

**PRA RULEBOOK: CRR FIRMS AND NON-AUTHORISED PERSONS: CONTRACTUAL
RECOGNITION OF BAIL-IN INSTRUMENT 2015**

Powers exercised

- A. The Prudential Regulation Authority (“PRA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137G (the PRA’s general rules);
 - (2) section 137T (general supplementary powers); and
 - (3) section 192JB (rules requiring parent undertakings to facilitate resolution).
- B. The PRA exercises the following powers in the Act to make those terms in the Glossary that are used in this instrument in rules applicable to qualifying parent undertakings:
- (1) section 192JB (rules requiring parent undertakings to facilitate resolution); and
 - (2) section 137T (general supplementary powers).
- C. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instrument) of the Act.

Pre-conditions to making

- D. In accordance with section 138J of the Act (Consultation by the PRA), the PRA consulted the Financial Conduct Authority. After consulting, the PRA published a draft of proposed rules and had regard to representations made.

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- E. The PRA makes the rules in Annex A and Annex B to this instrument.
F. With effect from 1 January 2016 the PRA deletes rules 3.1 to 3.3 in Annex A.

Commencement

- G. Rules 1.1(1) to (3), 1.2, 1.3 and 3.1 to 3.3 in Annex A to this instrument come into force on 19 February 2015.
H. Rules 1.1(4), 2.1 and 2.2 in Annex A to this instrument come into force on 1 January 2016.
I. Annex B to this instrument comes into force on 19 February 2015.

Citation

- J. This instrument may be cited as the PRA Rulebook: CRR Firms and Non-Authorised Persons: Contractual Recognition of Bail-In Instrument 2015.

By order of the Board of the Prudential Regulation Authority
15 January 2015

Annex A

In this Annex, the text is all new and is not underlined.

Part

CONTRACTUAL RECOGNITION OF BAIL-IN

Chapter content

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1 APPLICATION AND DEFINITIONS

1.1 Unless otherwise stated, this Part applies to a *BRRD undertaking* which is:

- (1) a *CRR firm*;
- (2) a *financial holding company*;
- (3) a *mixed financial holding company*; or
- (4) a *mixed activity holding company* which has at least one *subsidiary* which is an *institution* which is not the *subsidiary* of a *financial holding company* which is also a *subsidiary* of the *mixed activity holding company*.

1.2 In this Part, the following definitions shall apply:

eligible deposit

has the meaning given in point 4 of Article 2(1) of Directive 2014/49/EU.

excluded deposit

means

- (1) an *eligible deposit* from natural persons and *micro, small and medium-sized enterprises*; or
- (2) a deposit that would be an *eligible deposits* from natural persons or *micro, small and medium-sized enterprises* if the deposit had not been made through a *branch* of the *firm* located in a *third country*.

excluded liability

has the meaning given in section 48B(7A)(a) of the Banking Act 2009.

liability

means any debt or liability to which the *BRRD undertaking* is subject, whether it is present or future, certain or contingent, ascertained or sounding only in damages.

mandatory reduction provision

has the meaning give in section 6B(2) of the Banking Act 2009.

micro, small and medium-sized enterprises

means micro, small and medium-sized enterprises as defined with regard to the annual turnover criterion referred to in Article 2(1) of the Annex to Commission Recommendation 2003/361/EC.

special bail-in provision

has the meaning given in section 48B(1) of the Banking Act 2009.

1.3 Unless otherwise defined, any italicised expression used in this Part and in the *CRR* has the same meaning as in the *CRR*.

2 CONTRACTUAL RECOGNITION OF BAIL-IN

2.1 A *BRRD undertaking* must include in the contract governing a *liability* a term by which the creditor or party to the agreement creating the *liability* recognises that the *liability* may be subject to the exercise of a power by the Bank of England to make *special bail-in provision* or *mandatory reduction provision* and agrees to be bound by any reduction of the principal or outstanding amount due or by any conversion or cancellation effected by the exercise of that power, provided that such *liability* is:

- (1) not an *excluded liability*;
- (2) not an *excluded deposit*;
- (3) governed by the law of a *third country*; and
- (4) issued, entered into or arising after 31 December 2015.

[Note: Art. 55(1) (part) of the *BRRD*]

2.2 In respect of a *liability* that is:

- (1) an *additional tier 1 instrument*, or
- (2) a *tier 2 instrument*,

a *BRRD undertaking* that is a *CRR firm* must provide to the *PRA* a properly reasoned independent legal opinion from an individual appropriately qualified in the relevant *third country* on the enforceability and effectiveness of the term referred to in 2.1.

3 CONTRACTUAL RECOGNITION OF BAIL-IN - TRANSITIONAL PROVISIONS

3.1 In this Chapter, the following definitions shall apply:

debt instruments

means any form of transferable debt security or instrument, whether registered or bearer, including commercial paper, bills of exchange, banker's acceptances, certificates of deposit and bonds, with the exception of debt securities or instruments which are *Additional Tier 1 instruments* or *Tier 2 instruments*.

unsecured liability

means a *liability* where the right of the creditor to payment or other form of performance is not secured by a charge, pledge, lien or mortgage, or collateral arrangements including *liabilities* arising from repurchase transactions and other title transfer collateral arrangements.

3.2 A *BRRD undertaking* must include in the contract governing a *liability* a term by which the creditor or party to the agreement creating the *liability* recognises that the *liability* may be subject to the exercise of power by the Bank of England to make a *special bail-in provision* or *mandatory reduction provision* and agrees to be bound by any reduction of the principal or

outstanding amount due or by any conversion or cancellation effected by the exercise of that power, provided that such *liability* is:

- (1) not an *excluded liability*;
- (2) not an *excluded deposit*;
- (3) governed by the law of a *third country*;
- (4) issued, entered into or arising after 19 February 2015; and
- (5) either a *debt instrument* which is an *unsecured liability*, or an *additional Tier 1 instrument* or a *tier 2 instrument*.

[Note: Art. 55(1) (part) of the BRRD]

3.3 In respect of a *liability* that is:

- (1) an *additional tier 1 instrument*; or
- (2) a *tier 2 instrument*,

a *BRRD undertaking* that is a *CRR firm* must provide to the *PRA* a properly reasoned independent legal opinion from an individual appropriately qualified in the relevant *third country* on the enforceability and effectiveness of the term referred to in 2.1.

Annex B

Amendments to the Definition of Capital Part of the PRA Rulebook

Chapter 6 is deleted in its entirety.