

## I. RESOLUTION FRAMEWORK

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### 1. What is the role of the Single Resolution Board (SRB)?

The SRB is the resolution authority for significant banks and other cross-border groups within the Banking Union. Together with National Resolution Authorities (NRAs), it forms the Single Resolution Mechanism (SRM). The NRAs play a key role within the Banking Union.

The mission of the SRB is to ensure the orderly resolution of failing banks with minimum impact on the real economy and public finances of the participating Member States of the Banking Union.

The SRB is the resolution authority for:

- ▶ banks which are considered significant or in relation to which the European Central Bank (ECB) has decided to exercise directly all of the relevant supervisory powers; and
- ▶ other cross-border groups, where both the parent and at least one subsidiary bank are established in two different participating Member States of the Banking Union.

The number of banks within the SRB's direct remit is bound to change over time, as new banks are established and existing banks leave the market. The list of banks within the SRB's remit is published on the [SRB's website](#).

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### 2. What is the Single Resolution Mechanism?

**The SRM is responsible for the resolution of all banks in participating Member States of the Banking Union.**

The SRM is one of the pillars of the Banking Union, alongside the Single Supervisory Mechanism (SSM). Under the SRM, as of January 2016 centralised decision-making power in respect of resolution has been entrusted to the SRB, which derives its powers from both the Bank Recovery and Resolution Directive (Directive 2014/59/EU – BRRD) and the Single Resolution Mechanism Regulation (Regulation (EU) 806/2014 – SRMR).

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### 3. What is the BRRD?

The aim of the BRRD is that failing banks can be orderly resolved without disruption of the financial system or the real economy while minimising costs for taxpayers.

The BRRD, broadly speaking, regulates four key elements: i) recovery and resolution planning; ii) early intervention measures by the supervisor; iii) the application of resolution tools and powers in the event of an actual bank failure; and, last but not least, iv) cooperation and coordination between national authorities.

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#### **4. What is the SRM Regulation? What about the relationship with the SSM?**

The SRM Regulation was adopted in July 2014 to create an integrated decision-making framework for resolution in the Banking Union as a complement to the SSM, which pursues a similar objective with respect to supervision. The SRB works in close cooperation with the NRAs.

The NRAs are the resolution authorities of the participating Member States of the Banking Union. They are empowered to implement resolution schemes adopted by the SRB.

The SRB and the NRAs closely cooperate with the SSM, the European Commission (EC), the Council of the European Union, the European Parliament, as well as other European and international authorities.

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#### **5. What are the roles of National Resolution Authorities in the SRM?**

The NRAs are directly responsible for all banks which are not under the direct remit of the SRB. However, where it is necessary to ensure the consistent application of high resolution standards, the SRB can decide, or an NRA can request the SRB, to directly exercise all its powers with regard to banks falling within an NRA's original remit.

The SRMR provides that the SRB is responsible for the effective and consistent functioning of the SRM. The SRB may issue general instructions for the attention of NRAs and may issue warnings to an NRA where the SRB considers that a decision that the NRA intends to adopt does not comply with the SRMR or with the SRB's general instructions.

Moreover, if a resolution action by an NRA requires the use of the Single Resolution Fund (SRF), the SRB is responsible for the adoption of the resolution scheme for that bank.

The NRAs also have an important role in the governance of the SRM. Should a bank within the SRB's remit meet the conditions for resolution, the Executive Session of the SRB, in which the SRB and relevant NRA(s) are represented, will adopt a resolution scheme and the relevant NRA(s) will implement the scheme.

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#### **6. What is a bank resolution?**

Resolution is the restructuring of a bank by a resolution authority through the use of resolution tools in order to safeguard the public interest, including the continuity of the bank's critical functions, financial stability and minimal costs to taxpayers.

Banks provide vital services to citizens, businesses, and the economy at large in view of the critical intermediary role that banks play in our economies, financial difficulties in banks need to be resolved in an orderly, quick and efficient manner, avoiding undue disruption to banking activity and to the rest of the financial system and real economy. Because of this vital role played by banks, and in the absence of effective resolution regimes, the authorities have in the past often considered it necessary to put up taxpayers' money to restore trust in the banking system and avoid broader systemic damage.

A resolution action must be taken only where it is deemed necessary in the public interest and only when winding up of the bank under normal insolvency proceedings would not meet to the same extent the resolution objectives as defined in the BRRD. In such cases, resolution

tools are to be used to intervene in a failing bank so as to ensure the continuity of the bank's critical financial and economic functions, while minimising the impact of the bank's failure on the economy and the financial system. The resolution regime ensures that a failing bank's shareholders and creditors will bear the losses, rather than taxpayers.

There are four resolution tools:

- ▶ **Sale of business** - permits the total or partial disposal of an entity's assets, liabilities and/or shares to a private purchaser;
- ▶ **Bridge bank** – part or all of the assets, liabilities and/or shares are transferred to a controlled temporary entity;
- ▶ **Asset separation** – assets can be transferred to an asset management vehicle;
- ▶ **Bail-in** – equity and debt can be written down and converted, placing the burden on the shareholders and creditors of a bank, rather than on the public.

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## 7. What conditions have to be met in order to put an entity into resolution?

The resolution of a bank occurs when the relevant authorities determine that:

- ▶ the bank is Failing Or Likely To Fail (FOLTF);
- ▶ there are no supervisory or private sector measures that can restore the bank to viability within a reasonable timeframe; and
- ▶ resolution is necessary in the public interest, i.e. the resolution objectives would not be met to the same extent if the bank were wound up under normal insolvency proceedings.

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## 8. Who is responsible to determine whether those conditions are met and which are the consequences of such determination?

For the Banking Union, "FOLTF" is to be determined by the ECB (after consulting the SRB). The SRB may also determine that a bank is considered FOLTF, if it has informed the ECB of its intention to do so and the ECB has not reacted within three days (Art 18 SRMR).

The SRB determines whether there are no alternative measures that would avoid the failure and the resolution is necessary in the public interest.

The SRB is the authority in charge of the assessment of public interest. If this condition is not met, the failure will be addressed a national level by the authorities in charge of normal insolvency proceedings.

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## 9. What is the difference between bank resolution and normal insolvency proceedings?

The overarching objective of the BRRD resolution regime is to make sure that a bank can be resolved swiftly with minimal risk to financial stability. This should be achieved without negative impact on the real economy and without the need to spend taxpayer money to stabilise a failing bank (i.e. bail-in instead of bail-out). Resolution objectives are much broader than the objectives of normal insolvency proceedings, which commonly focus on the interests of creditors and on maximising the value of the insolvency estate. The resolution regime aims to ensure overall financial stability. Within that context, the resolution authority would also seek to ensure that No Creditor would be worse off in resolution than insolvency (the "No Creditor Worse Off" test).

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## 10. Are normal insolvency proceedings for banks harmonised at EU level?

The insolvency proceedings have not been harmonised at EU level. Different procedures and objectives are set out at national level.

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## 11. What are the objectives that are pursued with a bank resolution and that inform the resolution authority's assessment of whether a resolution is in the public interest?

When applying resolution tools and exercising resolution powers, the SRB and, where relevant, the NRAs take into account the resolution objectives and select the resolution tool(s) and resolution powers which are best-suited to achieve the resolution objectives.

The BRRD and the SRMR set out the following resolution objectives:

- ▶ **to ensure the continuity of critical functions;** the SRB identifies whether the bank carries out any critical functions the disruption of which could have an adverse impact on the real economy and financial stability. If this is the case the SRB determines which is the resolution action and the resolution tool able to effectively preserve them.
- ▶ **to avoid significant adverse effects on financial stability,** in particular by preventing contagion, including to market infrastructures, and by maintaining market discipline. Such effects mainly refer to a situation where the financial system is actually or potentially exposed to a disruption that may give rise to financial distress liable to jeopardise the orderly functioning, efficiency and integrity of the internal market or the economy or the financial system of one or more Member States or the Union as a whole.
- ▶ **to protect public funds** by minimising reliance on extraordinary public financial support;
- ▶ **to protect depositors** covered by the Deposit Guarantee Scheme Directive (DGSD) and investors covered by the Investor Compensation Scheme Directive (ICSD);
- ▶ **to protect client funds and client assets.**

When pursuing the resolution objectives, the SRB together with the NRAs will seek to minimise the cost of resolution and avoid destruction of value unless this is necessary to achieve the resolution objectives.

These resolution objectives are of equal importance, and resolution authorities need to balance them as appropriate depending on the nature and circumstances of each case.

In order to carry out a resolution action, the resolution authority should consider that the proposed resolution action for the bank at stake is a better option to reach the resolution objectives compared to winding up the entity under normal insolvency proceedings (Article 18 (5) SRMR, also Article 32 (5) BRRD).

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## 12. What is the difference between bail-in and bail-out?

Bail-out refers to a situation in which persons other than shareholders and creditors, such as a government, rescue a company (such as a bank) by injecting money to prevent negative consequences to the financial system or the economy that would arise from that company's failure.

A 'bail-in', on the other hand, occurs when a company's shareholders and creditors bear the burden by having a portion of their debt written off or converted into equity. This ensures that moral hazard is properly addressed and avoids the use of taxpayers' money.

The resolution authority at the same time also seeks to ensure that No Creditor would be Worse Off in resolution than insolvency (the "No Creditor Worse Off" test).

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### 13. Which are the general rules governing resolution?

- ▶ The shareholders of an institution must bear first losses;
- ▶ creditors of the same class are treated in an equitable manner, unless otherwise provided for in the SRMR/BRRD;
- ▶ no creditor shall incur greater losses than they would have incurred if the bank had been wound up under normal insolvency proceedings;
- ▶ creditors of the institution will bear losses after the shareholders, in accordance with the priority of their claims under normal insolvency proceedings, unless expressly provided otherwise in the SRMR/BRRD;
- ▶ the management and senior management of the institution must be replaced, except where maintaining them in office is considered necessary to achieve the objectives of resolution;
- ▶ natural and legal persons are made liable subject to national law, under civil or criminal law, for their responsibility for the failure of an institution under resolution;
- ▶ covered deposits are fully protected. According to the Deposit Guarantee Scheme Directive, € 100.000 is an appropriate level of protection and should be maintained. Deposits are covered per depositor per bank. This means that the limit of € 100.000 applies to all aggregated accounts at the same bank. Depositors must be informed that deposits held under different brand names of the same bank are not covered separately. However, deposits by the same depositor in different banks all benefit from separate protection.

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### 14. What is the decision-making process to put an entity into resolution?

Upon the determination by the SRB that a bank meets the conditions for resolution, the SRB will adopt a resolution scheme which will determine which resolution tool(s) is to be applied and, if necessary, whether the SRF is to be used.

Where the resolution action involves the use of the SRF or the granting of State aid, the resolution scheme is adopted after the EC has adopted a positive or conditional decision concerning the compatibility of such aid with the internal market. The competent NRAs are closely involved in the preparation and adoption of resolution scheme.

Once the SRB has adopted a resolution scheme, it sends it to the EC. The scheme may enter into force only if no objection is expressed by the EC or the Council of the European Union (the Council) within a period of 24 hours. If the EC endorses the scheme, it enters into force. However, if the EC objects to certain aspects of the scheme, the SRB shall modify it accordingly, after which it is approved and enters into force.

Alternatively, the EC can propose to the Council of the European Union that it objects to the scheme either because there is no public interest, or to require a material modification to the use of the SRF. If the Council of the European Union objects to the scheme because it is not in the public interest, the bank will be wound up in an orderly manner in accordance with the applicable national law. If the Council of the European Union approves the modification to the use of the SRF, the SRB modifies the scheme accordingly, after which it is approved and enters into force. If the Council of the European Union rejects the EC's proposal, the scheme enters into force in its original form.

Relevant NRAs will take the necessary actions to implement the resolution scheme. The SRB will monitor the execution of the resolution scheme by the relevant NRAs at national level and,

should an NRA not comply with the resolution scheme, the SRB can instruct directly the bank under resolution.

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### **15. What are the general powers of the SRB and the NRAs for the application of resolution tools?**

The BRRD sets out in Article 63 a list of general powers required by resolution authorities for the application of resolution tools. The minimum set of 'key powers' under the BRRD are:

- ▶ Accessing information to prepare resolution actions.
- ▶ Taking control of a bank under resolution, including the power to replace the management.
- ▶ Exercising rights and powers conferred upon shareholders and the management body.
- ▶ Transferring shares, rights, assets or liabilities.
- ▶ Altering the maturity of eligible liabilities, converting them into shares or reducing the principal amount.
- ▶ Cancelling or reducing the nominal amount of shares or other instruments of ownership.

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### **16. What is the Single Resolution Fund?**

Resolution funding arrangements are required as a last resort, once shareholders and creditors have first borne losses. The SRF was created specifically for this reason. The SRB owns and administers the SRF. The SRB may use the SRF only for the purpose of ensuring the efficient application of the resolution tools and exercise of the resolution powers. The SRB may use the SRF to cover losses or to recapitalise the entity once a contribution to loss absorption or recapitalisation equal to at least 8% of total liabilities of the bank, including own funds, has been made by the bank's shareholders and creditors. The SRF is composed of national compartments for a transitional period of eight years before becoming fully mutualised. The amount of funds is built up over time, with contributions from the banking sector raised at national level by the NRAs.

The SRF has a target level of at least 1% of the amount of covered deposits of all credit institutions within the Banking Union by 31 December 2023. As of July 2016 a total amount of EUR 10.8 billion in contributions from nearly 4000 institutions was collected. The target size of the SRF is dynamic and will change with the amount of covered deposits.

## **II. RESOLUTION PLANNING**

One of the main tasks of the SRB is to plan for the resolution of banks to ensure their resolvability. The purpose of resolution planning is:

- ▶ to obtain a comprehensive understanding of the banks and their critical functions,
- ▶ to identify and address any impediments to their resolvability, and
- ▶ to be prepared for their resolution if needed

The resolution planning process is reflected in the chapters of a resolution plan:

## **A. STRATEGIC BUSINESS ANALYSIS**

As the first step, a detailed overview of the bank is produced. The overview describes the bank's structure, financial position, business model, critical functions, core business lines, internal and external interdependencies and critical systems and infrastructure.

## **B. PREFERRED RESOLUTION STRATEGY**

Next, it is assessed whether, in case of a bank's failure, the resolution objectives are best achieved by winding up the bank under normal insolvency proceedings or resolving it. If it is the latter, the preferred resolution strategy is developed, including the use of appropriate resolution tools and powers.

## **C. FINANCIAL AND OPERATIONAL CONTINUITY IN RESOLUTION**

When the resolution strategy has been determined, the financial and operational prerequisites to ensuring continuity in resolution so as to achieve the resolution objectives are assessed.

## **D. INFORMATION AND COMMUNICATION PLAN**

This step describes the operational arrangements and procedures required to provide resolution authorities with all necessary information and the arrangements regarding management information systems, which will ensure timely, up-to-date and accurate information, together with the communication strategy and plan for resolution.

## **E. CONCLUSION OF THE RESOLVABILITY ASSESSMENT**

In this step, it is assessed whether impediments exist to the winding up under normal insolvency proceedings or the resolution of a bank. Where winding up or resolution is not possible, appropriate measures to address such impediments are identified.

## **F. OPINION OF THE BANK IN RELATION TO THE RESOLUTION PLAN**

The bank is entitled to provide its opinion in relation to the resolution plan. The bank's opinion forms part of the resolution plan. The resolution plan is reviewed and, where necessary, updated at least annually and after any material changes relating to the bank.

For more information, please read the [SRB's Introduction to Resolution Planning](#).

# **III. RESOLUTION INSTRUMENTS**

## **A) THE BAIL-IN TOOL**

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### **1. What is the bail-in tool?**

Under bail-in, losses are imposed on owners and creditors of a failing bank. The bail-in tool achieves loss absorption either by converting the liability into common equity instrument, such as a share, or by writing down the principal amount of the liability.

Bail-in is a key resolution tool in the EU bank resolution framework. It enables debt owed by a bank to creditors to be written-down or converted to equity.

By taking into account how shareholders and creditors would incur losses if a bank were subject to normal insolvency proceedings, bail-in reduces the value and amount of liabilities of a failed bank. It thereby avoids taxpayers having to provide funds to cover losses and recapitalise the bank.

**The bail-in tool can be used to:**

- ▶ recapitalise an institution that meets the conditions for resolution to the extent sufficient to restore its ability to comply with the conditions for authorisation and so continue performing its authorised activities, and to sustain market confidence in the institution; or,
- ▶ convert to equity, or reduce the principal amount of claims or debt instruments that would be transferred to a bridge institution (in order to provide capital for that bridge institution) or that would be transferred under the sale of business tool or asset separation tool.

**Scope of the bail-in tool**

The SRMR/BRRD provides that the bail-in tool can be applied to all liabilities that are not expressly excluded from the scope of bail-in. A key exclusion is for covered deposits i.e. deposits up to the amount covered by a deposit guarantee scheme (DGS). This is why in resolution the covered deposits are safe.

The following liabilities are expressly excluded:

- ▶ covered deposits, liabilities in respect of holding client assets or client money, where the client is protected under applicable insolvency law;
- ▶ liabilities resulting from a fiduciary relationship, where the beneficiary is protected under applicable law;
- ▶ liabilities to other financial institutions (outside the group of the institution under resolution) with an original maturity of less than seven days;
- ▶ liabilities with a remaining maturity of less than seven days, owed to payment or securities settlement systems or their participants;
- ▶ employee remuneration or benefits (other than variable remuneration);
- ▶ liabilities to commercial or trade creditors relating to the provision of critical goods or services;
- ▶ liabilities to tax and social security authorities that are preferred by law;
- ▶ liabilities for contributions to deposit guarantee schemes; and
- ▶ liabilities to the extent that they are secured, including covered bonds and hedging instrument liabilities of the covered bond issuer.

In addition to the above list of excluded liabilities, the SRMR/BRRD provides that, in exceptional circumstances, the resolution authority may wholly or partially exclude certain liabilities from bail-in, where:

- ▶ it is not possible to bail in the liability within a reasonable timeframe; or
- ▶ the exclusion is necessary and proportionate to achieve continuity of critical functions and core business lines; or



- ▶ the exclusion is necessary and proportionate to avoid widespread contagion that would disrupt the functioning of financial markets, in particular as regards deposits held by individuals and micro-, small and medium-sized enterprises; or
- ▶ bailing in the liability would cause higher losses to other creditors than not bailing it in.

## **B) THE SALE OF BUSINESS TOOL**

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### **1. What is the sale of business tool?**

The sale of business tool enables resolution authorities to sell the institution (or parts of its business) to one or more purchasers without the consent of shareholders. The resolution authority has the power to transfer shares or other instruments of ownership issued by an institution under resolution, and all or any assets, rights or liabilities of an institution under resolution to a purchaser that is not a bridge institution. The sale of business tool may be applied individually or in combination with other tools. As for all resolution tools, its use must promote the resolution objectives.

### **2. What happens to the remaining entity in the event of a partial sale of business?**

When the sale of business tool is used to transfer parts of assets, rights and liabilities, the residual entity shall be wound up under normal insolvency proceedings. This should be completed within a reasonable timeframe.

## **C) THE BRIDGE INSTITUTION TOOL**

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### **1. What is the bridge institution tool?**

The bridge institution tool aims to set up a bank that can be disposed (thus preserving the critical functions of the failing bank) and to separate it from the rest. The bridge institution tool can be applied to maintain the bank's critical functions, while searching for a third party purchaser.

The tool allows for the transfer of i) instruments of ownership issued by one or more institutions under resolution or ii) all or any assets, rights or liabilities of one or more institutions under resolution to a bridge institution.

A temporary bridge institution (also known as a bridge bank) is created and, for up to two years, critical functions will be maintained until a sale to a private purchaser can be concluded. Any residual part of the bank that has not been sold is then wound up in an orderly manner.

### **2. Who will be the owner of the bridge institution?**

The bridge institution is wholly or partially owned by one or more public authorities, and is controlled by the resolution authority.

## **D) THE ASSET SEPARATION TOOL – ASSET MANAGEMENT VEHICLE**

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### **1. What is the asset separation tool?**

The asset separation tool is used to transfer assets and liabilities to a separate Asset Management Vehicle (AMV). It is temporarily created to receive the assets, rights and liabilities of one or more institutions under resolution or of a bridge institution. These are managed by the AMV with a view to maximising their value for an eventual sale, or an orderly wind-down.

The asset separation tool must always be applied together with another resolution tool (sale of business, the bridge institution and/or bail-in).

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## 2. Who will be the owner of the asset management vehicle?

The AMV is wholly or partially owned by one or more public authorities which may include the resolution authority or the resolution financing arrangements.

In line with the general resolution powers of the resolution authority to take over shareholder rights, the transfer may take place without the consent of shareholders of the institution under resolution or any third party, and without complying with any procedural requirements under company or security law.

The AMV should operate under the control of the resolution authority and subject to the following provisions: i) the resolution authority approves the content of the AMV's constitutional documents; ii) the resolution authority either appoints or approves the AMV's management body; iii) the resolution authority approves the remuneration of the members of the management body and determines their appropriate responsibilities; and iv) the resolution authority approves the strategy and risk profile of the AMV.

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## 3. What type of assets will be transferred to the asset management vehicle?

Article 42(5) BRRD provides that the resolution authority may use the asset separation power to transfer assets, rights, and liabilities only in one of the following three scenarios:

1. The market for those assets is such that their liquidation under normal insolvency proceedings could have an adverse effect on one or more financial markets.
2. The transfer is necessary to ensure the proper functioning of the institution under resolution or bridge institution.
3. The transfer is necessary to maximise the liquidation proceeds.

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## 4. How will the asset management vehicle be funded?

The funding structure of the AMV will depend on the value and characteristics of the assets transferred. If combined with the bail-in tool, the amount of bail-in has to take into account a prudent estimate of the capital needs of an AMV. Any consideration paid by the AMV in respect of the assets, rights or liabilities transferred directly from the institution under resolution may be paid in the form of debt issued by the AMV.