

INFORMATION ON BANK RESOLUTION under the Austrian Act on Bank Recovery and Resolution (“BaSAG”)

In Austria, the EU Bank Recovery and Resolution Directive (BRRD) was transposed into national law by the Austrian Act on Bank Recovery and Resolution (“BaSAG”).

BaSAG entrusts the financial market authority with **additional and early modes of intervention** when institutions or institution groups violate or are likely to violate regulatory rules, so as to counteract and obviate further deterioration in their financial status. In addition, it **governs procedures to recover and resolve banks**.

The focus of BaSAG is to ensure that **the owners of the bank (e.g. shareholders) and creditors (e.g. bond holders)** bear losses first, before a **resolution fund** endowed by the banks bears losses. Those objectives should help avoid using taxpayer money to recover or resolve a bank.

Resolution

The Austrian Financial Market Authority (FMA), which fulfills the role of the national resolution authority can order certain resolution measures provided the following **resolution requirements** are met:

- There is imminent risk that the bank in question will default. This assessment follows regulatory provisions and occurs, for example, if the bank due to losses can no longer fulfill the legal prerequisites for authorization as a credit institution.
- There is no reasonable prospect that the bank’s default could be prevented in due time by any alternative private sector measures or other measures by regulators.
- The measure is necessary in the public interest, i.e. necessary and appropriate, and winding up of the institution under normal insolvency proceedings is not an equivalent alternative.

In cases where all resolution requirements are met, the resolution authority – usually before insolvency proceedings are initiated – has the power to take comprehensive resolution measures that can negatively impact shareholders and creditors of the bank.

The following resolution tools can be utilized:

- Sale of business tool
Transfer of shares or other instruments of ownership, assets, rights or liabilities of an institution under resolution to a purchaser that is not a bridge institution.
- Bridge institution tool
Transfer of assets, rights or liabilities of an institution to a bridge institution that is a public sector institution.
- Asset separation tool
The authority to transfer assets, rights and liabilities to an independent public sector legal entity (bad bank) that has been created for the purpose of administering and disposing of non-performing debt and assets; only in combination with another resolution tool and/or
- Bail-in tool
The conversion of liabilities (including capital instruments eligible as own funds) into equity or write-down of the principal amount or amount outstanding of debt instruments during resolution to recapitalize the institution to the extent sufficient to restore its ability to carry out the activities for which it is authorized, to provide capital for a bridge institution, or under the sale of business tool or the asset separation tool.

Legally exempt are, including but not limited to:

- deposits covered by the deposit guarantee scheme up to EUR 100,000.00
- asset-backed securities (e.g. covered bonds, funded bonds)

The use of resolution tools by the resolution authority may **disrupt the rights of shareholders and creditors** and may be exercised without their consent. The resolution authority shall ensure that the application of resolution tools does **not incur higher losses than under normal insolvency proceedings**.

The bail-in option distinguishes **between various groups of creditors**. While some creditors are fully excluded from bail-in, others have to absorb losses in an exactly defined sequence ("**loss absorption cascade**"). Losses are absorbed on a **tier basis**, i.e. creditors of the next higher tier are only bailed in if the claims of the preceding tier of creditors are not sufficient to cover the losses. The resolution authority must use the following **sequence** when accessing the assets of the bank in question.

- 1st tier:** Tier 1 capital instruments (e.g. common shares; the shareholders or owners of the bank in question bear the highest risk of loss);
- 2nd tier:** Additional Tier 1 capital instruments (e.g. silent capital contributions)
- 3rd tier:** Tier 2 capital issues (e.g. participation rights)
- 4th tier:** Other subordinated debt (e.g. subordinated debt instruments)
- 5th tier:** Other allowable debt (e.g. deposits not covered by the deposits guarantee scheme).
- 6th tier:** Unsecured ordinary senior claims (e.g. ordinary senior bonds)
- 7th tier:** Not covered deposits (e.g. deposits not covered by deposit guarantee scheme)

Resolution and possible risks for creditors

If the resolution authority utilizes the tools described above, total loss of capital invested by the shareholders and creditors may occur. Shareholders and creditors of financial instruments and claims can suffer complete loss of the purchase price for acquisition of those financial instruments and claims in addition to other costs involved with the purchase.

When the resolution authority makes use of one of the tools, the creditor may not cancel the financial instruments or claims or claim any other contractual rights solely on the basis of the use of the tool. This applies as long as the bank fulfills its main obligations under the terms of the financial instruments and claims, including payment obligations and

duties to perform.

The possibility of a resolution can be reason enough to make the sale of a financial instrument or claim in the secondary market more difficult. This means that the shareholder and creditor might be able to sell the financial instrument or claim only at a significant discount. Even if the issuing bank is obligated to redeem, a sale of such financial instruments could be heavily discounted.

A resolution of a bank should not put shareholders and creditors in inferior positions than during regular insolvency procedures. In case the resolution renders a shareholder or creditor in an inferior position to that which would result from a regular insolvency, the shareholder or creditor has a right to compensation.