and approve institution-specific resolution strategies and resolvability assessments conducted by the Bank's Resolution team in order to formally approve banking institution-specific resolution strategies and agree on actions to remove

any impediments identified to orderly resolution action necessary to enhance the resolvability of banking institutions.

- Resolution action: Determine whether it is reasonably likely that a banking institution assessed as failing or likely to fail can restore its position, whether resolution is necessary and recommend to the Board the use of resolution tools.

3.2.2 Composition of the ResCo

The Resolution Committee shall consist of:

(a) The Governor, who shall be the Chairperson

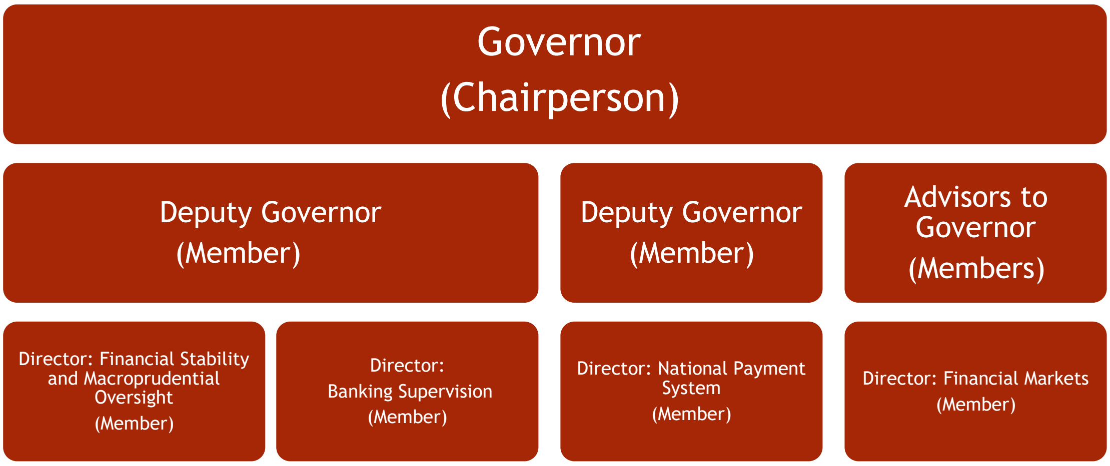
(b) The Deputy Governors

(c) the Advisor(s) to the Governor

(d) the Directors of Financial Stability and Macroprudential Oversight, National Payment System, Banking Supervision and Financial Markets.

(e) Further, the Directors of Strategic Communications and International Relations as well as, Exchange Control and Legal Department may be invited to attend the meetings.

Figure 1: Composition of the ResCo



3.2.3 Secretariat

The ResCo is supported by a secretariat. Meetings are organized by a secretariat consisting of designated staff in the Financial Stability and Macroprudential Oversight Department of the Bank of Namibia, particularly the division for Resolution and Deposit Insurance. The duties of the secretariat include ensuring the ResCo Terms of Reference (ToR) are understood by all members, taking minutes during the meetings, documenting ResCo decisions based on the ToR as well as writing, presenting and coordinating/safekeeping of any necessary documents.

3.2.4 Frequency of ResCo's meetings

The ResCo meets at least twice a year. The ResCo may, however, meet at any time during a particular year as the need arises. At the bi-annual meetings, the ResCo will be kept abreast of the key issues pertaining to potential risk exposure to the individual banking institutions, as monitored by the Banking Supervision Department. Additionally, developments pertaining to changes in resolution strategies, as well as resolvability assessments of concerned banking institutions will also be presented at such meetings. Further, any development strategies, policies or frameworks will be presented at such meetings for review and approval.

3.2.5 ResCo's decision making and quorum

Resolution decision making powers at ResCo are vested with the Governor of the Bank of Namibia and the ResCo will provide him or her with the necessary support. This means that the final decision on ResCo decision-making lies with the Governor, and in the Governor's absence, the decision-making will pass on to the Deputy Governor not overseeing the Banking Supervision function. With regard to decisions on policy and application of appropriate resolution tools to a failing banking institution, ResCo will make such recommendations to the Board for approval as referred to in section 3.2.1. The quorum of the ResCo meeting will be a simple majority of the ResCo members.

For the avoidance of doubt, decisions of the ResCo the employment of resolution tools to a failing banking institution, shall be subject to approval by the Board.

Part 2. Entering resolution

Institutions at risk of failure are identified by the respective Supervisors based on the adopted supervisory scoring framework. If an institution is scored as at risk by the supervisor, this triggers intensified resolution planning by the Resolution Authority.

BOX ARTICLE 2

Resolution is initiated when an institution is no longer viable, or likely to be no longer viable, and has no reasonable prospect of becoming so. Non-viability includes amongst others, the inability to achieve sustainable and acceptable returns on a forward-looking basis, while maintaining compliance with minimum capital and other regulatory requirements. Resolution must be initiated timely and early before a bank is balance-sheet insolvent and all its equity has been fully wiped out.

Entry into resolution consists of the following stages:

- **Stabilization phase:** Where there is a need to resolve a banking institution, the stability and effective working of the Namibian financial system, including the continued provision of critical financial functions, is achieved through the application of stabilization options by the resolution authority, for example through a transfer to a purchaser or bridge institution, and/or through bail-in.

- **Restructuring phase:** This is where changes are made to the structure and business model of the whole banking institution or its constituent parts to address the causes of failure and ensure that the resolved entity is viable and can continue as a going concern.

- **Exit from resolution and implementation of restructuring:** This is where the resolution process is ended.

Part 3. Resolution planning

To prepare for the effective use of the resolution powers in the event of a banking institution's resolution, advance resolution planning on a bank-specific basis needs to be undertaken by the Bank to ensure a resolution can be executed in an orderly manner. To this end, the Resolution Authority develops a feasible and credible resolution strategy for each banking institution. This means that a banking institution needs to be structured in a way that facilitates the orderly use of resolution powers by the Bank as the resolution authority when it fails.

The purpose of resolution planning is to ensure an orderly resolution of a failing banking institutions. The Bank will have its preferred resolution strategy and ensure that each strategy is feasible and credible in resolving such a banking institution in an orderly manner. Resolution planning and preparation must be conducted well in advance of a banking institution experiencing stress and regardless of the banking institution's current likelihood of, or proximity to, failure.

In pursuit of its resolution mandate the Bank will require wide comprehensive, accurate and updated data from different sources. In this regard, the Bank may request any information, or commission reports from any office, ministry or agency of the Government, a regulatory authority, a supervisory authority or any institution which is overseeing banking institutions, financial institutions, payment system participants which the Bank of Namibia considers necessary to give effect to crisis management and resolution framework.

The process that will be deployed in resolution planning consist of the following phases:

- **<u>Resolution strategies and plans:</u>** The Bank will establish its suitable resolution strategy for banking institutions with reference to information provided by the banking institution, including if provided, its view on an optimal resolution strategy. The resolution plans that will be prepared (and regularly updated) by the Bank will be guided by information provided by banks (e.g., structure, critical functions, interconnectedness, arrangements to ensure operational continuity, funding needs etc).

- **<u>Resolvability assessments:</u>** The Banks' assessment of a banking institution's resolvability will be an iterative process. It will consider both the feasibility and the credibility of the Bank's preferred strategy for each banking institution. The scope of the resolvability assessments will vary depending on the size and nature of the bank and group, and the type of resolution option being considered. Resolvability assessments will be comprehensive and involve a clearly documented identification of the feasible resolution options and the initiatives required to ensure they are capable of timely implementation.

- **<u>Planning for a cross-border resolution</u>**: The Bank is the host for three systemic foreign subsidiaries and therefore recognize resolution decisions, which could be of administrative, judicial, jurisdictional, contractual; and supervisory nature, The Bank is also considerate of the cross-border financial stability impact of its resolution decisions.

- **<u>Resolution preparedness:</u>** As the designated institution's proximity increases in the theoretical paths of normality, distress and failure, the Bank will take actions to establish a state of readiness to be able to resolve the banking institution in an orderly manner should the need arise. The institution may take recovery actions at the distress stage to restore its financial strength and viability.

Part 4. Interagency Coordination

As described in the Tripartite Guidelines for Cooperation in the Field of Financial Stability between the Bank, Ministry of Finance, the Namibia Financial Institutions Supervisory Authority (NAMFISA), the Bank will provide regular briefing to the Minister of Finance regarding its resolution planning work before crisis, any institution at increased risk of failure and its proposed strategies for ensuring the orderly resolution of entities that do fail. This will assist the authorities in the coordination of their respective independent statutory actions required to effectively respond to a crisis involving a bank failure.

Part 5. International Cooperation

Cooperation Agreements (CoAG): For resolution purposes, the Bank may put in place CoAGs that will complement generic Memoranda of Understanding (MOUs). The Bank has in place MoUs with supervisory authorities in several jurisdictions and will continue to establish avenues for cross border cooperation and simulation exercises on a bilateral level with jurisdictions with which Namibian is either home or host Authority.

Operation of Crisis Management Groups (CMGs): Where the parent of a designated institution is situated outside Namibia, the Bank may be invited to attend the crisis management group (CMG) and/or group resolution college chaired by the resolution authority (i.e., the Group Level Resolution Authority - GLRA) responsible for the parent of the group. Where a subsidiary of a Namibian banking group is situated outside Namibia, the Bank may invite such an institution to attend the CMG and/or resolution college chaired by the resolution authority (i.e. GLRA) responsible for the parent of the group in Namibia. The objective of the Crisis Management Group (CMG) is to discuss, at least annually, the resolution plans and the resolvability assessments. The CMG will serve as a platform for information exchange, and recovery and resolution planning and decisions. The objective of the group resolution college is to at least annually, discuss and agree on group resolution planning and related issues.

Policy review and signature

This Policy should be reviewed after every three years or as and when necessary.

SIGNED on behalf of **the Bank of Namibia** on this 25th day of April 2024.

Johannes !Gawaxab
In his capacity as the Chairperson of the Board of the Bank of Namibia

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