Information on creditor participation (bail-in) in a bank resolution and recovery proceeding

In order to create a common European framework of rules and instruments for the recovery and resolution of banks, the EU issued a directive (Bank Recovery and Resolution Directive **(BRRD)** establishing a regime for the recovery and resolution of credit institutions and investment firms. In Austria, this directive was transposed into national law by **Bundesgesetz über die Sanierung und Abwicklung von Banken** (**BaSAG**, the Federal Act on the Recovery and Resolution of Banks).

Among other things, BaSAG governs the participation of a bank's creditors (**bail-in)** in a bank's resolution under supervised proceedings. The purpose is to avoid the use of taxpayers' money in the event that a bank is at risk of default.

When a bank is at risk of failing, the designated resolution authority may apply a number of resolution measures:

Sale of business

All or part of a bank's assets and/or liabilities are transferred to a buyer. For the bank's customers and creditors this means a change in their contracting partner or debtor.

Bridge institution

A public-sector institution takes over the liabilities and/or assets of the bank undergoing resolution. For the bank's customers and creditors this means again a change in their contracting partner/debtor.

Asset transfer

This is the so-called **bad bank** mechanism. The assets and/or liabilities of the bank concerned are transferred to special-purpose vehicles for liquidation. For the bank's customers and creditors this means again a change in their contracting partner/debtor.

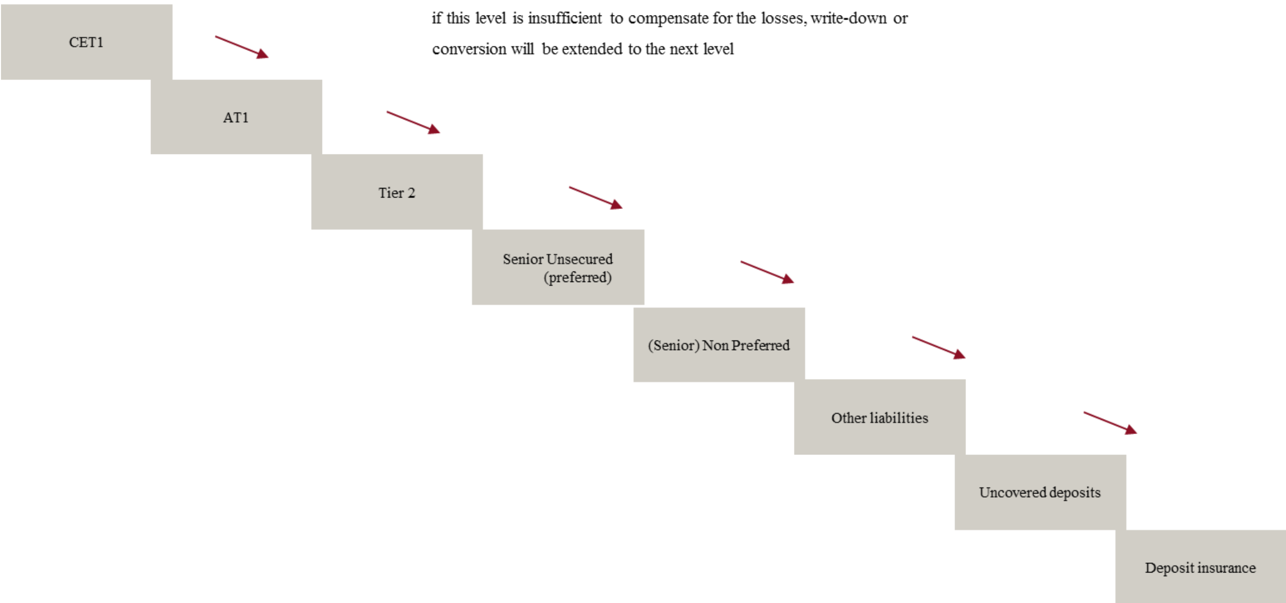
Bail-in

If an authority orders the resolution of a bank, the bank's equity and debt will be written off fully or in part or converted into equity. The aim of this approach is to stabilise the bank affected. In such a case, shareholders and creditors may have to take substantial losses as the resolution authority may reduce their claims, without their consent, in the extreme case even to zero.

Under current rules, instruments for loss absorption must be taken in the following order:

1. Shares and other equity instruments (common equity tier-1 capital, **CET1**; additional tier-1 capital, **AT1**)
2. Subordinated liabilities (e.g. supplementary and junior bonds – **tier 2**)
3. Uncovered subordinated financial instruments/ claims that are not part of additional tier-1 or supplementary capital (**tier 2**)
4. (Senior) Non Preferred: The debt is attracted by an institution through issuing debt instruments within the meaning of the BRRD (notably bonds / notes); the original contractual maturity of the debt instruments is at least one year; the debt instruments do not contain embedded derivatives and are not derivatives themselves; and the relevant contractual documentation and, where applicable, the prospectus explicitly refers to the lower ranking under the relevant BRRD paragraph.
5. Uncovered non-subordinated financial instruments and claims (e.g. uncovered bank bonds and certificates)
6. Finally, deposits of companies and natural persons not covered by the deposit insurance scheme

Bail-in liability cascade pursuant to BRRD and BaSAG



Source: Bank Gutmann:

Exempted from bail-in are deposits in accordance with the statutory deposit insurance scheme as well as covered bank bonds (covered bonds or mortgage bonds) and separate assets (e.g. investment funds).

The BRRD regime has been legally implemented in member states across Europe. Bail-in may hence also be applied to bank bonds from other EU countries, yet the details of the rules may differ on a national level.

Risk information

For a bank's creditors, the statutory bail-in proceedings described above may lead to a **total loss** of capital invested. When a bank undergoes recovery and resolution proceedings, any **sale** of bonds, for example, may prove to be more difficult and may be possible only at substantially lower valuations. Even if the original **issuing document** or **marketing material** of a bank product does not expressly describe the possibility of bail-in, the product may be affected by bail in under current law.

For further information please refer to the website of Österreichische Nationalbank (Austria's central bank): https://www.oenb.at/en/financial-market/three-pillars-banking-union/single-resolution-mechanism.html

Or Financial Market Supervision in Austria: https://www.fma.gv.at/en/bank-resolution/