



INFORMATION ABOUT THE IMPLEMENTATION OF AN EXTERNAL BAIL-IN

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1 BACKGROUND

On 13.02.2023, the European Banking Authority (EBA) published its “Guidelines to resolution authorities on the publication of the write-down and conversion and bail-in exchange mechanic” (EBA/GL/2023/01). These Guidelines are addressed to the FMA in its function as resolution authority (hereinafter: FMA) and define the information to be published by resolution authorities regarding the application of write-down and conversion, especially in conjunction with the bail-in tool.

The Guidelines were drawn up by EBA in cooperation with the national resolution authorities, to increase the transparency and predictability and to therefore for designing the resolution regime more effectively. Divergent approaches by national authorities had been observed, especially on a cross-border basis, due to divergent national regulations in relation to company law and capital market law, as well as the stakeholders involved. The Guidelines ensure that a minimum level of harmonised information is available to market participants about the implementation of the bail-in tool. By publishing this document, the FMA fulfils its disclosure obligations set out in those EBA Guidelines.

This publication has the form of a living document and will be updated by the FMA on an ad hoc basis. The approach described presents a schematic depiction of a fictitious resolution event. Due to the substantial complexity and time pressure involved where a resolution actually occurs, the FMA may deviate from the executions shown here where necessary in the specific case in hand.

2 INTRODUCTION

The FMA has two tools at its disposal for enabling the absorption of loss or a recapitalisation of a failing institution:

1. write-down and conversion of capital instruments (WDCCI) pursuant to Articles 70 et seq. BaSAG¹, or
2. The bail-in tool (bail-in) pursuant to Articles 85 to 94 BaSAG.

WDCCI is not a resolution tool per se. Article 70 para. 2 BaSAG states that in any case where resolution actions would lead to losses for creditors that the FMA shall in any case apply WDCCI first, before applying a resolution instrument pursuant to Articles 74 et seq. BaSAG, if the bail-in tool is not applied anyway.

The bail-in is applied based on a valuation of the institution's assets and liabilities pursuant to Articles 54 et seq. BaSAG. These valuations form the basis for calculating the rate of the write-down or the conversion rate.

Of the four resolution tools, the bail-in tool is the only one that does not require the involvement of a third party at the time of being ordered by the FMA. In implementing the ordered resolution action, other stakeholders are nonetheless involved, such as central securities depositories (CSDs), stock exchanges, and central counterparties (CCPs).

When applying the bail-in tool, in relation to the institution under resolution's eligible liabilities, the FMA may order pursuant to Article 86 para. 1 BaSAG that the principal amount or the remaining amount is partially or fully written down, or that eligible liabilities are converted into instruments of ownership. The bail-in tool is applicable to all the institution under resolution's liabilities that are not excluded under Article 86 para. 2 BaSAG. It is therefore not permissible to order a write-down or conversion in relation to eligible deposits, eligible liabilities or liabilities towards institutions or entities pursuant to Article 1 para. 1 nos. 2 to 4 BaSAG, except for entities that are part of the same group, that have an original term of less than seven days.

When applying the bail-in tool, the following sequence (loss absorption cascade) under Article 90 para. 1 BaSAG must be observed:

1. write-down and conversion of Common Equity Tier 1 (CET1) items pursuant to Article 73 para. 2 no. 1 BaSAG,
2. write-down and conversion of the principal amount of Additional Tier 1 (AT1) instruments to the necessary extent and within the limits of their capacity,
3. write-down and conversion of the principal amount of Tier 2 instruments to the necessary extent and within the limits of their capacity,

¹ The Federal Act on the Recovery and Resolution of Banks (BaSAG; Bundesgesetz über die Sanierung und Abwicklung von Banken), published in Federal Law Gazette I No. 98/2014.

4. write-down and conversion of the principal amount of subordinate liabilities pursuant to Article 90 para. 1 nos. 4 BaSAG,
5. write-down and conversion of the principal amount of the bail-inable liabilities pursuant to Article 90 para.1 nos. 5 BaSAG.

Furthermore, when determining an appropriate conversion rate, the FMA shall consider the principal amount and its ranking in insolvency proceedings. Furthermore, if different conversion rates are determined, then the FMA shall apply a higher conversion rate upon liabilities considered to be senior under applicable insolvency law than on subordinated liabilities.

Resolution actions shall be ordered by the issuing of an emergency administrative decision according to Article 116 BaSAG (Mandatsbescheid) without a preceding investigative procedure. The emergency administrative decision shall be issued by publishing an edict on the FMA website and shall thereby be deemed to have been legally delivered. Upon publication the emergency administrative decision becomes directly effective towards all parties whose rights have been affected by the resolution actions, in particular the shareholders and creditors.

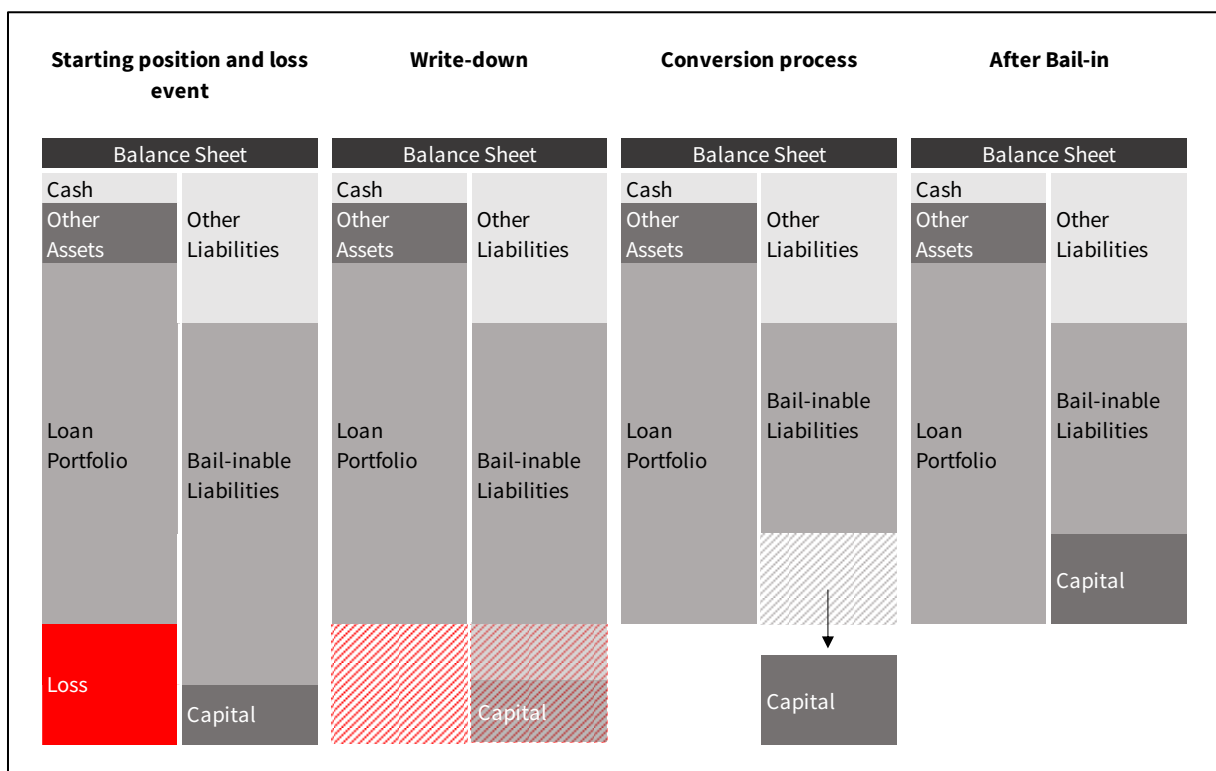


Figure 1: Graphical description of the exchange mechanic of WDCI and Bail-in

3 TIME FRAME FOR CARRYING OUT THE EXTERNAL IMPLEMENTATION OF THE BAIL-IN

This shows an example for the complete process for the external implementation of the bail-in, starting with the data delivery prior to the emergency administrative decision (Mandatsbescheid) through to the internal implementation in the bank and ultimately the external implementation by the involved stakeholders, including implementation at the depository banks thereby performing the transfer to the new owners. The duration and process involved may differ depending on the amount of the loss, the legal form of the company, as well as the amount and structure of the liability side of the institution.

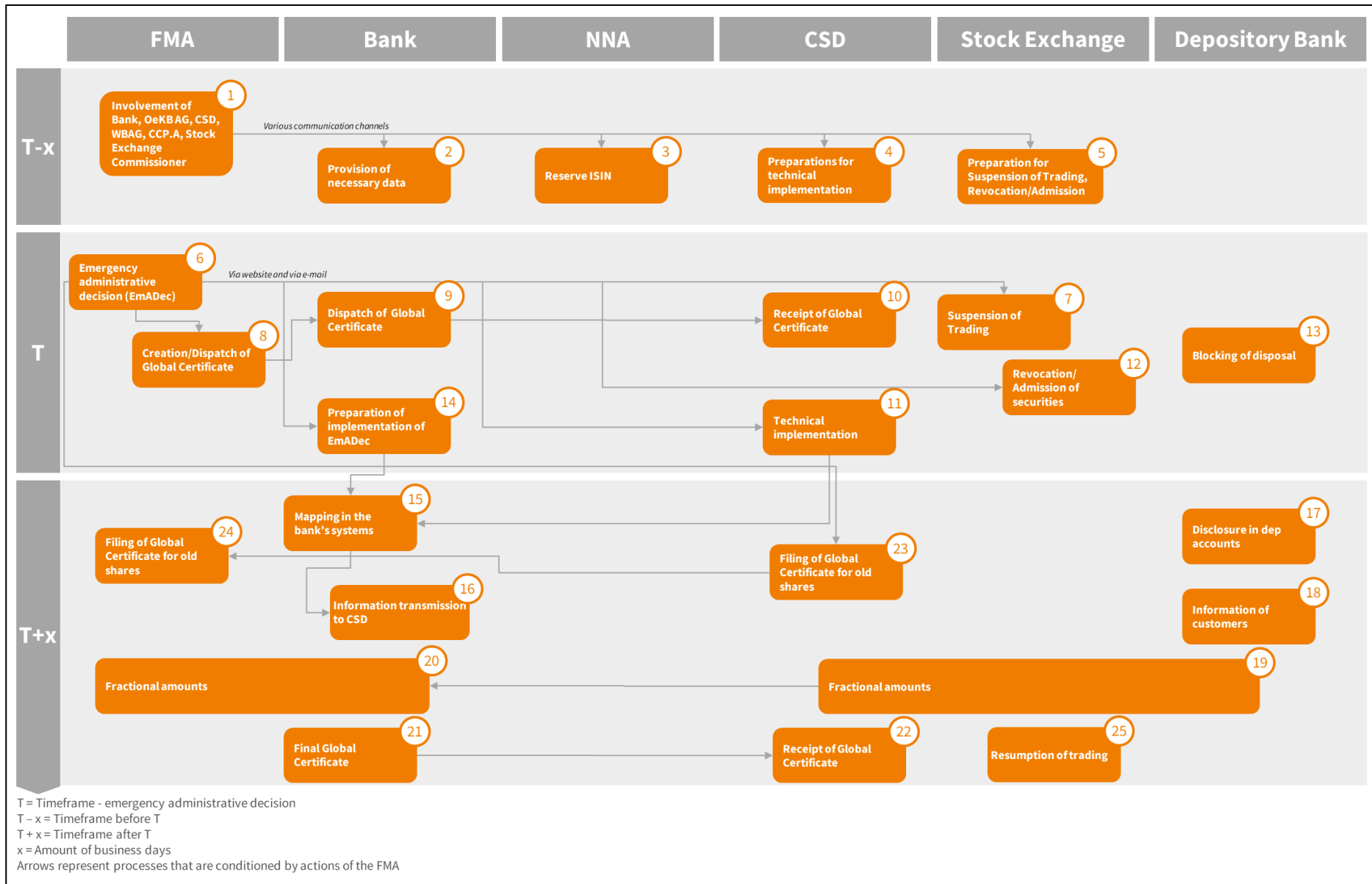


Figure 2: Example of the complete process for the external implementation of the bail-in

4 STAKEHOLDERS

4.1 THE ROLE OF THE STAKEHOLDERS

The implementation of the bail-in, especially in the case of exchange-listed banks, requires the FMA to interact with various stakeholders. In the external implementation of the bail-in, the relevant stakeholders include Österreichische Kontrollbank AG (OeKB AG), Österreichische Kontrollbank as the central securities depository (OeKB CSD or the ICSD, the CSDs of other Member States and the CSDs of third countries), Central Counterparty Austria (CCP.A) and Wiener Börse AG (WBAG).

The orders made by the FMA to the Wiener Börse AG (WBAG) are a core component of the emergency administrative decision, in which a bail-in is ordered in the case of an exchange-listed institution. On the one hand, such orders cover revoking of trading in securities issued by the bank under resolution, while on the other hand also authorising the trading of new securities to be issued by the institution. The orders stated in the emergency administrative decision are to be implemented by WBAG. New shares are also issued via WBAG.

WBAG itself, or the FMA as the authority for the supervision of markets and stock exchanges, may make use of the powers conferred on them under stock exchange law that accompany the ordering of resolution matters. Under the system set out in the Stock Exchange Act 2018 (BörseG; Börsegesetz) the WBAG orders the suspension of trading under Article 17 para. 1 BörseG, and the FMA only acts in its capacity as the authority for the supervision of markets and stock exchanges pursuant to Article 17 para. 5 BörseG, where WBAG does not act.

The role of OeKB CSD as central securities depository is to receive new share certificate and to destroy the old certificate. OeKB CSD requires the final certificate to register the new shares; the FMA produces this certificate. To guarantee that the bail-in occurs smoothly, the FMA already applies for a reserve ISIN from the OeKB AG in advance.

CCP.A takes responsibility for settling of stock exchange transactions as well as for the settlement or default risk in the settlement of securities transactions, and as the central counterparty is responsible for the clearing and risk management of all transactions at WBAG.

4.2 STAKEHOLDER CONTACT DETAILS

Table 1: Stakeholder Contact Details

<i>Role of the organisation</i>	<i>Name</i>	<i>Contact details</i>
Central securities depository (CSD).	OeKB CSD GmbH	+43 1 53127-2100 csd@oekb-csd.at https://www.oekb-csd.at/ Strauchgasse 1-3, 1010 Vienna
Supervision of stock exchanges	Financial Market Authority (FMA), Department III	+43 1 249 59 0 fma@fma.gv.at www.fma.gv.at Otto-Wagner-Platz 5, 1090 Vienna
Central counterparty (CCP),	CCP Austria Abwicklungsstelle für Börsengeschäfte GmbH (CCP.A)	+43 1 533 22 44 office@ccpa.at https://www.ccpa.at/ Strauchgasse 1-3, 1010 Vienna
Exchange operating company	Wiener Börse AG (WBAG)	+43 1 531 65-0 info@wienerboerse.at www.wienerboerse.at Wallnerstraße 8, 1010 Vienna
National Numbering Agency (NNA) – ISIN issuing body	Oesterreichische Kontrollbank Aktiengesellschaft (OeKB)	+43 1 53127-2030 isin@oekb.at https://www.oekb.at/kapitalmarkt-services/isin-vergabe.html Am Hof 4, 1010 Vienna

5 TIME FRAME PRIOR TO ANNOUNCEMENT OF THE RESOLUTION ORDER BY THE FMA

The exchange of information between the FMA and the relevant stakeholder starts during the early intervention stage. The bank under resolution is already subject to more intense supervision during the early intervention stage, and during this time period is subject to enhanced reporting obligations (management reports, documentation about valuation models etc.) and data submission (SRB Bail-in Dataset² or in accordance with the FMA Minimum Standards on Provision of Data for the Case of Resolution³, list of liabilities etc.).

These stakeholders are informed that a resolution is expected to take place, in order to start necessary preparations and to be able to resolve potential challenges already during this stage. During this stage, the FMA, in consultation with OeKB AG also activates the reserve ISIN.

² <https://www.srb.europa.eu/en/content/operational-guidance-bail-implementation>

³ <https://www.fma.gv.at/fma/fma-mindeststandards/01/2021-FMA-Minimum-Standards-for-the-provision-of-data-for-the-case-of-resolution>

6 SUSPENSION FROM TRADING, REVOCATION OF THE ADMISSION TO TRADING AND RESUMPTION OF TRADING

During the resolution procedure there is the opportunity either to revoke or suspend all instruments of an issuer from trading or only those instruments that are affected by the bail-in (Article 58 para. 3 no. 3, Article 96 BaSAG). The FMA's powers exclusive apply to the regulated market, but not to MTFs⁴. Similarly, regulated markets in other Member States are also not covered.

For executing the order, WBAG requires the name of the issuer as well as the respective ISINs. This information is included by the FMA in the emergency administrative decision (Mandatsbescheid). The duration of the suspension from trading depends on the individual case in hand. The size and structure of the bank under resolution are particularly relevant.

The FMA orders the revocation of authorisation for trading for all expunged securities. Securities that are only partially affected are not revoked as a rule, but trading is suspended for as long as required until the shares that are newly created as a result of the resolution are listed on the stock exchange. As a rule, the FMA will re-list the shares that were newly created as a result of the resolution, provided that the old shares were listed on the stock exchange. A bank that was hitherto not listed on the stock exchange will also not be listed on the stock exchange following resolution. In the case of companies with the legal form of stock companies, such CET-1 instruments will have the form of registered ordinary shares without a par value, provided the bank is not traded on the stock exchange.

Pursuant to Article 97 para. 1 BaSAG the obligation pursuant to Article 46 BörseG 2018⁵ to publish a prospectus, and that for a public offering as defined in Article 2 KMG 2019⁶, does not apply.

7 HOW A POTENTIAL PROVISIONAL INSTRUMENT WORKS

Due to a lack of a legal basis to do so, the FMA will not issue interim instruments.

⁴ Multilateral Trading Facilities (MTFs) are trading systems operated by stock exchanges or investment firms, on which financial instruments are traded that are neither required to observe conditions for authorisation set out under law nor to observe transparency obligations.

⁵ Stock Exchange Act 2018 (BörseG 2018; Börsegesetz 2018), published in Federal Law Gazette I No. 107/2017 as amended.

⁶ Capital Market Act 2019 (KMG 2019; Kapitalmarktgesetz 2019), published in Federal Law Gazette I No. 62/2019 as amended.

8 WRITE-DOWN AND EXPUNGING OF RELEVANT INSTRUMENTS

The emergency administrative decision (Mandatsbescheid) will contain a comprehensive list of all affected bail-inable liabilities, listed in accordance with the loss absorption cascade. Every liability will be clearly identified (e.g. by ISIN, account number, etc.), while at the same time observing Austrian banking secrecy requirements in accordance with Article 38 BWG⁷. Every creditor will therefore be able to tell from this approach whether they are affected by the administrative decision. From the points in the ruling, it will be apparent whether the securities of the creditor are expunged, written down to 0, particularly written down or are converted.

This process will be technically implemented by means of assistance from OeKB CSD. The process can only be started upon delivery of the new physical global certificate to OeKB CSD. OeKB CSD requires the following information, based on the smallest denomination (smallest tradable unit) to conduct its technical booking steps, which are contained in the emergency administrative decision (Mandatsbescheid).

Assumptions: a bond (nominal value 10,000) with a carrying amount of 450,000,000 with an insolvency hierarchy of 5 is converted into new shares with a quota of 12.51%.

- a. Deregistration: bond ATXXXXXX and recognition of ISIN of Bond ATXXXXXX in a ratio of 10,000:8,749 (meaning that a nominal value of 10,000 is deregistered, and a nominal value of 8,749 is registered). The conversion ratio in this example is 12.51%. This means that the bond continues to exist with a nominal value of 87.49%. In the next step shares are issued for the 12.51%.
- b. Registration: shares in a ratio of 10,000:1,251 (meaning that for a nominal value of 10,000 a total of 1,251 shares are registered). As the conversion rate is 12.51%, 12.51% of the original nominal value is converted into shares. This ratio arises due to the new capital structure of the failed bank. Important: the ratio must be calculated/expressed based on the original nominal value of 10,000.

Here is a table containing examples to present this better.

Bal-Sheet Pos	ISIN/ Identification etc.	Designation	Currency	UGB/BWG Book value	Original nominal	Conversion ratio	New nominal	New share denomination	New denomination total
5	ATXXXXXX	Bond	EUR	450,000,000	10,000	12.51%	8,749	1,251	56,295,000

Figure 3: Sample presentation of a table of the required information

To perform this, manual entries are required to be made by OeKB CSD, with approx. 10-20 minutes required per affected ISIN. In addition, the stakeholders are notified via SWIFT.

⁷ The Austrian Banking Act (BWG; Bankwesengesetz), published in Federal Law Gazette no. 532/1993 as amended.

In the event of write-down, the existing certificates continue to apply for the securities that have been written down: OeKB CSD makes a remark about this on the physical certificate. If units or other instruments of ownership are expunged, then OeKB CSD archives the physical certificates for 30 days, and thereafter they are shredded. During this 30-day period, the certificate may be collected by the bank (the issuer). For evidential purposes the FMA instructs the bank to collect the certificate and to hand it over to the FMA.

All information is entered into the OeKB CSD's system and passes through the custody chain. By these bookings being made, the creditor's exposure is reduced in terms of its principal amount, and shares are added to their securities account.

At the same time, the bank under resolution begins with the implementation and execution of the emergency administrative decision (Mandatsbescheid). The changes listed in the emergency administrative decision (Mandatsbescheid) must be mapped in the bank's systems, to subsequently permit a new balance sheet to be drawn up.

8.1 FORMALLY UNSECURED CREDITORS

In case a previously unsecured creditor now becomes a shareholder, then they should notify this to the bank under resolution. The shareholder now has to inform about its securities account or that it wishes to sell its shares.

8.2 POSITIVE NET ASSET VALUE

Provided that the institution under resolution has a positive net asset value, the FMA will proceed by means of economic dilution. In this case, old shares will nevertheless be cancelled, and all old and new shareholders will receive the same type of shares so that accounting differences between old and new shares are able to be better balanced.

9 CONVERSION PROCESS

The FMA has the power to convert Additional Tier 1 (AT 1), Tier 2 (T 2) and bail-in-able liabilities into share capital or other instruments of ownership (Article 58 para. 1 no. 6 in conjunction with Article 85 para. 1 no. 2 BaSAG). On the one hand this makes it possible to recapitalise the institution, while on the other hand the creditors should be compensated for their loss to a certain extent by receiving instruments of ownership.

For determining the conversion ratio, the FMA shall calculate the amount pursuant to Article 88 para.1 no. 2 BaSAG, "by which the bail-in-able liabilities must be converted into shares or other types of capital instruments, in order to restore the Common Equity Tier 1 capital ratio of an institution under resolution (or a bridge institution)".

10 APPROACH FOR HANDLING FRACTIONAL SHARES

The existence of fractional shares is unable to be avoided due to the bail-in mechanic. To avoid unfair treatment, the following approach is applied:

In a first step, the old shares are expunged in both the case of a positive net asset value as well as in a negative net asset value and new shares issued with the smallest accounting unit (€ 1 = 1 share). In the emergency administrative decision (Mandatsbescheid) there will be a rounding down on an instrument basis down to the smallest possible tradeable unit, e.g., 1 unit of bond X receives 12 shares, if for example in accounting terms 12.74 shares were possible. The fractional shares that arise are entered in the capital reserve by value. As a result, the highest possible amount of fractional shares is calculated in the emergency administrative decision (Mandatsbescheid).

In a second step following the external implementation, the individual positions of creditors are taken into account when they are transferred to their securities account. Therefore, the rounding down is not performed on an instrument basis and using the smallest tradeable unit, but instead at the level of positions of creditors. For example: 1 unit of bond X in accounting terms receives 12.74 shares, but only 12 shares according to the emergency administrative decision (Mandatsbescheid). If the creditor owns 2 units of bond X, then the creditor receives 25 shares ($2 \times 12.74 = 25.48$). Using this mechanism, less fractional shares are booked into the capital reserve and the number of new shares increases. Once the booking in of shares into the securities accounts has been conducted, the global certificate of the newly issued share will be updated again.

11 TRANSFER OF CONTROL TO NEW OWNERS AND MANAGEMENT BODY

The FMA has two options available regarding the management of an institution. Under Article 67 BaSAG the FMA may in exercising of control exercise the powers itself, or transfer exercising of control to a resolution administrator (Abwicklungsverwalter) pursuant to Article 68 BaSAG. In both instances the ordering and ending of such an order shall be performed by means of an emergency administrative decision (Mandatsbescheid) or with similar publicity measures.

Ownership of the shares is transferred to the shareholders as soon as the requirements under property law are met.

12 CONSIDERATION OF POTENTIAL DIFFERENCES BETWEEN THE PRELIMINARY AND FINAL VALUATIONS

The decision to order resolution measures in the emergency administrative decision (Mandatsbescheid) is based on the preliminary valuation. A final valuation is commissioned as part of the preliminary proceedings. The results of the valuation will be communicated to the parties in the course of the hearing. If the final valuation comes to a different conclusion and thus to different bail-in ratios, this would have to be taken into account in the administrative decision in relation to the challenge procedure (Vorstellungsbescheid).