



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

The Central Bank of Ireland's Approach to Resolution For Banks and Investment Firms (Second Edition) October 2021

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Part I Overview

Introduction

1. The Central Bank of Ireland's ('*Central Bank*') mission is to serve the public interest by safeguarding monetary and financial stability and by working to ensure that the financial system operates in the best interests of consumers and the wider economy. This *Approach to Resolution* document (the '*document*') outlines the Central Bank's resolution mandates, powers and available discretions, its approach to resolution, and its perspectives on resolvability under the following relevant legislation¹:
 - Regulation (EU) No. 806/2014 ('*Single Resolution Mechanism Regulations*' or '*SRMR*');
 - Directive (EU) 2014/59/EU ('*Bank Recovery and Resolution Directive*' or '*BRRD*');
 - European Union (Bank Recovery and Resolution) Regulations 2015 (S.I. No. 289 of 2015) ('*Bank Recovery and Resolution Regulations*' or '*BRR Regulations*'); and
 - Regulation (EU) No 575/2013 ('*Capital Requirements Regulations*' or '*CRR*').
 - 2. The Central Bank is designated as the National Resolution Authority (NRA) and the National Competent Authority (NCA) for credit institutions and certain investment firms under the BRR Regulations and for the purposes of the SRMR within the context of the Banking Union Area Single Resolution Mechanism (SRM).
 - 3. This document is not intended as an exhaustive overview of this complex area, nor is it intended as a primary source of information on resolution matters. Institutions are expected to directly consult the applicable legal texts and/or seek independent legal advice as appropriate.
 - 4. Amendments to the SRMR and the BRRD since 2019² ('*SRMR2/BRRD2*' or the '*Risk Reduction Measures Package*') have refined resolution regimes in the EU and provided for additional powers and discretions for resolution authorities. National transposition of BRRD2 (amending the BRR Regulations)³ entered into force from 28 Dec. 2020.
 - 5. The first edition of the Central Bank's *Approach to Resolution* issued in 2019. This version (second edition), reflects changes introduced following the amendments to legislation referenced in paragraph 4.
 - 6. In exercising its powers in respect of individual institutions, the Central Bank will consider the merits and circumstances of each individual case.

¹ As amended from time to time.

² Regulation (EU) No. 877/2019 and Directive (EU) 2019/879/EU, respectively.

³ European Union (Bank Recovery and Resolution) (Amendment) Regulations 2020 (S.I. No. 713 of 2020).

7. The Central Bank's perspectives in relation to setting the minimum requirement for own funds and eligible liabilities (MREL) and minimum subordination quantitative requirements can be found in the Central Bank's *Approach to MREL* document, published separately.
8. Part II of this document provides a broad overview of the resolution framework within which the Central Bank operates.
9. Part III outlines the Central Bank's general perspectives on resolvability and resolution planning.
10. Part IV illustrates how the Central Bank would generally approach a resolution action.
11. More detailed information on Resolution Tools and Related Powers; Valuation in Resolution; the Principles of Operational Continuity; Resolution Tool Playbooks; and Orderly Wind-down Plans is set out in the annexes.

Scope

12. This document applies to the following Irish authorised institutions and other entities, within the SRM, where the Central Bank has principal responsibility as resolution authority for resolution decisions:
 - a) Credit institutions within the scope of the BRR Regulations that are less significant institutions (LSIs) and are not part of a 'cross-border group' as defined in the SRMR;
 - b) Investment firms within the scope of the BRR Regulations and subject to the applicable initial capital requirement, but that are not part of a cross-border group as defined in the SRMR; and
 - c) Holding companies, financial institutions, and other relevant entities referred to in Regulation 2(1) of the BRR Regulations.⁴
13. The institutions and entities referred to in paragraph 12 (a)-(c) are referred to collectively as '*institutions*' for the purpose of this document, except where specific reference is made to particular types of institutions and entities.
14. This document does not apply to entities outside the scope of the BRR Regulations such as credit unions or insurance firms, for example.
15. In this document, cross-Banking Union groups refer to cross-border groups as defined in the SRMR. Examples of cross-border groups in this regard may include a credit institution and one or more of its subsidiaries where they are established within the Banking Union Area specifically. Such cross-border groups fall under the direct remit of the Single Resolution Board (SRB), as opposed to the Central Bank.
16. As noted, this document is not intended as an exhaustive source of information on resolution or on the Central Bank's perspectives on

⁴ This document shall also apply to any intermediate parent undertaking established in Ireland coming under the responsibility of the Central Bank as resolution authority.

resolvability. The Central Bank will convey institution-specific expectations and requirements on certain matters in the course of its regular engagements with institutions. The Central Bank also periodically engages with stakeholders on topical resolution issues more generally. The Central Bank may specify additional or more detailed expectations regarding resolution matters over time, including via bilateral engagement with institutions, and will be informed by policies issued by the SRB, other NRAs, and international best practice.

17. The Central Bank has a broad range of direction-making and sanctioning powers. To the extent that requirements are not adhered to by institutions, it should be noted that the Central Bank will take any necessary and appropriate action(s), including the exercising of its statutory powers.
18. This document should be read consistently with the resolution legal framework within which the Central Bank and institutions operate; including the BRR Regulations, the SRMR, relevant European Commission Delegated Regulations, European Banking Authority (EBA) guidelines, recommendations, and Q&As, as appropriate.
19. The Central Bank will follow the applicable legal framework when discharging its powers and exercising discretions outlined in this document. Any Central Bank assessments, actions, and exercising of discretions referred to in this document will be conducted in a manner that is necessary, appropriate, and proportionate to the circumstances.
20. This document does not specify in full the Central Bank's responsibilities under the SRMR. For example, the Central Bank has a number of internal consultation, notification, and reporting obligations within the SRM. These obligations are not fully specified in this document.⁵
21. In formulating the approaches outlined in this document, the Central Bank has had regard to similar documents issued by the SRB, relevant authorities in other jurisdictions, as well as international (e.g. Financial Stability Board (FSB)) standards.

⁵ For further information see SRB, *Decision of the Single Resolution Board of 17 December 2018 establishing the framework for the practical arrangements for the cooperation within the Single Resolution Mechanism between the Single Resolution Board and National Resolution Authorities ('Cooperation Framework')* ([Link](#)).

Part II Resolution Framework

Principles of the Resolution Framework

22. The FSB, the international regulatory standard-setting body, issued *The Key Attributes of Effective Resolution Regimes for Financial Institutions* in 2011, in order to assist global regulators in the design of an effective resolution framework that encompasses the principles of burden-sharing, maintenance of critical functions, reduced reliance on public financial support, alongside an effective toolkit for resolution. The FSB Key Attributes document has subsequently been updated⁶ and supplemented,⁷ and remains an important guide.
23. This was followed by the development of special resolution legislation in certain countries, including Ireland.⁸ Subsequently, the BRRD, established a harmonised EU recovery and resolution framework for credit institutions and certain investment firms, and was adopted at EU level as a further part of the EU single rulebook together with Capital Requirements Directive (CRD) / CRR / Deposit Guarantee Scheme Directive (DGSD), and associated EBA guidelines, and recommendations related to resolution. Core aspects of Ireland's legislative framework are outlined in the following section.
24. A core principle of the harmonised resolution framework is that shareholders and investors in institutions accept the risks associated with their investment decisions and, consequently, should bear the investment losses arising from the failure of those institutions (unless entitled to statutory compensation). If there was a perception that institutions would never be allowed to fail, it would ultimately undermine prudent decision-making by the management of institutions and encourage inappropriate risk taking, known as moral hazard. For this reason, burden-sharing is a driving principle of the resolution framework in order to mitigate moral hazard by ensuring that shareholders and investors bear losses from an institution's failure.
25. Nevertheless, it is important to make sure failures, when they occur, are not disruptive to the stability of the financial system nor to the provision of critical functions, the protection of deposits covered by the DGS, client funds and, importantly, should not expose taxpayers to losses resulting from the use of public funds. These factors form the core principles of the EU resolution framework. In addition, the public interest assessment (PIA), MREL, and subordination help to underpin the principles of the resolution framework and ensure the orderly management of institutions' failures.

⁶ FSB, *Key Attributes of Effective Resolution Regimes for Financial Institutions* (15 October 2014) ([Link](#)).

⁷ FSB, *Principles on Loss-Absorbing and Recapitalisation Capacity of G-SIBs in Resolution: Total Loss Absorbing Capacity (TLAC) Term Sheet* (9 November 2015) ([Link](#)).

⁸ *Central Bank and Credit Institutions (Resolution) Act 2011* (No. 27 of 2011).

26. There are several ways in which failures can be handled so as to best maintain financial stability and the other factors mentioned in paragraph 25. The default, and most likely, approach for the majority of failing institutions is via a Central Bank-involved winding-up (liquidation) procedure.⁹ In such cases, the Central Bank petitions the High Court (the 'Court') in order to wind up the institution. In the case of credit institutions, the Central Bank has an oversight role in that process in relation to certain issues, such as ensuring particular depositors are protected.
27. The failure of institutions can also be handled in an orderly way via the application of resolution tools.¹⁰ Resolution tools are generally used where, for example, the failure of an institution could cause financial instability or could disrupt critical functions. In these situations, placing an institution into liquidation would generally be less appropriate.
28. Resolution tools would be considered necessary by the Central Bank where certain conditions for resolution are met, including for example, where the Central Bank considers resolution to be in the public interest. In such cases, a PIA is undertaken on an institution-specific basis with due regard to the economic circumstances at the time of failure.
29. The application of appropriate resolution tools can help to mitigate economic disruption and facilitate the orderly restructuring, or market exit, of a failed institution. Resolution tools may also reduce the risk of reliance on public funds, based on the principle that shareholders and investors should bear the costs of a failing institution, whereby the write down and conversion of certain liabilities is effected in a process known as 'bail-in'.
30. During an *ex-ante* resolution planning process, the Central Bank will determine the preferred approach for managing the failure of an in-scope institution, if such circumstances were to materialise. This is known as the '*preferred resolution strategy*' (PRS) of the institution.

The Central Bank in the SRM

The Banking Union Project

31. The BRR Regulations were transposed into domestic law as part of the broader Banking Union¹¹ project. The Banking Union project was initiated in 2012 amongst the Euro Area Member States, with the possibility for non-Euro Area Member States to also participate.
32. Recognising the risks and biases that can arise where banking supervision and resolution are only carried out at national levels, the Banking Union project includes:

⁹ Winding up is required where resolution conditions are met other than the test of resolution action being the public interest test (BRR Reg. 62B). Less common insolvency routes available in national law include examinership.

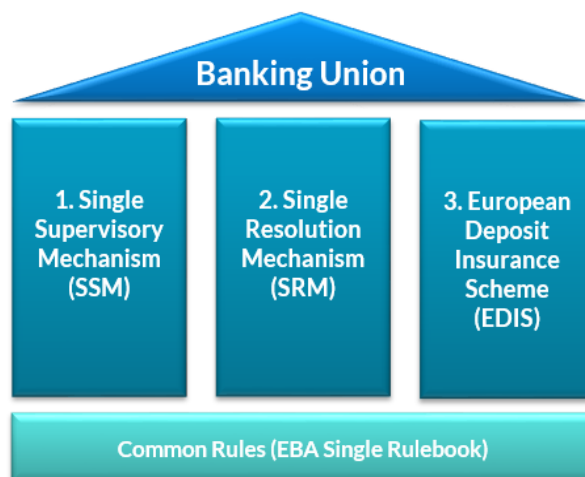
¹⁰ In line with the Court application procedure prescribed in the BRR Regulations. This procedure is covered in more detail in Part IV of this document.

¹¹ European Commission, *What is the Banking Union?* ([Link](#)).

- Centralising prudential supervision, crisis management and resolution in order to ensure more consistency and higher standards in the oversight of Banking Union institutions;
- Creating a European deposit insurance scheme (EDIS) in the Euro Area.¹² EDIS would enhance the resilience of national DGSs to local shocks and ensure that depositor protection in pay-out events would not depend on the location of the failed bank. EDIS remains under political negotiation at EU level; and
- Further reducing certain risks in the Banking Union, including risks arising from non-performing loans.¹³

33. To-date, Banking Union has resulted in the sharing of responsibilities for the prudential supervision of credit institutions within a Single Supervisory Mechanism (SSM), comprising the ECB and the NCAs. It has also resulted in the sharing of resolution-related responsibilities for credit institutions within the SRM, comprising the SRB and the NRAs.

Figure 1: The Pillars of Banking Union



Responsibilities within the SRM

34. In the SRM, the SRB is directly responsible for resolution-related tasks for:

- Credit institutions and groups¹⁴ that are considered to be significant institutions (SIs);¹⁵

¹² European Commission, *European Deposit Insurance Scheme* ([Link](#)).

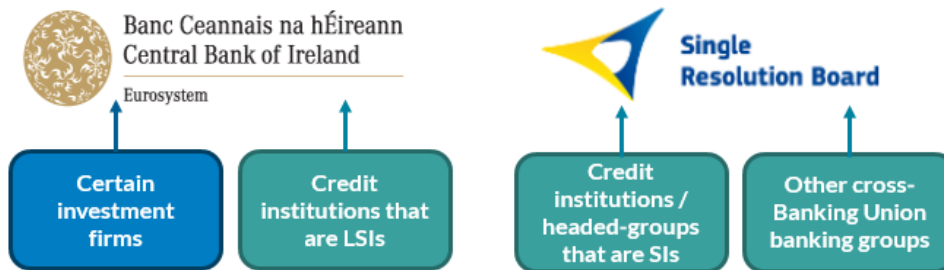
¹³ Council of the EU, *Non-Performing Loans: Political Agreement Reached on Capital Requirements for Banks' Bad Loans* ([Link](#)), as implemented via Regulation (EU) 2019/630. Also see European Commission Action Plan on Non-Performing Loans in the Aftermath of the Covid-19 Pandemic (Dec. 2020) ([Link](#)).

¹⁴ Meaning a parent undertaking and its subsidiaries that are entities within the scope of the SRM (such as credit institutions established in an SRM Member State) as referred to in Article 2 SRMR.

¹⁵ In accordance with Article 6(4) of Council Regulation (EU) No 1024/2013 ('SSM Regulation').

- Other credit institutions and credit institution-headed groups that are subject to discretionary direct oversight by the ECB;¹⁶ and
- Other cross-Banking Union banking groups.¹⁷

Figure 2: Responsibilities for Banking Union Resolution-Related Tasks with respect to Irish Institutions



35. In order to fulfil its roles within the SRM, the SRB works in close cooperation with NRAs, including via institution-specific internal resolution teams (IRTs) comprising SRB and NRA staff. NRAs are directly responsible for key resolution-related processes for LSIs and have a responsibility for the national implementation of resolution decisions taken by the SRB for institutions under the SRB's direct remit.
36. It should also be noted that the SRB retains a general oversight function of ensuring effective and consistent functioning of the SRM, including in relation to LSIs. This requires the submission by NRAs to the SRB of, for example:
- Draft LSI resolution plans;
 - Any draft decision to place an LSI into resolution; and
 - Any draft decision adopting a resolution scheme for an LSI.
37. The SRB may also, for instance, issue guidelines and general instructions to NRAs in relation to NRAs' oversight of LSIs.¹⁸
38. The SRB is responsible for administering and governing the SRM's Single Resolution Fund (SRF), on which further detail is provided in paragraphs 68 to 75. The levies that LSIs contribute for resolution funding are transferred to the SRF. If any LSI resolution action requires use of the SRF, the SRB takes over responsibility from the NRA for adopting the resolution scheme.

¹⁶ In accordance with Article 7(4)(b) or 7(5) of the SSM Regulation.

¹⁷ Meaning cross-border groups as defined in Article 3(1), point (24) of the SRMR.

¹⁸ Article 31 of the SRMR.

Core Aspects of the BRR Regulations

Scope of the BRR Regulations

39. The domestic resolution framework is legislated through the BRR Regulations, which apply to credit institutions and certain investment firms authorised in Ireland, as well as financial institutions and certain holding companies established in the State. The BRR Regulations also apply to a certain extent to branches of institutions that are established outside of the European Economic Area (EEA), which operate in the State, i.e. ‘third-country’ branches.¹⁹

Role of the High Court

40. Under the BRR Regulations, the Central Bank is required to apply to the Court for sanction to implement any of the resolution tools in the exercise of its powers under the BRR Regulations, or otherwise where the Central Bank wishes to have a liquidator appointed to an institution. This will be necessary where the Central Bank exercises such powers irrespective of whether an institution is directly overseen by the Central Bank or by the SRB. Therefore, the Court plays a key role in the Irish resolution process. Further details on the roles of the Court are set out in Part IV.

Role of the Minister for Finance

41. The Central Bank as NRA is required by the BRR Regulations to inform the Minister for Finance (the ‘Minister’) of certain prescribed matters.²⁰ For example, the Central Bank must inform the Minister of a Central Bank decision to make a proposed resolution order.
42. The Central Bank must also have the Minister’s prior written consent in specified circumstances before making a proposed resolution order.²¹ For example, the Minister’s prior written consent is required before making a proposed resolution order where the Central Bank forms the view that the resolution decision could pose a serious risk to the stability of the financial system or the economy of the State.

NRA Internal Governance and Cooperation

43. The Central Bank is required to maintain a structural and decision-making separateness between its functions as NRA and its other functions. This is without prejudice to internal information exchange and cooperation with those other functions, consistent with the BRR

¹⁹ Following the withdrawal of the United Kingdom (UK) from the European Union, the UK is deemed to be a ‘third-country’, and therefore UK-licensed institutions are deemed to be ‘third-country’ institutions for the purposes of the BRR Regulations and the EU resolution framework.

²⁰ BRR Reg. 9(1).

²¹ BRR Reg. 9(2).

Regulations. The Central Bank has published internal rules in this regard, which may be updated from time-to-time.²²

44. The NRA function of the Central Bank must work closely with other relevant Central Bank functions and associated bodies, which broadly speaking have the following roles in the event of firm failure:

- The Central Bank, in its capacity as the NCA, determines if an institution is failing or likely to fail (FOLTF),²³ in consultation with the Central Bank's NRA function;
- Where the relevant conditions for resolution are met, the Central Bank, in its capacity as the NRA, can decide to apply to Court to place the failing institution into resolution by seeking a resolution order;
- Following the grant of a resolution order by the Court the Central Bank, as the NRA, formally notifies a number of bodies, including the Central Bank functions responsible for supervision and the Deposit Guarantee Scheme (DGS), in addition to the Investor Compensation Company which is responsible for the Investor Compensation Scheme (ICS); and
- Where it is decided that it is not appropriate to place a failing credit institution or investment firm into resolution under the BRR Regulations, the Central Bank may consider it appropriate in the case of such institutions to petition the Court for winding up proceedings. Any payments due to eligible depositors and/or investors of the institution would then be determined by the DGS and ICS (up to the statutory protection limits).

²² Central Bank of Ireland, *Internal Rules of the Central Bank of Ireland as Resolution Authority Regarding Professional Secrecy and Information Exchanges between the Resolution Authority and Other Functional Areas of the Central Bank for the Purposes of the European Union (Bank Recovery and Resolution) Regulations 2015* ([Link](#)).

²³ For LSIs, this may also involve consultation with the European Central Bank.

Box 1: The DGS²⁴

The Central Bank is the national designated authority for the DGS in Ireland²⁵ and therefore administers the DGS. The DGS protects deposits eligible for protection²⁶ up to 100,000 EUR per depositor per institution in the event of a bank, building society or credit union authorised by the Central Bank being unable to repay deposits. Certain deposits, known as temporary high balances, may qualify for compensation in excess of 100,000 EUR in limited circumstances.

Compensation payments are based on details of depositors and their accounts provided to the DGS by the liquidator of the defaulting institution (where the institution is being wound up).

The Central Bank annually, calculates the DGS contributions that in-scope institutions need to pay, having regard to EBA guidelines on methods for calculating contributions to DGSs.

Box 2: The ICS²⁷

The ICS is administered by the Investor Compensation Company, an independent body. The ICS compensates eligible investors²⁸ where investment firms are determined unable, due to their financial circumstances, to meet their client obligations.

The ICS is primarily funded by levies paid by investment firms that are members of the scheme.

The ICS provides that eligible investors can be reimbursed up to 90 per cent of the money they have lost, capped at a maximum of 20,000 EUR (i.e. 'compensatable loss').

The Central Bank's Role in Liquidations

45. For most institutions, the Central Bank would expect to conclude that the resolution objectives could be achieved to the same extent by winding-up (liquidating) the institution.²⁹ Where that is the case, the institution may be subject to a modified Central Bank-involved liquidation (CBIL) procedure.³⁰

²⁴ (DGS Website [Link](#)).

²⁵ European Union (Deposit Guarantee Schemes) Regulations 2015 (S.I. No. 516 of 2015 ('DGS Regulations')).

²⁶ As defined in DGS Reg. 3.

²⁷ (ICS Website [Link](#)).

²⁸ As defined in Section 2 of the Investor Compensation Act 1998.

²⁹ In its assessment of the public interest assessment as a condition for resolution pursuant to BRR Reg. 62.

³⁰ Under Part 7 of the *Central Bank and Credit Institutions (Resolution) Act 2011* (No. 27 of 2011) or Reg. 148 of the *European Union (Markets in Financial Instruments) Regulations 2017* (S.I. No. 375 of 2017), as applicable.

46. In such cases, the Central Bank will initiate a CBIL procedure for a failing institution by applying to the Court for an order winding-up that institution.
47. Further details on the Central Bank's roles within CBIL procedures are specified in Part IV of this document.

Conditions for the Use of Resolution Tools or Liquidation

48. The use of resolution tools, or liquidation, is a final resort for dealing with a failing institution. The process broadly involves four stages and these stages may, depending on the circumstances, happen in quick succession. In some cases, a step may not occur at all, for example where an institution deteriorates so rapidly that there is insufficient time to activate its recovery plan before failure:
- Going concern supervision, where the institution is not in stress and complies with its regulatory requirements;
 - Recovery plan activation, where the institution has become distressed and it attempts to remedy the situation by taking certain pre-planned recovery actions;
 - Early intervention, where the institution's situation has deteriorated further and the competent authority exercises appropriate powers to try and restore the institution's stability;
 - Resolution or liquidation, where the institution fails and is subject to a liquidation process or use of one or more of the resolution tools, having regard to the institution's resolution plan.
49. Three conditions must be satisfied before an institution may be subject to resolution tools or liquidation.³¹ The first is that the institution is FOLTF.³² An institution will be deemed FOLTF if various conditions are met, or there are clear indications supporting such a determination, for example:
- a) The institution infringes or will, in the near future, infringe its minimum conditions of authorisation;
 - b) The value of assets of the institution are, or will in the near future, be less than the value of its liabilities;
 - c) The institution is, or will in the near future be, unable to pay its debts or other liabilities as they fall due;

³¹ Article 18 SRMR/BRR Reg. 62.

³² An analogous ground to the resolution condition in the BRR Regulations applies for the purposes of petitioning the Court for winding up under Part 7 of the *Central Bank and Credit Institutions (Resolution) Act 2011* (No. 27 of 2011) or Regulation 148 of the *European Union (Markets in Financial Instruments) Regulations 2017* (S.I. No. 375 of 2017), as applicable.

- d) Extraordinary public financial support is required, except in certain circumstances and subject to the approval of the European Commission.³³

50. The second condition for use of the resolution tools is that there is no reasonable prospect that any alternative private sector measures taken in respect of the institution would prevent the failure of the institution within a reasonable timeframe, having regard to timing and other relevant circumstances. Such alternative measures include:

- Institution-led or private sector solutions that address the institution's financial deterioration and potential risk to creditors, in line with identified recovery options.
- Supervisory action taken by the competent authority, including early intervention measures such as:
 - ❖ Limiting shareholder dividend or staff bonus payments;
 - ❖ Requiring changes to the legal or operational structures of the institution;
 - ❖ Requiring the institution to negotiate a debt structuring with creditors.
- Write-down or conversion of relevant capital instruments and eligible liabilities in accordance with the BRR Regulations.

51. The third condition for use of resolution tools is that use of one or more resolution tools is necessary in the public interest.

Public Interest Assessment (PIA)

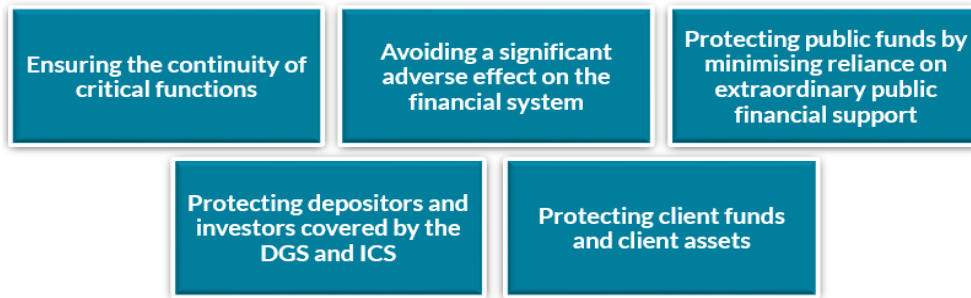
52. Use of resolution tools may only occur where this is in the public interest.³⁴ In determining the public interest for this purpose, the Central Bank must have regard to the prescribed resolution objectives.³⁵ These objectives are not ranked in an order of priority:

³³ Extraordinary financial support can take the following forms: (i) a State guarantee to back liquidity facilities provided by the Central Bank; (ii) a State guarantee of newly issued liabilities; (iii) an injection of own funds or purchase of capital instruments at prices and on terms that do not confer an advantage upon the institution, where neither the circumstances referred to in subparagraphs (a), (b), or (c) above nor the circumstances referred to in Regulation 95(4) are present at the time the public support is granted.

³⁴ Pursuant to Article 18(1)(c) SRMR/BRR Reg. 62(1)(c).

³⁵ Article 14 SRMR/BRR Reg. 61.

Figure 3: The Resolution Objectives



- The '*continuity of critical functions*' resolution objective is particularly concerned with the potential impact of a sudden disruption of one or more specific functions, such as deposit-taking or lending on the real economy;
- The '*financial stability*' resolution objective is particularly concerned with preventing significant contagion (which may be direct or indirect), including to market infrastructures. This objective is also concerned with maintaining market discipline.
- The '*protection of public funds*' resolution objective aims to minimise reliance on extraordinary public financial support. Such reliance (dependency) may arise where an institution needs extraordinary public financial support to continue carrying out its economic activities;
- The '*protection of covered depositors and investors*' resolution objective aims to ensure that depositors and investors covered by the DGS and ICS (see Boxes 1 and 2) would be sufficiently protected in resolution. This mitigates the risk of contagion to other institutions, bank runs and wider instability as a consequence of loss of confidence in the ability to recover deposits and/or investment instruments; and
- The '*protection of client funds and assets*' resolution objective aims to ensure that client funds and client assets would receive adequate protection in resolution. Such protection could entail (1) ensuring that client funds and assets can be returned to the respective owners in full, and (2) ensuring timely access to such funds and assets.

Box 3: Critical Functions

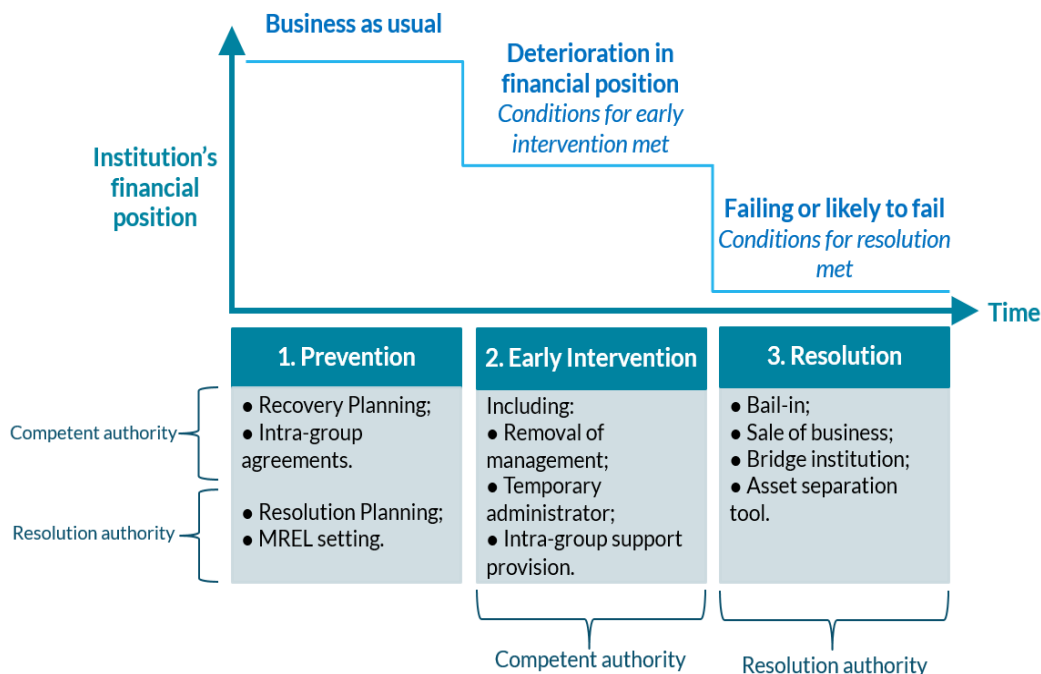
Critical functions³⁶ refers to activities, services, or operations, the discontinuance of which is likely in one or more EEA States to:

- lead to the disruption of services that are essential to the real economy; or
- disrupt financial stability due to the size, market share, external and internal interconnectedness, complexity or cross-border activities of an institution or group, with particular regard to the substitutability of those activities, services or operations.

Examples of functions that could be considered critical include deposit-taking, lending, payments settlement and clearing, capital markets activities, and wholesale funding.

53. Use of resolution tools must be necessary for the achievement of, and be proportionate to, one or more of the above resolution objectives. Furthermore, it must be determined that liquidation of the institution would not meet those resolution objectives to the same extent.
54. When pursuing the resolution objectives, the Central Bank would also aim to minimise the cost of resolution and avoid unnecessary destruction of value.³⁷

Figure 4: Steps to Resolution



55. The Central Bank employs the PIA on an *ex ante* basis for resolution planning, in addition to the determination on the conditions for

³⁶ As defined in BRR Reg. 3.

³⁷ Article 14(2) SRMR/BRR Reg. 61(3).

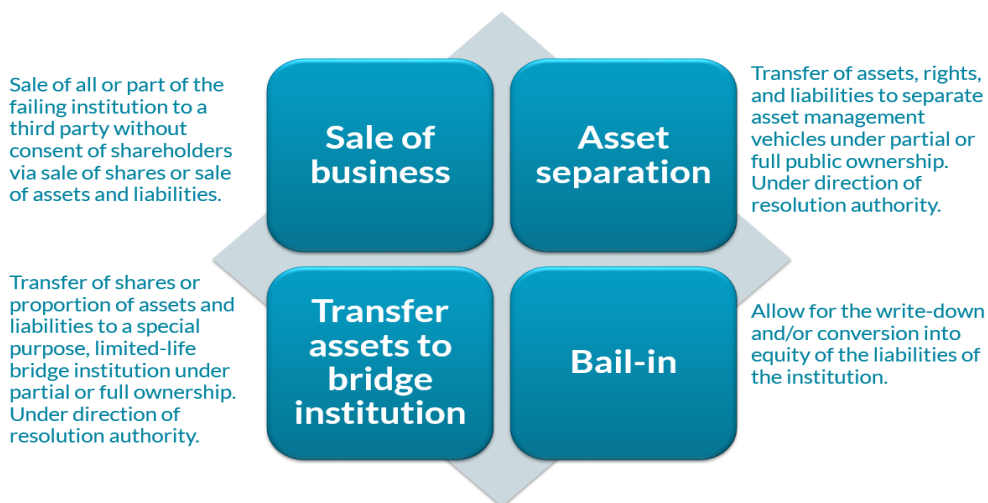
resolution. For resolution planning purposes, two scenarios are taken into consideration; (i) where the institution's failure occurs at a time of general financial instability or system-wide adverse events, and (ii) where the institution's failure is caused by institution-specific factors.³⁸

Resolution Tools

56. The Central Bank has a number of resolution tools under the BRR Regulations which it could apply to Court to use for an institution which is a candidate for resolution. Most of the tools could be used on an individual or combined basis and would aim to achieve the resolution objectives. The resolution tools are:

- Bail-in;
- Sale of business;
- Bridge institution; and
- Asset separation.

Figure 5: The Resolution Tools



57. Further information on the resolution tools can be found in Annex I of this document.

Minimum Requirement for Own Fund and Eligible Liabilities (MREL) and Subordination

58. In a resolution scenario, the costs should be borne by the shareholders of and investors in the institution under resolution. In order to ensure this, institutions must have a sufficient level of loss absorbing capital and appropriate liabilities. This is especially important to enable effective use of the bail-in tool, which in turn is central to fulfilling resolution objectives and restoring an institution's capital position after resolution. MREL, which is the regulatory minimum capital and 'bail-inable' liabilities

³⁸ For additional information on system-wide adverse events, see the SRB's *Addendum to the Public Interest Assessment: SRB Approach* (May 2021) ([Link](#)).

that must be held by an institution, is therefore crucial in underpinning institutions' resolvability.

59. Subordination of liabilities is a key enabler for the resolution framework. It is about establishing a clear order of creditor priority, meaning that subordinated liabilities, such as subordinated debt, absorb losses before other more senior liabilities, such as certain deposits.²⁷ The subordination of liabilities used for MREL can substantially increase the likelihood of a successful resolution because it simplifies the use of the bail-in tool.
60. In addition, a minimum subordination requirement ensures that a sufficient quantum of the appropriate types of instruments are on the balance sheet to effectively absorb losses and facilitate smooth recapitalisation in resolution.
61. In this way, subordination helps mitigate risks, including the '*no creditor worse off*' (NCWO)²⁸ risks resulting from: (i) having bail-inable instruments ranking *pari passu* with operational liabilities and any other liabilities excluded from bail-in; or (ii) having to exercise a discretionary power to exclude some liabilities under exceptional circumstances.
62. Further details on the Central Bank's expectations on MREL and subordination can be found in the Central Bank's *Approach to MREL*.

The Creditor Hierarchy

63. When applying the bail-in tool, the Central Bank would be required to respect a hierarchy of claims, consistent with key principles underpinning resolution. These principles specify that shareholders must bear first losses, followed by creditors.³⁹ As there may be many types of creditors of an institution, a further principle is that the Central Bank must endeavour to ensure that creditors bear losses in accordance with the applicable order of priority of their claims.

The 'No Creditor Worse-off' (NCWO) Principle

64. No creditor should incur greater losses in resolution than they would otherwise have incurred under the Irish insolvency hierarchy had the institution hypothetically been liquidated.⁴⁰ This is commonly referred to as the NCWO principle.

Ranking of Deposits

65. DGS-eligible covered deposits⁴¹ are outside the scope of the bail-in tool, thereby enjoying an exempted status.
66. Other deposits may be in scope of the bail-in tool. In the creditor hierarchy, the parts of eligible deposits of natural persons and micro,

³⁹ Article 15(1)(a)-(b) SRMR/BRR Reg. 64(1)(a)-(b).

⁴⁰ Article 15(1)(g) SRMR/BRR Reg. 64(1)(g).

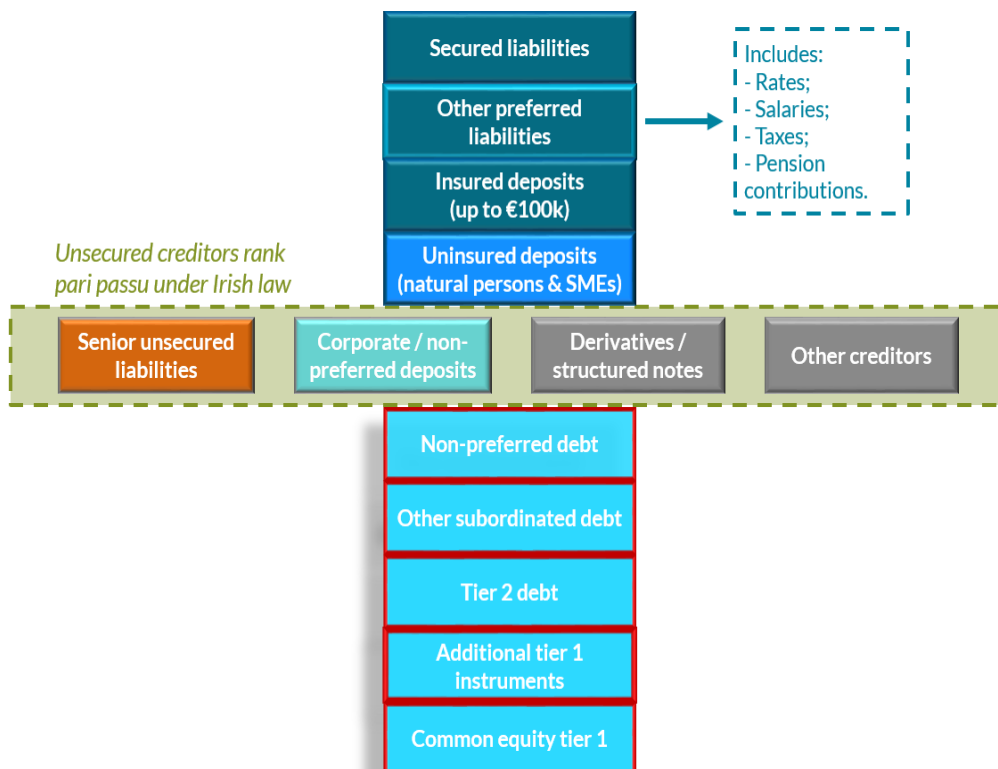
⁴¹ Up to 100,000 EUR.

small and medium enterprises (SMEs)⁴² exceeding the DGS coverage level (i.e. 100,000 EUR) rank ahead of and are therefore said to be ‘preferred’ to other unsecured creditors (which may include deposits not eligible for DGS coverage, i.e. non-covered, non-preferred deposits).

Bank Creditor Hierarchy in Ireland

67. Creditors of institutions are subject to bail-in according to a statutory creditor hierarchy⁴³ which governs the sequence of write down and conversion of liabilities in a bail-in scenario and in accordance with the BRR Regulations. For example, non-preferred senior unsecured debt ranks junior to, or has a lower priority than, certain other unsecured creditor claims. This debt would be bailed-in after other subordinated debt but before other senior liabilities in order to assist with meeting the NCWO principle.

Figure 6: The Creditor Hierarchy under Irish Law



Resolution Funds

68. The BRR Regulations and the SRMR establish resolution financing arrangements that may be relied upon where necessary in a resolution event; the national Bank and Investment Firm Resolution Fund (BIFR) and the SRM-level SRF respectively.

⁴² As defined with regard to the annual turnover criterion referred to in Article 2(1) of the Annex to Commission Recommendation 2003/361/EC.

⁴³ BRR Reg. 87.

69. Subject to strict conditionality, the resolution funds may only be used to ensure the effective application of resolution tools for the following purposes to:⁴⁴

- Guarantee the assets or the liabilities of an institution under resolution;
- Make loans to, or purchase assets, of an institution under resolution;
- Make contributions to a bridge institution, and/or an asset management vehicle;
- Pay compensation to shareholders or creditors, where applicable;
- Make a contribution to an institution under resolution, to compensate for the exclusion of certain creditors from the scope of bail-in.

70. The national fund administered by the Central Bank, the BIFR, covers Irish investment firms and non-EEA (i.e. *'third-country'*) branches that are in-scope of the BRR Regulations.⁴⁵ Every year, the Central Bank issues regulations⁴⁶ setting out the method for calculating the annual *ex-ante* BIFR levies payable by certain types of investment firms,⁴⁷ as well as third-country branches.

71. The SRM-level fund administered by the SRB, the SRF, covers all credit institutions in the Euro Area, including LSIs.

72. Both the BIFR and the SRF are funded by *ex-ante* levies paid in by institutions on an annual basis.⁴⁸ The available financial means of the SRF is to be at least 1 per cent of DGS-protected deposits of all the credit institutions authorised in the Banking Union Member States by 2024.⁴⁹ A target level of at least 1 per cent of Irish DGS-protected deposits by 2024, taking into account contributions paid into the SRF by Irish banks, is the basis on which BIFR levies are calculated.

73. During the SRF transitional period, contributions will be allocated to different national compartments, which are subject to a progressive

⁴⁴ Pursuant to Article 76 SRMR/BRR Reg. 164. A combination of these actions may also be used.

⁴⁵ Prior to the establishment of the SRM, the BIFR also covered Irish credit institutions, which have since migrated to the SRF.

⁴⁶ Central Bank of Ireland, *Bank and Investment Firm Resolution Fund* ([Link](#)).

⁴⁷ Investment firms excluded from the definition of 'investment firm' in accordance with Article 3(2) of Commission Delegated Regulation (EU) No 2015/63 supplementing Directive 2014/59/EU of the European Parliament and of the Council with Regard to Ex Ante Contributions to Resolution Financing Arrangements.

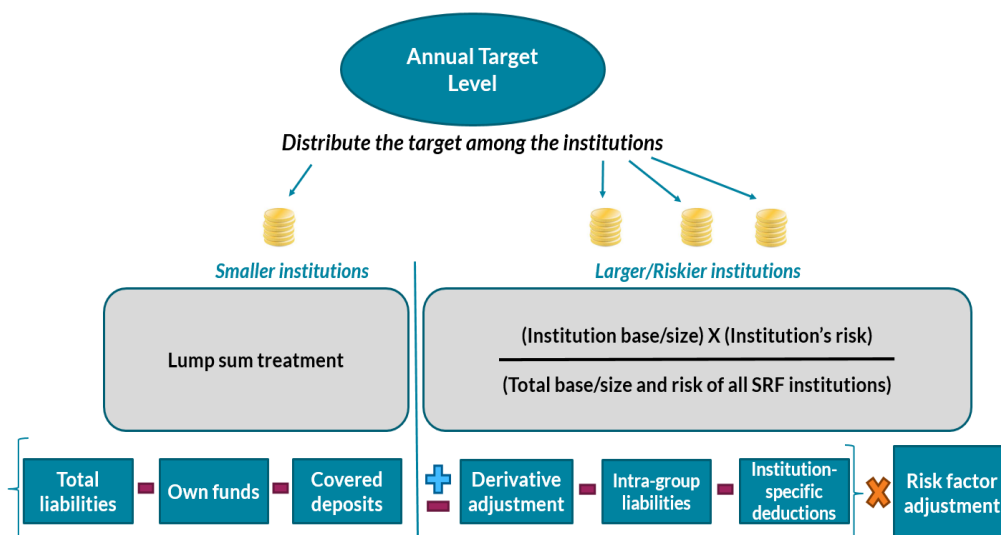
⁴⁸ *Ex-post* levies may also be raised in the event that there is reliance on the SRF or BIFR in a resolution event.

⁴⁹ Formal agreement was achieved for a common backstop to the SRF for the provision of liquidity support from the European Stability Mechanism (ESM), which will enter into force by the beginning of 2022. See European Stability Mechanism, *What is the Common Backstop?* ([Link](#)). Also see Statement of the Eurogroup in Inclusive Format on the ESM Reform and the Early Introduction of the Backstop to the SRF (30 Nov. 2020) ([Link](#)).

merger so that they will be fully mutualised at the end of the transition period.⁵⁰

74. The SRB is responsible for the calculations of SRF contributions for credit institutions, based on information received from the credit institutions and collected by NRAs on the SRB's behalf. The Central Bank thus collects the SRF contributions from Irish credit institutions on behalf of the SRB and transmits those contributions to the SRB on behalf of the State on an annual basis. The Central Bank is responsible for the calculation of contributions to the BIFR.
75. Contributions to both the BIFR and the SRF take into account the annual target level as well as the size and the risk profile of institutions. Contributions are generally risk-based, with 'risk pillars' and various risk indicators used to assess the risk profile of institutions within the scope of Commission Delegated Regulation (EU) 2015/63.⁵¹

Figure 7: Risk-Based Calculation Methodology for Fund Contributions



Multinational Cooperation⁵²

76. The Central Bank has multinational cooperation, including joint decision-making, obligations with respect to certain institutions. These would arise in at least the following situations:

- An institution forms part of a multinational group but which is not a cross-Banking Union group referred to in paragraph 15; and/or

⁵⁰ Various Member States, *Agreement on the Transfer and Mutualisation of Contributions to the Single Resolution Fund* ([Link](#)).

⁵¹ Commission Delegated Regulation (EU) 2015/63 supplementing Directive 2014/59/EU on of the European Parliament and of the Council with regard to Ex Ante Contributions to Resolution Financing Arrangements. The Central Bank aligns itself with the SRB's approach towards risk pillars and risk indicators in this regard.

⁵² Excluding cross-Banking Union groups.

➤ An institution has a significant branch⁵³ in the EEA.

77. For multinational groups headquartered in Ireland, the Central Bank will generally establish a resolution college. These resolution colleges would bring the Central Bank and the other relevant resolution authorities together to discuss and agree on group resolution planning and related issues.⁵⁴ In this situation, the Central Bank would be the group-level resolution authority (GLRA).
78. Where a parent of an institution is situated outside Ireland, the Central Bank may be invited to attend the group resolution college and/or crisis management group (CMG) chaired by the resolution authority (i.e. the GLRA) responsible for the parent of the group.
79. Where there is an Irish subsidiary of a third country institution, or a significant third-country branch in the State, and either (as applicable):
 - a) The Irish subsidiary institution itself has a subsidiary in another EEA State outside the Banking Union Area, or another subsidiary institution of that same third-country institution which is also the Irish subsidiary's parent is located in any other EEA State; or
 - b) There is at least one other significant third-country branch of the same third-country institution located in another EEA State.

In such cases, the Central Bank, and the other relevant EEA resolution authorities, will establish a European Resolution College (ERC) for those entities within the EEA.⁵⁵

⁵³ As defined in BRR Reg. 3(1), meaning a branch that would be considered significant in accordance with Article 51 of the EU Capital Requirements Directive.

⁵⁴ Requirements for, and expectations of, resolution colleges are specified in Commission Delegated Regulation (EU) 2016/1075 supplementing Directive 2014/59/EU.

⁵⁵ BRR Reg. 153.

Part III Resolution Planning and Resolvability

Overview

- 80. The Central Bank has a statutory responsibility to draw up resolution plans and conduct resolvability assessments for institutions within scope of the BRR Regulations.⁵⁶
- 81. Resolution planning is the process whereby the Central Bank engages with institutions in order to determine their PRS and to ensure that they are sufficiently prepared for the implementation of resolution action in the event of failure.
- 82. When drafting a resolution plan, the Central Bank will assess the extent to which a bank is resolvable by considering whether the institution can be feasibly and credibly wound-up through a CBIL procedure or if the use of resolution tools may be required to maintain financial stability.
- 83. This Part of the document outlines the Central Bank's general perspectives on resolution planning and resolvability, and the key considerations for the Central Bank in this area.

Key Objectives of Resolution Planning

- 84. To prepare for the effective use of its resolution powers in a timely, orderly manner in a resolution event, the Central Bank needs to undertake advance resolution planning. Resolution planning underpins the PRS for an institution, which needs to be both feasible and credible, and is supported through the resolvability assessment. Alternative (i.e. variant) resolution strategies may also be determined.⁵⁷
- 85. The PRS for institutions is determined by the Central Bank in the course of resolution planning, working (where applicable) in cooperation with the institution and responsible authorities in other jurisdictions where an institution may form part of a group. It should, however, be noted that the PRS for an institution would be reassessed at the point of a FOLTF event.

Resolution Planning Process and Information

The Central Bank's Resolution Planning Obligations

- 86. Resolution plans must be reviewed and, where appropriate, updated at least annually by the Central Bank. Resolution plans document the PRS

⁵⁶ Where there is an assessment in relation to intermediate parent undertakings, resolvability will form part of that assessment.

⁵⁷ For further requirements on PRS and variant strategies, see Commission Delegated Regulation (EU) 2016/1075.

for an institution, including which resolution tools to apply, in addition to an assessment of the resolvability of the institution.

87. Resolution planning is an iterative process between institutions and the Central Bank, and may require dialogue and cooperation with other relevant stakeholders.
88. The Central Bank as NRA liaises with the relevant competent authorities in the context of resolution planning and, more generally, in terms of new authorisations and ongoing surveillance of institutions' financial condition.

The Central Bank also consults with the SRB on certain decisions regarding LSIs before adopting them.

Where an institution forms part of a multinational group, the Central Bank would be subject to group resolution planning procedures. These procedures would depend on whether the Central Bank is the GLRA (where the institution is the EEA group parent) or is the resolution authority for a group subsidiary, i.e. where the institution is a subsidiary of a group parent in another jurisdiction.

89. The Central Bank undertakes resolution planning based on a cyclical process. This resolution planning cycle generally follows four stages:
 - i. Information-gathering;
 - ii. PRS determination & plan development to operationalise the PRS;
 - iii. Resolvability assessment; and
 - iv. Addressing impediments to resolution.

Figure 8: The Resolution Planning Cycle



Resolution Planning Information Sources

90. In drawing up institutions' resolution plans, the Central Bank as NRA requests, in the first instance, relevant information⁵⁸ already available

⁵⁸ Part 2 of the Schedule to the BRR Regulations.

to the NCA which has oversight of the institution. Where the relevant information is not already available, or not available in the appropriate format, the Central Bank as NRA may direct an institution to provide the Central Bank with all necessary information.

91. The Central Bank expects such requests to occur at least annually and for them to be aligned with templates contained in applicable Commission Regulations.⁵⁹ The timings and deadlines for such returns are institution-specific.
92. For institutions that fall within the scope of simplified resolution planning obligations ('*simplified obligations*' or '*SO*'),⁶⁰ the level of information which will be required annually may be reduced on a case-by-case basis where appropriate to do so.
93. Institutions subject to reduced resolution plan information requests should not assume that this would necessarily determine that they would be liquidated if they failed.
94. The Central Bank may also have regard to various guidance and templates,⁶¹ as appropriate, on relevant resolution topics produced by the SRB, other NRAs or international bodies when assessing returns from LSIs.
95. Where it is appropriate and open to the Central Bank to do so, the Central Bank may amend a request and/or its assessment in order to focus on specific issues of concern in relation to a specific institution under its direct remit on a case-by-case basis.
96. In addition to regular information requests, the Central Bank may conduct resolvability workshops and on-site inspections with institutions on an *ad-hoc* basis.⁶² The Central Bank may also commission other reports and investigations where necessary.
97. Furthermore, the Central Bank may, where deemed necessary and appropriate, direct institutions to cooperate with the Central Bank in the preparation, updating, and implementation of resolution plans and to provide relevant documentation. This includes, but is not limited to, developing playbooks on how institutions would operationalise resolution tools internally or by providing sufficient operational guidance for orderly failure.

Annex IV contains more detail on Central Bank expectations regarding resolution tool playbooks.

98. Where appropriate, the Central Bank may request the submission of an orderly wind-down plan on an *ex-ante* basis, i.e. when an institution is not experiencing financial difficulties. The purpose of such an exercise

⁵⁹ Commission Implementing Regulation (EU) 2018/1624 of 23 October 2018 laying down Implementing Technical Standards with regard to Procedures and Standard Forms and Templates for the Provision of Information for the Purposes of Resolution Plans for Credit Institutions and Investment Firms pursuant to Directive 2014/59/EU of the European Parliament and of the Council, taking note of any relevant amendments due.

⁶⁰ As determined by the Central Bank in accordance with Article 11 SRMR/BRR Reg. 10.

⁶¹ For example, Single Resolution Board, *Critical Functions: SRB Approach* ([Link](#)).

⁶² Such workshops and on-site inspections may be Central Bank or SRB-led.

would be to assess an institutions' plan and readiness for the cessation of the institution's activities with minimal disruption, to examine considerations the board of the institution has given to the scenario, including the identification of impediments to its successful execution.

If requested, a wind-plan should provide a detailed outline of the operational considerations necessary to effectively execute a winding down of the institution's operations, which may differ depending on the institution's resolution strategy.

Annex V contains an outline of the key constituents of a wind-down plan.

99. Submissions made by each institution are also intended to serve as a mechanism for institutions to demonstrate their resolvability. While the Central Bank validates and examines the data presented, it is the responsibility of each institution to ensure its assigned PRS can be operationalised.

Resolution Planning Assumptions

100. In preparing resolution plans, as well as assessing the resolvability of institutions, the Central Bank will not assume:
- Any extraordinary public financial support;
 - Any emergency liquidity assistance provided by the Central Bank or another central bank;
 - Any other liquidity assistance provided by the Central Bank or by another central bank under non-standard collateralisation, duration and interest rate terms.

Contents of Resolution Plans

101. Resolution plans set out options for the Central Bank in applying its resolution tools and powers and contain key information on, for example: interconnections and continuity of critical functions in resolution; access to FMIs; a description of the PRS and any variant resolution strategies that could be applied.⁶³

⁶³ See Commission Delegated Regulation (EU) 2016/1075 and BRR Reg. 18 for further information on the content of resolution plans.

Box 4. Resolution Plan Format

Strategic Business Analysis	As the first step, a detailed overview of the institution is produced. The overview describes the institution's structure, financial position, business model, critical functions, core business lines, internal and external interdependencies and critical systems and infrastructures.
PRS	An assessment is then completed as to whether, in case of failure, the resolution objectives are best achieved by liquidating the institution under winding-up proceedings or, alternatively, resolving it using the resolution tool(s). In order to complete such an assessment, the Central Bank first assesses the credibility and feasibility of liquidation. If liquidation is not deemed credible and feasible, a PRS based on one or more of the resolution tools is developed. In addition, the loss absorbing capacity of the institution is assessed and a determination is made by the Central Bank on MREL.
Financial and Operational Continuity in Resolution	When the resolution strategy has been determined, the financial and operational prerequisites to ensuring continuity in resolution and achieve the resolution objectives are assessed within the resolution plan.
Information and Communication Plan	This step describes the operational arrangements and procedures required to provide resolution authorities with all necessary information (during the resolution planning stage and in the event of resolution) and the arrangements regarding Management Information Systems (MIS). This aims to ensure timely, up-to-date and accurate information is available, together with the communication strategy.
Conclusion and Resolvability Assessment	In this step, it is assessed whether impediments exist to the winding-up (liquidation), or the resolution, of the institution. Where either liquidation or resolution are not credible, appropriate measures to address such impediments are identified.
Opinion of the Institution and Transmission of the Plan	Where applicable, the opinion of the institution on the resolution plan is recorded in the plan. The final resolution plan is transmitted to the NCA and a summary of the final plan is transmitted to the institution.

Financial and Operational Continuity in Resolution

102. In order to effectively implement the PRS, it must be ensured that arrangements are in place to ensure the continuation of critical functions during, and after, resolution. The key principles of operational continuity are outlined in Annex III of this document; institutions are expected to demonstrate to the Central Bank's satisfaction that they are implementing those principles.
103. A distinction can be made between financial arrangements to preserve operational continuity, operational arrangements to preserve operational continuity, and arrangements regarding access to FMIs to preserve continuity. Therefore, it should be ensured that, for example, staff, IT systems, operational assets and other internal or external services essential to institutions' critical functions remain in place or are replaced without causing significant interruption to the provision of the critical functions. The manner in which the operational continuity of the services essential to institutions' critical functions is ensured will depend on the specific service delivery model(s) employed by each institution.
104. The Central Bank's approach in terms of assessing financial and operational continuity is to determine the critical services that are essential to continue the institution's critical functions during, and after, resolution. These critical services are determined on the basis of an analysis of internal and external operational interdependencies and their capacity for repair in adverse events.
105. Where the Central Bank deems it necessary, it may also require an operational continuity plan to be drafted by institutions as part of the resolution plan, detailing how they ensure all critical services underpinning critical functions could be continued during, and after, resolution.
106. In this respect, it is important that institutions have in place service level agreements (SLAs) for essential services that would remain valid and enforceable during resolution and that, in case of termination, provide for an appropriate transfer of the service to another service provider. Furthermore, it must be ensured that, for example, appropriate and robust MIS are in place and that the necessary regulatory or commercial licences can be smoothly continued or transferred in resolution.
107. The Central Bank expects institutions to maintain detailed records of financial contracts where a resolution plan, or a group resolution plan, foresees the taking of resolution actions where the conditions for resolution are met, and may impose a direction on an institution to do so. The Central Bank expects such records to be maintained in a manner consistent with relevant Commission regulations in this

area.⁶⁴ Institutions should note that, upon the request of the Central Bank, an institution will be expected to make available and transmit the requested information on financial contracts to the Central Bank within the timeline specified in any such a request.

108. The Central Bank may also, on a case-by-case basis, direct institutions with a PRS of liquidation to comply with the requirements referred to in paragraph 107.

Funding Strategy Elements of Resolution Plans

109. The financial strategy and arrangements of institutions must ensure that, during and after resolution, access to sufficient liquidity and funding is maintained, or regained, to safeguard the continuation of critical functions. This is regardless of whether those critical functions would remain within an institution under resolution, or would be transferred to a third party purchaser or to a bridge institution.
110. While resolution funds ensure the effective application of the resolution tools (such as making contributions to a bridge institution), liquidity in resolution is concerned with ensuring that the residual institution which carries the remaining critical functions has sufficient liquid assets (such as cash) in order to ensure its viability both during and post-resolution. This is a particularly relevant issue as institutions are likely to face liquidity stress both during and after resolution due to the hesitance of market participants to provide funding as a result of information asymmetries regarding the viability of the institution.⁶⁵
111. On the basis of the PRS and the relevant scenarios, the Central Bank analyses the liquidity and funding required during and after resolution and takes into account any adverse conditions, such as the potential inability to rollover unsecured debt, deposit outflows and rating implications, as well as the need to restore market confidence.
112. Against that backdrop, the Central Bank assesses, in the first instance, what internal sources of liquidity and funding would be available within institutions and, in the second instance, what external private and public sources would be accessible.
113. In this regard, the Central Bank assesses when and how institutions could apply for use of regular central bank facilities and what assets would be available as collateral for these facilities. However, in preparing and assessing a resolution plan and assessing resolvability

⁶⁴ Commission Delegated Regulation (EU) 2016/1712 supplementing Directive 2014/59/EU of the European Parliament and of the Council Establishing a Framework for the Recovery and Resolution of Credit Institutions and Investment Firms with regard to Regulatory Technical Standards Specifying a Minimum Set of the Information on Financial Contracts that Should be Contained in the Detailed Records and the Circumstances in which the Requirement Should be Imposed.

⁶⁵ See SRB's *Liquidity and Funding in Resolution* for further information on the liquidity and funding in resolution (March 2021) ([Link](#)).

of an institution, the Central Bank does not assume any extraordinary public financial supports other than through use of the resolution fund, or provision of central bank emergency liquidity assistance.

114. In order to maintain adequate funding during and following resolution events as part of the considerations when developing the resolution plan, institutions must be able to:
- Identify assets available to be mobilised and used as collateral;
 - Identify any legal or technical obstacles in accessing such assets; and
 - Measure and monitor asset encumbrance levels.
115. The Central Bank also expects institutions to be capable of providing, at any time, up-to-date, accurate information regarding liquidity and funding positions, as well as asset encumbrance levels.
116. The Central Bank undertakes the above-mentioned assessments having regard to institutions' resolution plans and strategies, as well as the nature, scale and complexity of institutions and their activities.

Assessing Resolvability

Feasibility and Credibility

117. As noted in paragraph 82, the Central Bank will assess resolvability by considering the feasibility and credibility of winding up the institution or of using resolution tools. Therefore, in circumstances where resolution is deemed appropriate, the PRS and variant resolution strategies must be both feasible and credible.⁶⁶

Feasibility means the Central Bank must be able to implement the PRS and variant strategies in an effective and timely way to ensure, among other things, the continuity of critical functions.

Credibility means that the application of the preferred resolution tools should not, in themselves, result in adverse broader consequences for the financial system and real economy to an unacceptable extent.

118. Institutions for which liquidation has been selected by the Central Bank as the PRS must also ensure that all reasonable efforts are made to prepare for and facilitate an orderly liquidation. Such institutions must comply with all Central Bank requests necessary to evaluate the credibility and feasibility of liquidation as their PRS.

⁶⁶ In accordance with Articles 26 to 32 Commission Delegated Regulation (EU) 2016/1075.

Resolvability Considerations

119. Resolvability assessments cover a broad range of considerations, including but not limited to:⁶⁷

- Sufficiency of loss absorption and recapitalisation capacity;
- Operational continuity in resolution (see Annex III) and Continuity of access to FMI's;
- Adequacy and capacity of institutions' MIS;
- Liquidity in resolution;
- Governance and communication; and
- Separability, complexity and restructuring plans.

120. When assessing institutions' resolvability, the Central Bank is informed by institutions' data submissions, the EU single rulebook, the SRB's Expectations for Banks, other resolution authorities' public frameworks, as well as international standard-setters' methodologies and frameworks, such as those of the FSB.

121. Where an institution's PRS is liquidation, the Central Bank generally focuses its assessment of the institution's resolvability on the:

- Protection and segregation of client assets, where applicable; and
- Provision of information needed by the DGS to effect a timely pay-out or transfer of covered deposits, where applicable.

The capability of the institution's systems to meet these ends would be a particular focus.

122. The Central Bank may choose to publish information with regards to resolvability of Irish institutions on an aggregate rather than institution-specific level. Institutions may also choose to publicly disclose information relating to their resolvability if considered appropriate to do so.

Addressing Resolvability Impediments

123. Conditions that impact negatively on the feasibility and credibility of a resolution strategy may be considered impediments to resolvability. The identification of impediments to resolvability by the Central Bank as NRA is conducted, where appropriate, at least annually, with input from institutions and the relevant competent authorities, as well as any other relevant resolution authorities (where the institution forms part of a multinational group).

⁶⁷ Part 3 of the Schedule to the BRR Regulations prescribes certain matters that must be examined at a minimum.

Initial Onus on the Institution

124. Institutions are expected to establish and maintain the appropriate procedures and systems to address, maintain and improve all aspects of resolvability. Institutions may be required to conduct a resolvability self-assessment to identify potential impediments to the resolution strategy.
125. In the event that the Central Bank identifies one or more potential impediments to the resolvability of an institution, the Central Bank's first preference is to work with the institution, which should seek to remove the potential impediments.

This engagement with institutions may involve workshops to discuss issues relevant for the resolvability assessment.

The Central Bank communicates the identified potential impediments, and its expectations regarding their removal, to institutions on a case-by-case basis, including through the annual resolution plan communication to the institution.

126. The Central Bank may require an institution to submit a credible work plan for the remediation of identified impediments with concrete milestones, deliverables, and timelines as part of its annual resolvability work programme. Institutions are responsible for identifying and implementing the measures needed to enhance their resolvability. The Central Bank would assess whether an institution's proposed approach or progress is adequate.
127. The Central Bank therefore generally expects institutions to propose realistic, effective measures to remedy the impediment/s in the first instance. If such measures proposed by an institution are acceptable to the Central Bank, the Central Bank will oversee and monitor remediation of the impediment/s by the institution.

Central Bank's Powers to Remove Substantive Impediments

128. The Central Bank may decide to trigger a 'substantive impediments' procedure where an institution does not submit any proposals for removing identified impediments or if any such proposals (or progress in implementing them) are considered inadequate by the Central Bank.
129. Where substantive impediments are identified, the process for the drawing-up of the resolution plan would be suspended. The Central Bank as NRA would prepare a report in cooperation with the competent authority where it notifies the institution about the substantive impediments (this would also be sent to the institution, or the EEA parent undertaking where applicable).

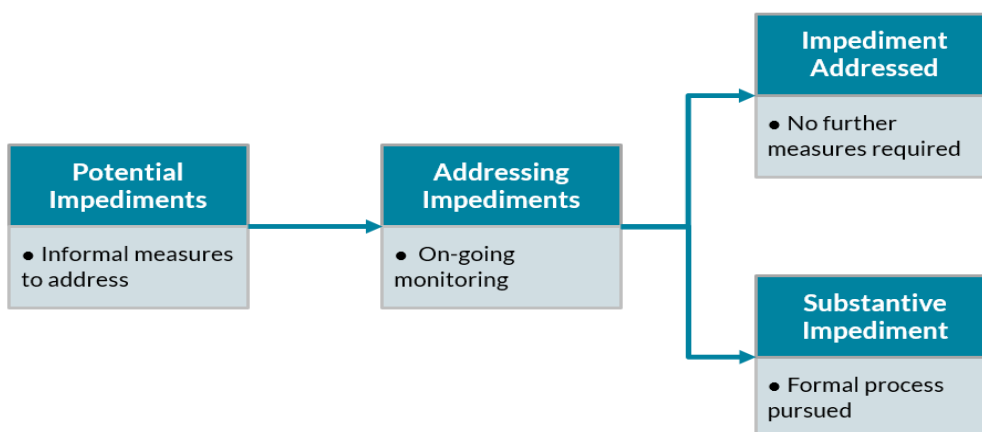
This report would recommend any proportionate and targeted measures that, in the Central Bank's view, would be necessary or

appropriate to remove those impediments. The institution would be invited to propose measures to address the impediments within four months. If the measures proposed by the institution effectively reduce/remove the substantive impediments, resolution planning would resume.

130. If the measures proposed by an institution do not effectively reduce or remove the substantive impediments to resolvability, the Central Bank may, taking into account certain (including financial stability) factors and having consulted other authorities as appropriate, direct an institution to take alternative measures to remove the substantive impediments. Examples of such alternative measures would be:

- Requiring the institution to limit or stop current or proposed future activities;
- Requiring the institution to issue MREL-eligible instruments;
- Requiring the institution to make changes to its legal or operational structures;
- Requiring the institution to revise any intra-group financing arrangements or review the absence thereof, or draw up service agreements (whether intra-group or with third parties) to cover the provision of critical functions;
- Imposing specific or regular additional information requirements relevant for resolution purposes; and
- Requiring the institution to divest specific assets.

Figure 9: Impediment Escalation Process



Part IV Conducting Resolution

Overview

131. This Part illustrates the practical application of the resolution powers and tools at the Central Bank's disposal, as well as its powers in respect of applying for and overseeing liquidation, where applicable. The Central Bank has discretion in how precisely it would exercise these powers in order to realise the resolution objectives in a specific resolution event.
132. It should also be noted that, where resolution action requires use of the SRF, the SRB (as opposed to the Central Bank) will adopt the resolution scheme for the LSI in question. Nonetheless, the Central Bank will have responsibility with regard to ensuring national implementation of any such resolution scheme.
133. Annexes I and II provide a summary of the resolution tools and an overview of the various valuations conducted prior to and following resolution action, respectively.

Multinational Resolutions⁶⁸

134. Where a failing institution forms part of a multinational group within the EEA, the Central Bank has certain notification and cooperation obligations towards the other relevant resolution and supervisory authorities, having regard to the group resolution plan. The obligations of the Central Bank and the procedures to be followed depend on whether the Central Bank is the GLRA or the resolution authority for a subsidiary of the group.
135. Where a failing institution forms part of a group extending outside the EEA, and resolution proceedings have been commenced in a non-EEA State, the Central Bank may bring a draft resolution order to the Court proposing to recognise and enforce, and give effect to those proceedings in Ireland, to the extent necessary. In deciding whether to make such a draft order, the Central Bank would have regard to a number of factors, including any implications for Irish financial stability if the resolution action was to be enforced/recognised.
136. It may be the case that, for certain institution failures, the Central Bank would exercise its resolution or liquidation initiation (i.e. the CBIL) powers in tandem with resolution powers exercised by the resolution authorities for other group entities. This may in turn depend on the PRS for the group as a whole, whether it be a single point of entry (SPE) or multiple point of entry (MPE) strategy.
137. An SPE strategy involves the application of resolution powers by a single resolution authority at the level of a single parent undertaking or of a single institution subject to consolidated supervision (the

⁶⁸ Excluding cross-Banking Union groups.

'resolution entity'). An MPE strategy involves the application of resolution powers by two or more resolution authorities to regional or functional subgroups or entities within a group.⁶⁹ SPE strategies will tend to be preferred for groups that are more centralised and intra-dependent; whereas MPE strategies will tend to be preferred for certain groups that, from a structural, management and funding perspective, have relatively more independent subsidiaries across jurisdictions.

138. Whatever the strategy, the Central Bank would, as far as possible bearing in mind its own resolution objectives, endeavour to exercise its resolution powers in a way that minimises impacts on other group entities and financial stability, especially in other EEA States where the group operates.

Resolution Decision-Making and Approval Process

139. Following a FOLTF determination, the Central Bank, in its capacity as NRA, will decide whether the conditions for resolution outlined in Part II of this document are met, and develop a resolution scheme outlining the resolution strategy to be applied to the institution alongside the rationale and approach for implementing such a strategy. Prior to taking a decision, the Central Bank may engage with the institution and initiate the process for valuing the assets and liabilities of the institution (see Annex II for an overview of valuation procedures).
140. The Governor of the Central Bank, following consultation with relevant stakeholders, will take a decision on the resolution scheme and initiate the Court approval process.⁷⁰
141. Where a decision to seek a resolution order has been taken, the Central Bank must notify the Minister, and in the case of LSIs, the SRB. In making such a decision, the Central Bank must also obtain prior written approval from the Minister in certain circumstances, for example, where the resolution order may impose a serious threat to financial stability or the economy of the State.

Judicial Approval of Resolution Order Procedure

142. In advance of resolution and the application of a resolution tool(s), the Central Bank must apply to the Court for approval of the proposed resolution order.
143. The resolution order confirms and authorises the resolution actions to be taken by the Central Bank in accordance with the resolution scheme prepared in advance by the Central Bank. An overview of the stages involved in obtaining Court approval for a resolution order is set out in Box 5.

⁶⁹ As per definitions in Article 2(5)-(6) Commission Delegated Regulation (EU) 2016/1075.

⁷⁰ The Governor may delegate this decision making power where necessary.

Box 5. Resolution Order Procedure

Stage 1: Assessment and decision of the Central Bank as NRA	Following the FOLTF determination, the Central Bank will assess whether the conditions for resolution have been met and, if they have been met, will determine the resolution tool(s) that should be used to best resolve the institution.
Stage 2: Application to Court	The Central Bank is required to apply <i>ex-parte</i> to the Court for a resolution order, which application will include the necessary supporting documentation.
Stage 3: Grant of resolution order, serving and publication requirements	In the event that the Court makes a resolution order, the Central Bank will follow the relevant procedure, which will include serving a copy of the resolution order on the institution under resolution, publishing the resolution order and any other prescribed information ⁷¹ . The institution under resolution may also have to satisfy notification and disclosure requirements at this stage.
Possible appeal to set aside the resolution order	The institution in relation to which a resolution order is made, shareholders of that institution or holders of a relevant capital instrument or liability affected by the resolution order may apply to the Court by motion on notice grounded by an affidavit, to set aside the resolution order, not later than 48 hours after the publication of the resolution order by the Central Bank. The Court may only set aside the resolution order if satisfied that the decision of the Central Bank was unreasonable or impaired by an error of law. ⁷²

Phases of Resolution Action

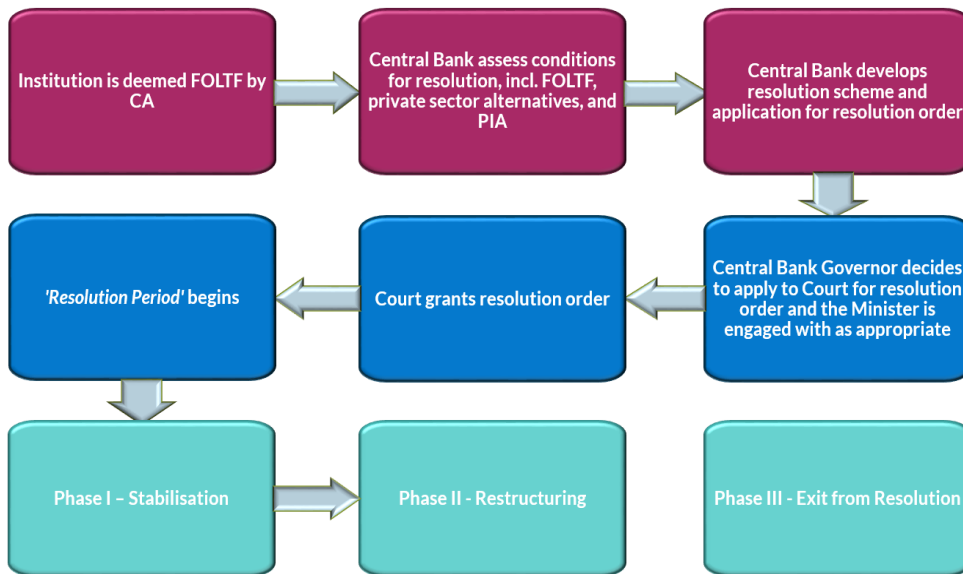
144. Regardless of the tool/s utilised, the Central Bank generally expects that the resolution of an institution would typically be conducted in broadly three phases:

- I. Stabilisation;
- II. Restructuring; and
- III. Exit from resolution.

⁷¹ See, for example, publication requirements under BRR Reg. 107. While the Central Bank would endeavour to provide as much information as possible on its own website at this point, it is possible that confidentiality obligations and market-sensitive information would restrict the amount of information that could be publicly disclosed.

⁷² See BRR Reg. 110 for further detail on this process.

Figure 10: The Resolution Process and Phases



Phase I - Stabilisation

145. Once the Court makes a resolution order, the Central Bank would then implement the resolution strategy by exercising control over the institution and by applying one or more of the resolution tools. Stabilisation would be achieved via a bail-in of the institution's eligible liabilities and/or a transfer of some or all of the institution or its business.
146. In the stabilisation phase, the Central Bank will focus on implementing the resolution strategy and it is envisaged that at least the following operational factors, will be relevant considerations:
 - Business continuity;
 - The conditions and functioning of IT systems;
 - Transfer of employees and employment contracts;
 - Authorisations, for example ensuring that any potential purchaser of the institution or part of the institution has the appropriate authorisations to carry out the business that it may acquire; and
 - Access to FMIs, such as payment, clearing and settlement systems.
147. In certain cases, the resolution order may confirm the appointment of a special manager to manage the institution under resolution by replacing the management body of the institution and facilitate the implementation of the resolution action/s specified in the resolution order.

148. The precise length of the ‘resolution period’⁷³ will be an ongoing assessment and may depend on the resolution tool applied. The Central Bank’s approach to implementing the available resolution tools is outlined hereunder.

Write-Down/Conversion and Bail-in

149. In a resolution scenario, where a capital instrument write-down and/or conversion (WDC)⁷⁴ and bail-in action is proposed to be exercised to resolve an institution, it is envisaged that the following will need to be determined:

- a) An aggregate write-down, or conversion to equity, amount in relation to the institution’s capital instruments;
- b) An aggregate amount by which affected eligible liabilities would be written down or converted to equity; and
- c) Any liabilities that would be excluded from bail-in on a discretionary basis.

150. It should be noted that certain liabilities cannot be bailed in – these include DGS-eligible deposits and fully secured liabilities. Other liabilities may be fully or partially excluded from bail-in by the Court on a case-by-case basis in a resolution order, following a proposal from the Central Bank, where one or more of the following apply:

- It is not be possible to bail-in the liability within a reasonable time;
- The exclusion is strictly necessary and proportionate to achieve the continuity of critical functions and core business lines;
- The exclusion is strictly necessary and proportionate to avoid giving rise to widespread contagion in a manner that could cause a serious disturbance to the Irish or EU economy; or
- The application of the bail-in tool to those liabilities would cause a destruction in value such that the losses borne by other creditors would be higher than if those liabilities were excluded from bail-in.

The Central Bank would be required to notify the European Commission in advance of exercising such exclusions. Where such exclusions may necessitate use of the BIFR, the discretion to exclude the liability shall only be exercised where the European Commission does not object within 24 hours (unless extended) of receiving the notification from the Central Bank. Where the European Commission has required amendments, the Central Bank must make those amendments.

⁷³ As construed in accordance with BRR Reg. 106(1) i.e. the period during which the institution or entity is considered an institution under resolution, beginning upon the making of a resolution order.

⁷⁴ It should be noted that the WDC power may also be used in conjunction with resolution tools other than bail-in, e.g. sale of business. The WDC power may also be used independently of resolution in certain circumstances – see BRR Reg. 95.

151. The Central Bank's general expectation is that institutions maintain a sufficient amount of bail-inable liabilities of the appropriate type within their MREL stack from the outset and that the holders of these instruments are readily identifiable. The Central Bank anticipates that this should reduce the likelihood of the circumstances noted in paragraph 150 arising.
152. During the resolution period, and where the WDC and bail-in tools are applied, the Central Bank would generally announce, as appropriate, that:
- The institution has entered resolution;
 - The resolution is being effected by a WDC and bail-in;
 - The level at which the action is being applied (e.g. at the level of a parent), as well as any consequent alterations to the structures or operations of material operating companies;
 - The regulatory capital instruments affected by the write-down and/or conversion;
 - The liabilities affected by the bail-in and, where applicable, those excluded from bail-in on a discretionary basis;
 - Confirming that the institution's critical functions would continue uninterrupted and that depositors and investors covered by the DGS and the ICS retain full protection;
 - The institution would open for business as usual on a specified day, with the same authorisation and regulatory status as before the resolution; and
 - Any new senior management, or special manager, replacing the previous senior management.
153. In order to give effect to bail-in, the Central Bank may also take necessary steps, as appropriate, to delist or remove from trading shares or other instruments of ownership or debt instruments, in addition to taking steps to list or admit to trading new shares or other instruments of ownership.
154. The Central Bank would expect that the institution under resolution would remain the primary point of contact for its capital instrument holders and creditors, leveraging already existing communication channels.
155. The Central Bank would therefore expect that the institution itself would provide clients with key information, such as: whether they are affected by the action; the amount of any write-down of their claims; amount of shares attributed to them in a conversion; and rights associated with their new position.

Sale of Business

156. In a sale of business resolution action, the Central Bank would expect that a willing private sector purchaser of the institution, or at least its

critical functions, would be identified during the resolution period, ideally via a marketing process. The Central Bank may dispense with a full marketing process in certain circumstances, particularly where it may undermine one or more of the resolution objectives.

157. The transfer would be expected to be on commercial terms, having regard to the particular circumstances of the case and in accordance with the State aid framework.⁷⁵

Bridge Institution

158. A bridge institution resolution action is envisaged as a temporary measure aimed at maintaining access to critical functions provided by the institution under resolution while alternative strategies are being considered. The ultimate objective is for the bridge institution's management to sell the bridge institution, or its assets, rights or liabilities, to one or more private sector purchasers. The Central Bank would establish and control the bridge institution until it is determined that, for example, the bridge institution no longer meets the requirements that facilitated its formation in the first instance.⁷⁶
159. The Central Bank would determine which assets and liabilities would transfer to a bridge institution. The Central Bank would generally expect that, where an institution is subject to this resolution tool and holds DGS-protected deposits, and/or ICS-protected instruments, then those deposits and/or instruments would at minimum be transferred to the bridge institution.
160. A bridge institution is not a permanent competitor in the market, given its nature as a temporary entity with a fixed, though extendable, lifespan.⁷⁷ The Central Bank anticipates that at an appropriate point in time the bridge institution would be disposed of.

Aspects common to both Sale of Business and Bridge Institution Tools

161. In the case of a sale of business or bridge institution resolution action⁷⁸, the Central Bank would expect that the resolution order would provide for transfer to a purchaser, or bridge institution as the case may be, of:
- a. Shares or other instruments of ownership issued by the institution under resolution; and/or
 - b. All or any assets, rights or liabilities of the institution under resolution.

⁷⁵ Article 24(2)(b) SRMR/BRR Reg. 69(3).

⁷⁶ As referred to in BRR Reg. 71(3).

⁷⁷ The resolution authority must terminate the operation of a bridge institution as soon as possible and not later than 2 years after the date on which the last transfer from an institution under resolution pursuant to the bridge institution tool was made, and can only extend the said period in limited circumstances as prescribed by BRR Reg. 73(7).

⁷⁸ See Articles 24 and 25 SRMR/BRR Reg. 69 and 71.

162. The Central Bank may also require the institution under resolution or any of its group entities to provide services or facilities necessary to a recipient to effectively operate any transferred business.

Asset Separation Tool (AST)

163. The AST facilitates the Central Bank in transferring assets and liabilities of the institution under resolution or bridge institution to an asset management vehicle (AMV).⁷⁹ This course of action may only be taken by the Central Bank in specific circumstances, for instance where the transfer is necessary to ensure proper functioning of the institution under resolution or a bridge institution.
164. It is envisaged that the AST would be used in conjunction with one or more other resolution tools. For example, the AST may be used with the sale of business or bridge institution tools where certain portfolios are not transferred to the acquiring or bridge institution.

Central Bank Disclosure when implementing Transfer Strategies

165. In circumstances where the sale of business and/or bridge institution and/or asset separation tools are applied, during the resolution period the Central Bank would expect to make certain announcements in this regard, in particular on outlining how the resolution is being effected and how critical functions should be maintained without disruption.⁸⁰

Phase II - Restructuring

166. Once an institution under resolution has had the selected resolution tool applied and has stabilised its balance sheet and capital, the Central Bank would expect that a restructuring of the institution/group would be necessary to some extent, depending on the precise nature and ramifications of the institution's failure.
167. If the bail-in tool has been applied, the management body of the institution under resolution or the special manager, as the case may be, shall draw up and submit a business reorganisation plan to the Central Bank for consideration. Any final approved plan shall be implemented by the institution under resolution or special manager.
168. A reorganisation plan must at least contain:
- A detailed diagnosis of the factors and problems that caused the institution under resolution to fail or become likely to fail, and circumstances leading to its difficulties;

⁷⁹ See Article 26 SRMR/BRR Reg. 74.

⁸⁰ Such disclosures could include, *inter alia*, that: The institution has entered resolution; The resolution is being effected by a transfer of business, the destination/s of the transferred parts of the business, as well as any assets and liabilities remaining with the institution under resolution; the institution's core functions would continue without disruption and that depositors and/or investors protected by the DGS and/or ICS remain protected; if a bridge institution has been established, details of the new senior management and board; if an AMV has been established, details regarding the setup and governance of the AMV. Where any of these tools have been used in conjunction with the bail-in tool, then these announcements would supplement the announcements foreseen for the bail-in tool.

- A description of the measures intended to restore the long-term viability of the institution under resolution that are to be adopted; and
- A timetable for implementation of those measures.

169. Measures proposed under a reorganisation plan could include:

- Reorganisation of the activities of the institution under resolution;
- Changes to the operational processes, systems and infrastructure within the institution under resolution;
- Withdrawal from loss-making activities;
- Restructuring of existing activities that can be made more competitive; or
- Sale of assets or business lines.

170. The Central Bank expects that restructuring would be required for a sale of business and/or bridge institution resolution action when transferring all or parts of the business to a private sector acquirer/s and/or bridge institution. A bridge institution may also undertake further restructuring during the period of its existence aimed at, for example, readying itself or its portfolio/s for transfer or sale.

Phase III - Exit from Resolution

171. Termination of the resolution period would be assessed on an ongoing basis and will depend on the resolution tool/s used. In a bail-in, the Central Bank would generally expect its direct involvement as NRA to largely end once the institution has new shareholder control. The subsequent business reorganisation plan may, however, take a longer period of time to implement under Central Bank oversight.

172. Where a sale of business tool is used, exit from resolution will likely occur once that process is completed. The bridge institution tool would temporarily postpone exit from resolution for the institution under resolution until, for instance, a sale of business could be effected and the Central Bank determines that the bridge institution has fulfilled its purpose. An AMV may exist for a more prolonged period of time in order to realise a favourable market value for assets transferred to it.

NCWO Principle

173. As noted in Part II of this document, resolution tools must be compliant with the NCWO principle. After a resolution action has concluded, the Central Bank would determine compliance with the NCWO principle and any compensating arrangements necessary by requiring the completion of a valuation by an independent valuer (see Annex II of this document for further information on valuations in the resolution process).

CBIL Procedures

174. As indicated in Part I of this document, the Central Bank expects there will be situations in which it would deem that the resolution objectives could be met to the same extent by the liquidation of an institution. In these situations, the Central Bank may exercise its CBIL powers.
175. In some circumstances, CBIL could be invoked parallel to one or more of the resolution tools. This may arise, for instance, in a sale of business or use of a bridge institution resolution action, with the residual institution being liquidated. Furthermore, CBIL may be exercised in support of a multinational group resolution action which involves liquidation of the Irish credit institution.
176. In the exercise of its CBIL powers for an institution, the Central Bank may petition the Court to wind up the institution and appoint a Central Bank-approved liquidator.

Credit Institutions

177. The grounds⁸¹ upon which the Central Bank may make such an application in relation to a credit institution include the following:⁸²
 - In the opinion of the Central Bank, the winding-up of that credit institution would be in the public interest;
 - The credit institution is, or in the opinion of the Central Bank may be, unable to meet its obligations to its creditors;
 - The credit institution has failed to comply with a particular direction of the Central Bank;⁸³
 - The credit institution's licence has been revoked and it has ceased to carry on banking business; or
 - The Central Bank considers that it is in the interest of persons having deposits (including deposits on current accounts) with that credit institution that it be wound up.
178. For credit institutions, a liquidator has two statutory objectives:⁸⁴
 - a) To facilitate the Central Bank in ensuring that each DGS-eligible depositor receives the amount payable or to facilitate the transfer of the DGS-eligible deposits to another credit institution approved by the Central Bank – this is the priority objective ('Objective 1'); and
 - b) To wind-up the credit institution in a way which achieves the best results for the creditors as a whole ('Objective 2').

⁸¹ The initiation grounds for credit institutions and investment firms are similar, though not identical, in certain respects.

⁸² Section 77 of the Central Bank and Credit Institutions (Resolution) Act 2011.

⁸³ Section 21 of the Central Bank Act 1971 (S.I. No. 24 of 1971) ('Central Bank 1971 Act'), e.g. a direction to suspend specified banking activity.

⁸⁴ See Section 80 of the Central Bank 2011 Act.

179. A liquidation committee must also be established as soon as practicable after the Court grants a winding up order. Such a committee would consist of three persons - two from the Central Bank to cover resolution and DGS responsibilities, while the Minister would nominate the third. The function of a liquidation committee is to ensure that the liquidator properly carries out the relevant functions under the CBIL, such as the achievement of Objectives 1 and 2.⁸⁵
180. The liquidation committee would cease to exist if, and when, it is satisfied that Objective 1, its priority objective, has been achieved. After such a time, the Central Bank would be a notice party to all legal proceedings relating to the winding up of the credit institution (Objective 2), and would expect to participate at a committee of inspection, if established.
181. For credit institutions, a separate committee of inspection may be formed in the course of a liquidation, which would be responsible for overseeing the liquidation process on behalf of the credit institution's creditors (Objective 2). Where such a committee of inspection is formed, the Central Bank is entitled to attend meetings of the committee of inspection and receive related documentation.⁸⁶ The Central Bank would generally expect to exercise this discretion in a CBIL situation.

Investment Firms

182. The Central Bank may apply to wind up an investment firm⁸⁷ where:
- The investment firm or market operator is unable or, in the opinion of the Central Bank, may be unable to meet its obligations to its clients or creditors;
 - The authorisation of the investment firm or market operator has been withdrawn or revoked and the firm or operator has ceased to carry on business as an investment firm or to operate a regulated market;
 - The Central Bank considers that it is in the interest of the proper and orderly regulation and supervision of investment firms or regulated markets or is necessary for the protection of investors that the investment firm or the market operator of the regulated market be wound up;
 - The investment firm or market operator has failed to comply with any regulatory direction given by the Central Bank.
183. For investment firms, the Central Bank generally expects that the liquidator would also be appointed as the administrator responsible

⁸⁵ See Section 83 of the Central Bank 2011 Act.

⁸⁶ Section 86 of the Central Bank 2011 Act.

⁸⁷ Regulation 148 European Union (Markets in Financial Instruments) Regulations 2017.

for liaising with the Investor Compensation Company regarding ICS-eligible investors and the certification of claims for compensation payments which may be due to those investors.⁸⁸ The liquidator would also be required, subject to certain exceptions, to safeguard client assets until all proper client claims have been satisfied.

Role of the DGS

184. The Central Bank, in its capacity as the national DGS authority, also requires institutions to maintain a *'single customer view'* file on a going concern basis in order to support timely action in a resolution event where a pay-out for DGS-eligible covered deposits is required. Institutions must be able to provide this file to the Central Bank within a short timeframe following DGS invocation.
185. In a resolution event, the DGS may also make a contribution in a resolution action involving use of the resolution tools⁸⁹ and/or in a liquidation action⁹⁰ involving preservation of access to DGS-eligible covered deposits with respect to credit institutions.
186. Any such contribution would be subject to conditionality and capped, particularly having regard to the amount the DGS would hypothetically have been required to pay out to depositors if the DGS had been triggered in a compensation event.

⁸⁸ Pursuant to the Investor Compensation Act 1998 (No. 37 of 1998).

⁸⁹ BRR Reg. 173.

⁹⁰ Reg. 25(8) DGS Regulations.

Annex I Resolution Tools and Related Powers

Write-down and Conversion Powers

- i. The Central Bank has the power to write down and convert capital instruments and eligible liabilities into equity both independently of a resolution action or in combination with a resolution action. The write down and conversion of capital instruments and eligible liabilities would usually occur outside of a resolution where it is determined that unless the power is exercised the institution will no longer be viable.
- ii. Write down and conversion powers will always be performed where a determination has been made that the conditions for resolution have been met, before any proposed resolution order is made.

Bail-in Tool

- iii. The bail-in tool enables the Central Bank to write-down creditor claims in order to absorb losses, and to convert the claims of unsecured creditors into shares in order to recapitalise an institution.
- iv. Under the bail-in tool, creditors of the same class must be treated equitably and no creditor should incur more losses than they would have incurred if the institution had hypothetically been liquidated.
- v. To ensure that the bail-in tool, as well as the other resolution tools, can be smoothly deployed, institutions must hold a minimum amount of own funds and bail-inable liabilities, known as MREL (see the Central Bank's *Approach to MREL* for further information in this regard).
- vi. The Central Bank would expect that any resolution actions it may take would, where necessary, be recognised in other EEA States. See the Central Bank's *Approach to MREL* for details on the Central Bank's expectations with respect to eligible liabilities governed by the law of a non-EEA State.

Sale of Business Tool

- vii. The sale of business tool empowers the Central Bank to transfer all or parts of an institution under resolution, thus ensuring continuity of critical functions. A transfer shall take place without obtaining the consent of the shareholders of the institution under resolution and without complying with any procedural requirements under company or securities law in the State, aside from the sale of business procedural requirements referred to in the BRR Regulations.
- viii. A transfer must be made on commercial terms and the Central Bank will endeavour to obtain commercial terms for a transfer which

conforms to a valuation in accordance with the prescribed requirements, having regard to the circumstances of the case. A transfer may be made in respect of the following: (a) shares or other instruments of ownership issued by the institution under resolution; (b) all or any assets, rights or liabilities of an institution under resolution.

Bridge Institution Tool

- ix. The bridge institution tool empowers the Central Bank to seek a transfer to a bridge institution and for that purpose to cause to be formed and registered a bridge institution, which would be required to apply for authorisation to carry on the business of a credit institution or investment firm. The bridge institution tool aims to ensure continuation of the critical functions that were performed by an institution under resolution prior to the transfer of those functions to the bridge institution. Transfers of shares, assets, rights and liabilities to a bridge institution may be done without the consent of the shareholders of the institution under resolution and without complying with procedural requirements under company and securities law, in the State.
- x. A bridge institution may only operate for a period of two years unless terminated sooner, but this period may be extendable in certain circumstances. A bridge institution would be liquidated when its operations have ceased following a sale or upon expiry of the statutory period.

Asset Separation Tool

- xi. The asset separation tool operates by transfer of all or any assets, rights or liabilities of one or more institutions under resolution, or a bridge institution, to an asset management vehicle overseen by the Central Bank. The purpose of this tool is to separate certain assets, rights and/or liabilities, by transfer to the asset management vehicle, with a view to the asset management vehicle managing the assets transferred to it and maximise their value through an eventual sale or orderly wind-down. This tool could only be used in combination with another resolution tool, such as the bail-in tool, whereby the bail-in tool could be used to absorb the losses attributable to the write-down in value of the transferred assets and recapitalise the institution under resolution.

Powers to Temporarily Suspend Certain Obligations

- xii. The Central Bank also has certain other powers to facilitate its resolution action/s. For example, the Central Bank may, where necessary, temporarily suspend payment or delivery obligations in relation to contracts to which the institution under resolution is a party, and temporarily suspend the termination rights of counterparties to contracts.
- xiii. The Central Bank may exercise such powers where, for instance, the sudden, simultaneous termination (or 'close out') of certain contracts

could endanger one or more of the resolution objectives. Temporary stays may facilitate the application of certain resolution tools, such as the bail-in tool, by providing more time to assess and value assets and liabilities. A temporary stay may also facilitate the transfer of contracts to a private purchaser or bridge institution.

- xiv. BRRD 2 requires institutions to include in any financial contract which they enter into and which is governed by the law of a non-EEA state, terms by which the parties recognise that the financial contract may be subject to the exercise of powers by the resolution authority to suspend or restrict rights and obligations under and recognise that they are bound by certain requirements.
- xv. Where the Central Bank exercises powers of suspension of payment or delivery obligations, pursuant to BRR Reg. 63A⁹¹ or BRR Reg. 129⁹² in respect of eligible deposits, the BRR Regulations provide that the resolution authority shall direct that affected depositors have access to an appropriate daily amount from those deposits. This amount is to be determined by the resolution authority having regard to all or any of the prescribed factors which include, for example, the balance sheet position of the institution, including its liquidity position.

⁹¹ In respect of an institution, in circumstances where the institution has been determined as failing or likely to fail, but prior to any resolution action.

⁹² In respect of an institution under resolution, circumstances where a resolution order has been made and has authorised such powers.

Annex II Valuation in Resolution

Background

- i. In advance of taking a resolution action, the Central Bank must ensure that a valuation of the assets and liabilities of the institution is carried out by an independent third party.
- ii. Three distinct valuations are required, namely:
 - Valuation 1 – informs the determination of whether the conditions for resolution or the write-down or conversion of capital instruments are met;
 - Valuation 2 – informs the choice of resolution tool to be utilised, the extent of any write-down or conversion of capital instruments and other decisions on the implementation of resolution tools; and
 - Valuation 3 – determine post resolution whether an institution's shareholders and/or creditors would have received better treatment if the institution had entered into normal insolvency proceedings, i.e. NCWO.
- iii. Under FSB principles,⁹³ authorities should ensure that firms have the appropriate MIS and technological infrastructure capability to support the timely provision of granular data to enable valuations to be performed. This capability will be relevant as part of resolvability assessment in the context of resolution planning.
- iv. The Central Bank will have regard to the EBA's *Handbook on Valuation for Purposes of Resolution*,⁹⁴ the EBA's *Handbook Chapter on MIS*⁹⁵ and the⁹⁶ containing the data dictionary in order to assess MIS readiness of institutions. Further information is provided under the MIS Capabilities to Support a Valuation section below.
- v. If institutions are unable to demonstrate their ability to provide such data, this may constitute a barrier to resolvability, and may result in the Central Bank directing firms to make improvements to their valuation capabilities.

⁹³ FSB, *Principles on Bail-in Execution* (June 2018) ([Link](#)).

⁹⁴ EBA, *Handbook on Valuation for Purposes of Resolution* ([Link](#)).

⁹⁵ EBA, *Handbook Chapter on MIS* ([Link](#)).

⁹⁶ EBA, *Handbook Annex* ([Link](#)).

Valuation 1

- vi. Where a decision is made by the competent authority (having consulted with the resolution authority of the Central Bank) that an institution is FOLTF. The Central Bank or an independent external valuer acting on behalf of the Central Bank would then conduct Valuation 1⁹⁷ in order to confirm that the institution is FOLTF and meets the conditions for resolution.⁹⁸
- vii. Valuation 1 determines whether the aggregate accounting value of the institution's assets exceeds that of its liabilities, i.e. whether the institution is balance-sheet insolvent and whether the conditions for authorisation are fulfilled, including whether the applicable regulatory capital requirements are met. To assist with this determination, Valuation 1 must be closely linked to the accounting principles relevant to the preparation of the institution's financial statements and the prudential regulations relevant for the calculation of the institution's capital requirements. This should not prevent the valuer from deviating from assumptions made by the institution's existing management, if this is warranted, based on the valuer's independent expert judgment.
- viii. For Valuation 1, the applied valuation methodologies may rely on an institution's internal models, including up-to-date data and information, if considered appropriate by the valuer, taking into account the nature of the institution's risk management framework, the quality of data and information available.
- ix. Valuation 1 may include focus on areas such as loans and loan portfolios, repossessed assets, fair valued instruments for which the valuations are no longer valid, goodwill and intangibles, legal disputes and regulatory actions, pension assets and liabilities and deferred tax items.

Valuation 2

- x. Valuation 2 informs the decision on the appropriate resolution action to be taken where the resolution conditions are met,⁹⁹ and the decisions on the extent of the cancellation or dilution of shares or other instruments of ownership, the extent of the write-down or conversion of relevant capital instruments and eligible liabilities, the assets, rights, liabilities or shares or other instruments of ownership to be transferred and the value of any consideration to be paid. Valuation 2 should also include an estimate of the treatment that each class of shareholders and creditors would have been expected to receive if the institution was wound up under normal insolvency proceedings.
- xi. Valuation 2 assesses the economic value (and not the accounting value) and leverages assumptions around future business

⁹⁷ BRR Reg. 65(5)(a).

⁹⁸ BRR Reg. 62.

⁹⁹ BRR Reg. 65(5)(b)-(g).

projections that are in line with the institution's post-resolution business/restructuring plan.

Valuation 3

- xii. Valuation 3 is carried out to determine whether creditors are worse off under resolution than they hypothetically would have been under normal insolvency proceedings, as per the NCWO principle.¹⁰⁰ It compares a counterfactual liquidation of the institution's assets under normal insolvency proceedings against an *ex-post* valuation of a claims basis.
- xiii. The valuation will be based on the facts and circumstances which existed and could reasonably have been known at the resolution decision date.

Provisional Valuation

- xiv. When an independent final valuation is not possible due to the urgency of the case and lack of available information, a provisional valuation can be carried out. A provisional valuation can also be carried out by the Central Bank where an independent valuation is not possible. The valuation will be considered provisional until an independent valuer conducts a valuation exercise that is fully compliant with the relevant valuations requirements of the BRR Regulations. The definitive valuation must be carried out as soon as practicable.
- xv. Where a provisional valuation is carried out, it must include a buffer for additional losses with appropriate justification.

MIS Capabilities to Support a Valuation

- xvi. The Central Bank expects institutions to have MIS capabilities in place which can provide high quality data and information that are necessary to conduct the valuations required in resolution or to implement insolvency decisions.
- xvii. The Central Bank has incorporated, into its resolvability assessments, best practice from the EBA approach to valuation MIS which embeds the proportionality principle which aims to rely, to the extent possible, on institutions' internal capabilities, intended as a combination of internal data aggregation capabilities and internal valuation models that are suitable for the valuation for resolution. The Valuation MIS approach is complemented by benchmarking tools, which are expected to be used by institutions to perform a self-assessment of the internally available data and information for this purpose, alongside supporting checklists of information and data which the institution is expected to maintain.
- xviii. The results of the self-assessment will form the basis of a dialogue between institutions and the Central Bank in the context of the

¹⁰⁰ BRR Reg. 133.

resolvability assessment, to calibrate the valuation MIS requirements.

- xix. If institutions identify weaknesses or shortcomings as part of their self-assessment, they will be required to take remedial actions that address shortcomings regarding the availability, quality, accuracy, completeness and timely delivery of the information for valuation. The Central Bank will review and provide feedback regarding the content and timeline of the remedial actions and subsequently monitor their implementation.
- xx. In addition to the institution's financial statements, audit reports and regulatory reporting (as of the period ending closest to the valuation date), the Central Bank would expect that at least the following information be made available for the purposes of conducting the valuation:
 - Updated financial statements and the latest regulatory reporting;
 - An explanation of the key methodologies, assumptions and judgments used by the entity to prepare the financial statements and regulatory reporting;
 - Relevant market data;
 - Valuer conclusions based on discussions with management and auditors;
 - Supervisory assessments of the institution's financial condition;
 - Industry-wide assessments of asset quality, and stress test results;
 - Valuations of peers;
 - Historical information; and
 - Trend analyses.

Annex III Principles of Operational Continuity

- i. The FSB¹⁰¹ has defined operational continuity as “*the means of ensuring or supporting continuity of the critical shared services that are necessary to maintain the provision or facilitate the orderly wind-down of a firm’s critical functions in resolution*”.
- ii. Where critical functions are identified, the Central Bank expects institutions to be capable of demonstrating their ability to continue providing critical functions to the real economy in the following circumstances:
 - Pre-resolution (including facilitating the use of recovery options);
 - During a resolution event; and
 - Subsequently during the restructuring phase.
- iii. As part of the resolution plan, the Central Bank expects to assess whether or not an institution meets such requirements having regard to the institution’s resolution strategy, as well as the nature, scale and complexity of the institution and its activities.
- iv. The Central Bank expects institutions to be capable of identifying legal entities and business lines or divisions that perform critical functions and the critical services they receive. In this regard, institutions should develop a clear mapping of critical service providers and recipients and include, at minimum, relevant details such as:
 - The jurisdiction of each party;
 - Description of the service;
 - Service delivery model used; and
 - The ownership of assets, the infrastructure used, pricing and contractual arrangements.
- v. The Central Bank expects that this mapping should also include services provided between critical shared service providers, if relevant, e.g. an intra-group service company sub-contracting with a third party service provider.
- vi. The Central Bank expects institutions to be capable of satisfactorily demonstrating the following:

¹⁰¹ FSB, *Guidance on Arrangements to Support Operational Continuity in Resolution* (18 August 2016) ([Link](#)).

- Contractual provisions for both intra-group and third party critical services are resolution-resilient;
- MIS supports, using a clear taxonomy of services, the maintenance of up-to date mapping of services to entities, businesses and critical functions. MIS should also allow for timely reporting on the provision or receipt of critical shared services on a legal entity and line of business basis, using a service catalogue. Examples of these systems include but are not limited to: searchable centralised repositories for intra-group and third party service contracts, software application catalogues, human resource databases and agreement repositories related to systems, facilities and intellectual property;
- Sufficient financial resources, outside of liquid assets used for prudential purposes, to not only continue to pay for critical services but also any additional collateral requirements or margin calls arising from such services;
- Robust pricing structures in place between critical service providers and recipients;
- Critical service providers have sufficient financial resilience to continue to provide the critical service;
- Critical services should have their own governance structure and clearly defined reporting lines;
- Where an institution relies on another entity within the group for critical services, the Central Bank would require institutions demonstrate that there would be no deterioration in service provision in a resolution scenario, or that organisational structures and agreements would not lead to the group provider prioritising its resources to support certain group entities over the institution in resolution; and
- Access to operational assets by the critical shared services provider, the serviced entities, business units and authorities would not be disrupted by the failure or resolution of any particular group entity.

Annex IV Resolution Tool Playbooks

- i. Playbooks, in a resolution planning context, are operational documents developed by institutions to prepare for, assist and give effect to decisions taken by the Central Bank.
- ii. Relevant institutions will be provided with guidance on resolution tool playbooks by the Central Bank. This guidance will be iterative and based on best practice, the institution's PRS as well as variant or alternative strategies for ensuring orderly resolution.
- iii. The activities and processes described in the playbook should be based on the assumed scenario that the Central Bank will;
 - a. Determine that the institution is FOLTF and that the resolution conditions are met;
 - b. Adapt a resolution scheme, the implementation of which would commence immediately following the obtaining of a Resolution Order by the NRA.
- iv. The playbook should describe the process and actions in each key area that need to be carried out (1) before the institution enters resolution (pre-resolution), (2) by the institution to give effect to the resolution tools, and (3) post-resolution.

Bail-in Playbook Guidance

- v. The bail-in playbook would cover, at a minimum:
 - a. An identification and description of relevant governance arrangements for bail-in execution, including an indication of responsibilities, reporting lines and roles of committees, the communication set-up and the processes for establishing a business reorganisation plan;
 - b. Identification of relevant capital instruments and other eligible liabilities for bail-in at individual level in the institution's internal IT systems in a complete, clear and timely manner. Generation of granular information for each relevant capital and liability item, ideally accompanied by specific information that relates to implementation;
 - c. A detailed description of the procedural steps for the execution of bail-in inside (internal execution) and outside (external execution) the institution for each type of instrument covered by the playbook; and
 - d. A description of MIS supporting the different processes.

Sale of Business Playbook Guidance

- vi. The sale of business playbook will have many similarities with a bail-in playbook, as write-down and conversion will be a key and common feature of all resolution actions. However, instead of re-listing shares, it would address the full or partial sale of the institution or the institution's assets and liabilities. In addition to relevant elements within the bail-in playbook, the sale of business playbook would need to:
 - a. Identify the potential buyer universe for both share deal and partial sale, including rationales, past interactions and capabilities;
 - b. The perimeter of assets and liabilities for a partial sale, including the operational and financial interdependencies and underpinnings of the portfolio/s;
 - c. Legal and regulatory considerations for both share deal and partial sale; and
 - d. Document the governance, data availability and operational steps to execute a potential sale process.

Annex V Orderly Wind-down Plans

- i. Where appropriate, the Central Bank may require an institution that is not experiencing financial difficulties to submit an ex-ante orderly wind-down plan where an institution. The wind-down plan will allow the Central Bank to assess the institution's plan and readiness for the cessation of its activities with minimal disruption and to examine considerations the board of the institution has given to the scenario, including the identification of impediments to its successful execution.
- ii. In order to provide a detailed overview of the operational considerations necessary to effectively execute a winding down of the institution's operations, a wind down plan will generally include the following:
 - An overview of the legal entity;
 - An analysis of scenarios which the institution believes would create a situation in which it would become no longer viable and therefore have to be wound down;
 - An assessment of the impact a wind down of the institution would have on various stakeholders, both internal and external;
 - The steps to executing a wind down with specific detail on the timeframe in which this could be operationalised;
 - The operational costs required to implement the wind down plan;
 - Assessment of the institution's resources in a wind down situation, including the governance processes in place to facilitate such a wind down and the management of risk, capital and liquidity in a wind down;
 - A demonstration of how all regulatory requirements will be met at any point in time during the wind down process;
 - The breakdown of the institution's business lines in a wind down; and
 - A section to address the exit/migration of (i) clients and client assets; and (ii) covered depositors and covered deposits, where applicable. This should include a division of the institution's assets into segments with similar exit characteristics and an estimation of exit costs for each segment.

Appendix

AMV	Asset Management Vehicle
AST	Asset Separation Tool
BIFR	Bank and Investment Firm Resolution Fund
BRRD	Bank Recovery and Resolution Directive
BRR	Bank Recovery and Resolution
CBIL	Central Bank-involved winding-up (liquidation)
CMG	Crisis Management Group
CRD	EU Capital Requirements Directive
CRR	EU Capital Requirements Regulation
DGS	Deposit Guarantee Scheme
DGSD	Deposit Guarantee Scheme Directive
EBA	European Banking Authority
ECB	European Central Bank
EDIS	European Deposit Insurance Scheme
EEA	European Economic Area
ERC	European Resolution College
EU	European Union
FOLTF	Failing or Likely To Fail
FMI	Financial Market Infrastructure
FSB	Financial Stability Board
GLRA	Group-Level Resolution Authority
ICS	Investor Compensation Scheme
IRT	Internal Resolution Team
LSI	Less Significant Institution
MPE	Multiple Point of Entry
MIS	Management Information System
MREL	Minimum Requirement for Own Funds and Eligible Liabilities
NCA	National Competent Authority
NCWO	No Creditor Worse-Off
NRA	National Resolution Authority
PIA	Public Interest Assessment

PRS	Preferred Resolution Strategy
SI	Significant Institution
SLA	Service Level Agreement
SME	Small and Medium Enterprise
SO	Simplified Resolution Planning Obligations
SPE	Single Point of Entry
SRB	Single Resolution Board
SRF	Single Resolution Fund
SRM	Single Resolution Mechanism
SRMR	Single Resolution Mechanism Regulation
WDC	Write-down and/or Conversion





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