

EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (BANK RECOVERY AND RESOLUTION DIRECTIVE) (EU EXIT) (No.2) INSTRUMENT 2019

Powers exercised

- A. The Prudential Regulation Authority (“the PRA”) being the appropriate regulator within the meaning of the Financial Regulators’ Powers (Technical Standards etc.) (Amendments etc.) (EU Exit) Regulations 2018 (“the Regulations”), having carried out the consultations required by regulation 5 of the Regulations and with the approval of the Treasury, makes this instrument in exercise of the powers conferred by regulations 3 and 4 of the Regulations.

Pre-conditions to making

- B. The PRA and the FCA are the appropriate regulators for the Bank Recovery and Resolution EU Regulations.
- C. The PRA proposes to exercise the power in regulation 3 of the Regulations to modify the Bank Recovery and Resolution EU Regulations and considers that (a) Condition A is satisfied; and (b) that the modifications to the Bank Recovery and Resolution EU Regulations can most appropriately be made by using the procedure set out in regulation 4 of the Regulations.
- D. The PRA has consulted the FCA on a division of responsibility and on the modifications contained in Annexes A and B to this instrument in accordance with regulations 3 and 5 of the Regulations.
- E. The PRA has consulted the Bank of England in accordance with regulation 5 of the Regulations.
- F. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

Interpretation

- G. In this instrument –
- (a) “the Act” means the European Union (Withdrawal) Act 2018;
 - (b) “the Bank Recovery and Resolution EU Regulations” means the EU Regulations specified in Part 4 of the Schedule to the Regulations under the heading “Bank Recovery and Resolution Directive”;
 - (c) “exit day” has the meaning given in the Act;
 - (d) “the FCA” means the Financial Conduct Authority; and
 - (e) “Condition A” means the condition defined in regulation 4(2) of the Regulations.

Division

- H. Each Bank Recovery and Resolution EU Regulation, as it has effect in domestic law by virtue of section 3 of the Act, is divided into two identical versions of the same, headed “Part 1 (FCA)” and “Part 2 (PRA)” respectively.
- I. Immediately before Article 1 in Part 1 (FCA) is inserted:

“Article A1

This Part of the Regulation applies to persons regulated solely by the FCA and their qualifying parent undertakings (within the meaning of section 192B of the Financial Services and Markets Act 2000) other than qualifying parent undertakings of PRA-authorized persons (within the meaning of section 2B(5) of the Financial Services and Markets Act 2000)”.

J. Immediately before Article 1 in Part 2 (PRA) is inserted:

“Article A1

This Part of the Regulation applies to PRA-authorized persons (within the meaning of section 2B(5) of the Financial Services and Markets Act 2000) and their qualifying parent undertakings (within the meaning of section 192B of the Financial Services and Markets Act 2000)”.

Modifications

K. The PRA makes the modifications contained in the Annex listed in column (2) below to the corresponding Bank Recovery and Resolution EU Regulation (or part thereof) listed in column (1) below.

(1)	(2)
Part 2 (PRA) of Commission Implementing Regulation (EU) 2016/911	A
Part 2 (PRA) of Articles 1 to 21, 33 to 36 and 42 to 49 of Commission Delegated Regulation 2016/1075	B

Commencement

L. This instrument comes into force on exit day.

Citation

M. This instrument may be cited as the Technical Standards (Bank Resolution and Recovery Directive) (EU Exit) (No.2) Instrument 2019.

By order of the Prudential Regulation Committee

[DATE]

Annex A

GROUP FINANCIAL SUPPORT AGREEMENTS

MODIFICATIONS TO PART 2 (PRA) OF EU REGULATION 2016/911

- 1.1 In this Annex new text is underlined and deleted text is struck through.
- 1.2 Part 2 (PRA) of EU Regulation 2016/911 means Commission Implementing Regulation of 9 June 2016 laying down implementing technical standards with regard to the form and the content of the description of group financial support agreements in accordance with 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, as it forms part of domestic law by virtue of section 3 of the Act and this Instrument, is modified as follows:

Article B1

Definitions

Unless the contrary intention appears, all words and expressions in this Regulation shall have the same meaning as in the Bank Recovery and Resolution (No. 2) Order 2014.

Article 1

Form of disclosure

Each institution that is a party to a group financial support agreement entered into pursuant to the law of the United Kingdom (or any part of it) implementing Article 19 of Directive 2014/59/EU which was relied upon immediately before exit day for that implementation, shall make disclosures in accordance with Article 2 of this Regulation on its website in a form that ensures accessibility to the public.

...

Article 2

Terms to be disclosed

...

2. The disclosure shall be accompanied by a statement that the provision of the financial support is subject to the conditions set out in Chapter 4 of the Group Financial Support Part of the PRA Rulebook or in rule IFPRU 11.5.14R of the Recovery and Resolution Part of the FCA Handbook under Article 23 of Directive 2014/59/EU and to the right of the competent authority to prohibit or restrict the provision ~~pursuant to Article 25 of Directive 2014/59/EU.~~

Thursday 28 February: This document is near-final. The final version will be made and published close to exit day.
We expect that the made instrument will be materially similar to this version.
For more information, see: <https://www.bankofengland.co.uk/eu-withdrawal/transitioning-to-post-exit-rules-and-standards>.

Article 3

Entry into force

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

Annex B

RECOVERY PLANS, INTRA-GROUP FINANCIAL SUPPORT, CONTRACTUAL RECOGNITION OF BAIL IN, NOTIFICATIONS ETC.

MODIFICATIONS TO SPECIFIED ARTICLES OF PART 2 (PRA) OF EU REGULATION 2016/1075/EU

- 1.1 In this Annex new text is underlined and deleted text is struck through as shown.
- 1.2 Part 2 (PRA) of EU Regulation (EU) 2016/1075 means Articles 1 to 21, 33 to 36 and 42 to 49 of Commission Delegated Regulation 2016/1075 of 23 March 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the content of recovery plans, resolution plans and group resolution plans, the minimum criteria that the competent authority is to assess as regards recovery plans and group recovery plans, the conditions for group financial support, the requirements for independent valuers, the contractual recognition of write-down and conversion powers, the procedures and contents of notification requirements and of notice of suspension and the operational functioning of the resolution colleges, as they form part of domestic law by virtue of section 3 of the Act, and this Instrument are modified as follows:

CHAPTER I

COMMON PROVISIONS AND RECOVERY PLANS

SECTION 1

Common Provisions

Article 1

Subject matter

This Regulation further specifies:

- (1) the information to be contained in an individual recovery plan and, in accordance with rules 3.8 and 3.9 of the Recovery Plans Part of the paragraphs 5 and 6 of Article 7 of Directive 2014/59/EU PRA Rulebook or rules IFPRU 11.3.9R and 11.3.11G of the Recovery and Resolution Part of the FCA Handbook, in a group recovery plan;
- (2) the minimum criteria that the competent authority is to assess with regard to both individual and group recovery plans, in accordance with paragraph 8 of Article 6 of Directive 2014/59/EU; articles 13 and 18 of the Bank Recovery and Resolution (No. 2) Order 2014;
- (3) the contents of resolution plans required for institutions that are not part of a group subject to consolidated supervision pursuant to the law of the United Kingdom (or any part of it) implementing Articles 111 and 112 of Directive 2013/36/EU which was relied upon immediately before exit day for that implementation and the contents of resolution plans required for

- groups, in accordance ~~respectively~~, with ~~Articles 10 and 13 of Directive 2014/59/EU~~ Part 5 of the Bank Recovery and Resolution (No.2) Order 2014;
- (4) the matters and criteria to be examined for the assessment of the resolvability of institutions or groups, provided for ~~respectively in paragraph 4 of Article 15, and paragraph 2 of Article 16 of the Directive 2014/59/EU~~ in Part 6 of the Bank Recovery and Resolution (No. 2) Order 2014;
- (5) the conditions set out in ~~points (a), (c), (e) and (i) of Article 23(1) of Directive 2014/59/EU~~ Chapter 4 of the Group Financial Support Part of the PRA Rulebook or in rule IFPRU 11.5.14R of the Recovery and Resolution Part of the FCA Handbook with regard to financial support by a group entity ~~in accordance with Article 19 of that Directive~~;
- (6) ~~the circumstances in which a person is independent from the resolution authority and the institution or entity referred to in point (b), (c) or (d) of paragraph 1 of Article 1 of Directive 2014/59/EU for the purposes of paragraph 1 of Article 36 of that Directive and of Article 74 thereof~~;
- (7) the list of liabilities to which the exclusion from the obligation to include the contractual term referred to in ~~paragraph 1 of Article 55 of Directive 2014/59/EU~~ by the Contractual Recognition of Bail-In Part of the PRA Rulebook or in rule IFPRU 11.6 of the Recovery and Resolution Part of the FCA Handbook applies and the contents of the contractual term required ~~in that paragraph by those rules~~;
- (8) the procedures and contents relating to the notifications referred to in ~~paragraph 1, 2 and 3 of Article 81 of Directive 2014/59/EU~~ articles 182 and 183 of the Bank Recovery and Resolution (No. 2) Order 2014, Chapter 8 of the Notifications Part of the PRA Rulebook or in rule IFPRU 11.7 in the Recovery and Resolution Part of the FCA Handbook and to the ~~procedural obligations notice of suspension referred to in Article 83 of that Directive~~; sections 24,25,41,48,48T and 89J of the Banking Act 2009;
- (9) ~~detailed rules on setting up and operational functioning of the resolution colleges for the performance of the tasks referred to in paragraph 1 of Article 88 of Directive 2014/59/EU.~~

Points (1), (2), (3) and (4) above are subject to the application of any simplified obligations determined in accordance with ~~Article 4 of Directive 2014/59/EU~~ articles 7 and 8 of the Bank Recovery and Resolution (No.2) Order 2014.

Article 2

Definitions

Unless the contrary intention appears, all words and expressions in this Regulation shall have the same meaning as in the Bank Recovery and Resolution (No. 2) Order 2014.

For the purposes of this Regulation, the following definitions apply:

- (A1) ‘exit day’ shall have the same meaning as in the Act;
- (1) ‘individual recovery plan’ means any of the following:

- (a) a recovery plan drawn up in accordance with ~~Article 5(1) of Directive 2014/59/EU~~ rules 2.1 to 2.2 of the Recovery Plans Part of the PRA Rulebook, or in rule IFPRU 11.2.4R of the Recovery and Resolution Part of the FCA Handbook by an institution that is not part of a group subject to consolidated supervision pursuant to the law of the United Kingdom (or any part of it) implementing Articles 111 and 112 of Directive 2013/36/EU which was relied upon immediately before exit day for that implementation and any determination under article 7(3) of the Bank Recovery and Resolution (No.2) Order 2014;
 - (b) a recovery plan drawn up in accordance with ~~Article~~ article 24 of the Bank Recovery and Resolution (No.2) Order 2014 ~~7(2) of Directive 2014/59/EU~~ by a subsidiary of ~~an EU~~ a parent undertaking;
- ...
- (3) ‘preferred resolution strategy’ a resolution strategy capable of best achieving the resolution objectives set out in set out in ~~Article 31 of Directive 2014/59/EU~~ section 4 of the Banking Act 2009 given the structure and the business model of the institution or group, and the resolution regimes applicable to legal entities in a group;
 - (4) ‘qualifying eligible liabilities’ means eligible liabilities which are included in the amount of own funds and eligible liabilities referred to in section 3A(4) of the Banking Act 2009 (and Part 9 of the Bank Recovery and Resolution (No.2) Order) 2014) and which are not excluded by article 123(4) of the Bank Recovery and Resolution (No.2) Order 2014. ~~which satisfy the conditions set forth in Article 45(4) of Directive 2014/59/EU in order to be included in the amount of own funds and eligible liabilities referred to in Article 45(1) of that Directive~~
- (4A) “recovery and resolution entity” means:
- (a) an institution that is established in the United Kingdom;
 - (b) a financial institution that is established in the United Kingdom when the financial institution is a subsidiary of a credit institution or investment firm, or of a company referred to in paragraphs (c) or (d), and is covered by the supervision of the parent undertaking on a consolidated basis in accordance with articles 6 to 17 of Regulation (EU) No 575/2013;
 - (c) an entity of any of the following kinds which is established in the United Kingdom:
 - (i) a financial holding company;
 - (ii) a mixed financial company;
 - (iii) a mixed-activity holding company;

- (d) a United Kingdom parent financial holding company or a United Kingdom parent mixed financial holding company.

...

Article 4

Summary of the key elements of the recovery plan

...

2. For the purposes of Sections II and III of Chapter I of this Regulation, material change means any change which could impact the ability of an institution or of ~~an EU~~ a United Kingdom parent undertaking or one or more of its subsidiaries to implement a recovery plan or to implement one or more recovery options contained in a recovery plan.

Article 5

Governance

The information on governance shall contain at least a detailed description of the following matters:

...

(2)

...

- (b) confirmation that the recovery plan has been assessed and approved by the management body of the institution or United Kingdom ~~EU~~ parent undertaking responsible for submitting the plan;

...

Article 7

The description of entities covered by the recovery plan

...

- (iv) any existing group financial support agreements concluded in accordance with ~~Article 19 of Directive 2014/59/EU~~ Chapter 2 of the Group Financial Support Part of the PRA Rulebook or in rule IFPRU 11.5 of the Recovery and Resolution Part of the FCA Handbook, including the parties to the agreement, the form of the financial support and the conditions associated with the provision of the financial support;

...

2. For the purposes of points (b) and (c) of paragraph 1, the reference to legal entities or branches shall be understood as a reference to legal entities or branches which:

...

- (f) are important for the financial stability of the United Kingdom at ~~least one of the Member States in which they have their registered offices or operate~~

...

Article 9

Actions, arrangements and measures under recovery options

...

2. Where a recovery option does not include the actions, arrangements or measures set out in points (a) to (e) of paragraph 1, the subsection on recovery options shall contain a demonstration that those actions, arrangements or measures have been adequately considered by the institution, the United Kingdom ~~Union~~ parent undertaking or the subsidiary which drew up and submitted the plan.

...

Article 13

Cross references

Where information set out in Article 7 has been submitted to the resolution ~~authority authorities~~ pursuant to ~~Article 11 of Directive 2014/59/EU section 83ZB of the Banking Act 2009~~, competent authorities may choose to accept cross references to that information as sufficient for meeting the requirement in article 7 if they do not compromise the completeness and quality of the recovery plan, as required by section III of Chapter I of this Regulation.

...

SECTION III

ASSESSMENT OF RECOVERY PLANS

Article 16

Completeness of recovery plans

The competent authority shall assess the extent to which a recovery plan satisfies the requirements of the law of the United Kingdom or any part of it which was relied upon immediately before exit day for the implementation of Article article 5 or Article article 7 of Directive 2014/59/EU respectively, including in Chapters 2,3 and 5 of the Recovery Plans Part of the PRA Rulebook, or rules IFPRU 11.2 and 11.3 of the Recovery and Resolution Part of the FCA Handbook and any determination under article 7(3) of the Bank Recovery and Resolution (No.2) Order 2014, and shall review the completeness of the plan based on the following:

...

- (2) whether the plan provides information that is up to date, also with respect to any material changes to the entity or entities, in particular changes to their legal or organisational structure or their business or financial situation since the last submission of the plan, in accordance with article 62(3)(a) of the Bank Recovery and Resolution (No.2) Order 2014 and any determination under Article 5(2) of Directive 2014/59/EU article 7(4) of the Bank Recovery and Resolution (No.2) Order 2014;

...

- (4) whether the plan adequately reflects an appropriate range of scenarios of severe macroeconomic and financial stress relevant to the specific conditions of the entity or entities that the plan covers, taking into account, where appropriate, guidelines issued by the EBA before exit day in accordance with Article article 5(7) of Directive 2014/59/EU that further specify the range of scenarios to be used in recovery plans by making every effort to comply with them in line with Article 16(3) of Regulation (EU) No 1093/2010;

...

- (7) whether the plan includes, where applicable, arrangements for intra-group financial support adopted pursuant to an agreement for group financial support that has been concluded in accordance with Chapter III of Directive 2014/59/EU; Chapter 2 of the Group Financial Support Part of the PRA Rulebook or in rule IFPRU 11.5 of the Recovery and Resolution Part of the FCA Handbook;
- (8) whether for each of the scenarios of severe macroeconomic and financial stress which is reflected in the plan in accordance with Chapter 2 of the Recovery Plans Part of the PRA Rulebook or in rules IFPRU 11.38R to IFPRU 11.3.13R and IFPRU 11.3.20R of the Recovery and Resolution Part

of the FCA Handbook ~~Article 7(6) of Directive 2014/59/EU~~, the plan identifies whether there are:

...

Article 17

Quality of recovery plans

In assessing whether the recovery plan meets the requirements of the law of the United Kingdom the requirements and criteria set out in or any part of it implementing Article article 5 and Article article 7 of Directive 2014/59/EU, which was relied upon immediately before exit day for that implementation, including Chapters 2, 3 and 5 of the Recovery Plans Part of the PRA Rulebook or in rules IFPRU 11.2 and 11.3 of the Recovery and Resolution Part of the FCA Handbook, and any determination under article 7(3) of the Bank Recovery and Resolution (No.2) Order 2014, as applicable, the competent authority, shall review the quality of a recovery plan based on the following:

...

(3) ...

- (a) the plan provides a sufficient level of detail concerning the information required to be included in recovery plans pursuant to articles 5 and 7 of Directive 2014/59/EU 7 of the Bank Recovery and Resolution (No.2) Order 2014, the Recovery Plans Part of the PRA Handbook or in rules IFPRU 11.2 and 11.3 of the Recovery and Resolution Part of the FCA Handbook;
- (b) the plan contains a sufficiently wide range of recovery options and indicators, taking into account, where appropriate, the guidelines issued by the EBA before exit day in accordance with Article article 9(2) of Directive 2014/59/EU that further specify the indicators to be included in recovery plans, by making every effort to comply with them in line with Article 16(3) of Regulation (EU) No 1093/2010;

...

(4)

- (c) Where plans have been required for subsidiaries on an individual basis pursuant to Article 7(2) of Directive 2014/59/EU, article 24 of the Bank Recovery and Resolution (No.2) Order 2014, there is internal consistency between these plans and the group recovery plan.

Article 18

Implementation of the arrangements proposed in the recovery plans

1. When assessing the extent to which the recovery plan satisfies the criterion set out in ~~point (a) of Article 6(2) of Directive 2014/59/EU~~, articles 12, 13, 18 and 19 of the Bank Recovery and Resolution (No.2) Order 2014, the competent authority shall review the following:

...

- (c) whether recovery options included in the plan set out actions which effectively address the scenarios of severe macroeconomic and financial stress reflected in accordance with Chapter 2 of the Recovery Plans Part of the PRA Rulebook or rules 11.2.6R to 11.2.11R and IFPRU 11.3.8R to IFPRU 11.3.13 of the Recovery and Resolution Part of the FCA Handbook Article 5(6) of Directive 2014/59/EU;

...

Article 19

Recovery options

When assessing the extent to which the recovery plan satisfies the criterion set out in ~~point (b) of Article 6(2) of Directive 2014/59/EU~~ article 13 of the Bank Recovery and Resolution (No.2) Order 2014, the competent authority shall review the following:

...

Article 20

Specific requirements for group recovery plans

- (1) When assessing the extent to which a group recovery plan satisfies the criteria set out in rules 3.8 and 3.9 of the Recovery Plans Part of the PRA Rulebook or rules IFPRU 11.3.8R to IFPRU 11.3.13R and IFPRU 11.3.20R of the Recovery and Resolution Part of the FCA Handbook ~~articles 7(4) and (6) of Directive 2014/59/EU~~, the competent authority shall review the following:

...

- (c) the extent to which arrangements included in the plan ensure the coordination and consistency of measures to be taken at the level of the parent undertaking or of an institution subject to consolidated supervision pursuant to the law of the United Kingdom (or any part of it) implementing Chapter 3 of Title VII of Directive 2013/36/EU which was relied upon immediately before exit day for that implementation pursuant to Chapter 3 of Title VII of Directive 2013/36/EU, or at the level of individual institutions, respectively. The extent to which governance processes included in the plan take

into account the governance structure of individual subsidiaries and any relevant legal restrictions shall be reviewed in particular;

- (2) the extent to which the plan provides solutions to overcome any obstacles to the implementation of recovery measures within the group which are identified in relation to ~~a scenario~~ scenarios of severe macroeconomic and financial stress relevant to the institution's specific conditions including system-wide events and stress specific to individual legal persons and to groups provided for in Article 5(6) of Directive 2014/59/EU; if the obstacles cannot be overcome, the extent to which alternative recovery measures could achieve the same objectives;

...

CHAPTER III

INTRA GROUP FINANCIAL SUPPORT

Article 33

Prospect to redress financial difficulties

...

2. When assessing the condition referred to in paragraph 1, the competent authority ~~referred to in Article 25 (2) of Directive 2014/59/EU~~ of the group entity providing financial support shall take into account information and assessments provided by the competent authority responsible for the receiving entity.

Article 34

Terms of the support

1. The terms, including consideration, for providing the financial support shall be deemed to be in compliance with rules 2.1(1) to 2.1(4) Article 19(7) of Directive 2014/59/EU of the Group Financial Support Part of the PRA Rulebook or rule IFPRU 11.5.10R of the Recovery and Resolution Part of the FCA Handbook if the following conditions are met:

...

- (b) the terms reflect the best interest of the providing entity in accordance with ~~Article 19(7) of Directive 2014/59/EU~~ rules 2.1(1) to 2.1(4) of the Group Financial Support Part of the PRA Rulebook or rule IFPRU 11.5.10R of the Recovery and Resolution Part of the FCA Handbook and the relation of benefits, risks and costs taken into account when determining the best interest, including direct or indirect benefits that may accrue to the providing entity as a result of the provision of financial support and of the benefits for the group from this provision.

...

Article 35

Liquidity and solvency of the providing entity

1. Subject to the condition specified in rule 4.1(7) of Chapter 4 of the Group Financial Support Part of the point (g) of Article 23(1) of Directive 2014/59/EU~~PRA Rulebook or rules IFPRU 11.5.14R (8) and 11.5.14R of the Recovery and Resolution Part of the FCA Handbook,~~ the provision of the financial support shall be considered not to jeopardise the liquidity or solvency of the providing entity if, following the provision of the financial support:

...

Article 36

Resolvability of the providing entity

1. The provision of ~~the~~ financial support shall be considered not to undermine the resolvability of the providing entity, if the provision of ~~the~~ financial support does not make the implementation of the resolution strategy for the providing entity as set out in the resolution plan substantively less feasible or less credible, in accordance with the assessment under ~~Articles articles 15 and 16 of Directive 2014/59/EU 60,~~ 61 and 62 of the Bank Recovery and Resolution (No.2 Order) 2014.

...

CHAPTER V

RESOLUTION

SECTION 1

Article 42

Definitions

For the purposes of this Chapter V, Section I, the following definitions apply:

- (1) ‘material amendment’ means, in relation to a relevant agreement, as defined in point 2 of this Article, ~~entered into before the date of application of the national provisions transposing Section 5 of Chapter IV of Title IV of Directive 2014/59/EU,~~ an amendment, including an automatic amendment, made after that date and affecting the substantive rights and obligations of a party to a relevant agreement; amendments which do not affect the substantive rights and obligations of a party to a relevant agreement include a change to the contact details of a signatory or the addressee for the service of documents, typographical changes to correct drafting errors or automatic adjustments of interest rates;

- (2) ‘relevant agreement’ means any agreement, including the terms of a capital instrument, creating a liability to which ~~Article 55(1) of Directive 2014/59/EU applies~~ Chapter 2 of the Contractual Recognition of Bail-In Part of the PRA Rulebook requires the inclusion of a term in the agreement or to which rule IFPRU 11.6 of the Recovery and Resolution Part of the FCA Handbook applies.

Article 43

Liabilities to which the exclusion from the obligation to include the contractual term referred to in ~~Article 55(1) of Directive 2014/59/EU applies~~ Chapter 2 of the Contractual Recognition of Bail-In Part of the PRA Rulebook or rule IFPRU 11.6 of the Recovery and Resolution Part of the FCA Handbook applies

1. ~~For the purposes of point (a) of the first subparagraph of Article 55(1) of Directive 2014/59/EU, the Contractual Recognition of Bail-In Part of the PRA Rulebook and or rule IFPRU 11.6 of the Recovery and Resolution Part of the FCA Handbook,~~ a secured liability shall not be considered as an excluded liability where, at the time at which it is created, it is:

...
 - (b) fully secured but governed by contractual terms that do not oblige the debtor to maintain the liability fully collateralised on a continuous basis in compliance with regulatory requirements of ~~Union~~ the law of the United Kingdom or of a third country law achieving effects that can be deemed equivalent to United Kingdom ~~Union~~ law.
2. ~~For the purposes of point (d) of the first subparagraph of Article 55(1) of Directive 2014/59/EU, liabilities issued or entered into after the date of application of the provisions adopted by Member States for the transposition of Section 5 of Chapter IV of Title IV of Directive 2014/59/EU in a Member State referred to in Article 42(1) of this Regulation shall comprise rule 2.3 of the Contractual Recognition of Bail-In Part of the PRA Rulebook or rule IFPRU 11.6.3 R of the Recovery and Resolution Part of the FCA Handbook, recognition of bail-in applies to:~~
 - (a) liabilities created after the relevant ~~that~~ date, regardless of whether they are created under relevant agreements entered into before that date, including under master or framework agreements between the contracting parties governing multiple liabilities;
 - (b) liabilities created before or after ~~that~~ the relevant date under relevant agreements entered into before that date and which are subject to a material amendment;
 - (c) liabilities under debt instruments issued after ~~that~~ the relevant date.

“relevant date” means the date applicable under Chapter 2 of the Contractual Recognition of Bail-in Part of the PRA Rulebook or rule IFPRU 11.6.3 R of the Recovery and Resolution Part of the FCA Handbook.

3. ~~For the purposes of the second subparagraph of Article 55(1) of Directive 2014/59/EU, a resolution authority shall determine that~~ The requirement to include a contractual term in a relevant agreement pursuant to Chapter 2 of Contractual Recognition of Bail-In Part of the PRA Rulebook or rule IFPRU 11.6.3R (2)(e) of the Recovery and Resolution Part of the FCA Handbook shall not apply where ~~it~~ the resolution authority is satisfied that the law of the third country concerned or a binding agreement concluded with that third country provides for an administrative or judicial procedure which:
- (b) ...
- (ii) the recognition or support of the exercise of the write-down and conversion powers by the resolution authority would result in third country creditors, in particular depositors located and payable in that third country, being treated less favourably than creditors, and depositors located or payable in the United Kingdom ~~Union~~, with similar rights under applicable United Kingdom ~~Union~~ law;
- ...
4. ~~For the purposes of the second subparagraph of Article 55(1) of Directive 2014/59/EU, the~~ The resolution authority shall assess that the grounds referred to in paragraph 3(b) would not prevent the recognition or support of the exercise of the write-down and conversion powers in all circumstances where such powers are applied.

Article 44

Contents of the contractual term required by Chapter 2 of the Contractual Recognition of Bail-In Part of the Article 55(1) of Directive 2014/59/EU PRA Rulebook or rule IFPRU 11.6 of the Recovery and Resolution Part of the FCA Handbook applies.

Contractual term in a relevant agreement shall include the following:

- (1) the acknowledgement and acceptance by the counterparty of a recovery and resolution institution ~~or entity referred to in point (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU~~, that the liability may be subject to the exercise of write-down and conversion powers by a resolution authority;
- (2) a description of the write-down and conversion powers under United Kingdom law of each the resolution authority ~~in accordance with the national law transposing Section 5 of Chapter IV of Title IV of Directive 2014/59/EU or, where applicable, under Regulation (EU) No 806/2014 of the European Parliament and of the Council (7), in particular the powers~~

~~set out in points (e), (f), (g) and (j) of Article 63(1) of Directive 2014/59/EU;~~

- (3) the acknowledgement and acceptance by the counterparty of a recovery and resolution ~~an institution or entity referred to in point (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU~~ :

- (a) that it is bound by the effect of an application of the powers referred to in point (b), including:
- (i) any reduction in the principal amount or outstanding amount due, including any accrued but unpaid interest, in respect of the liability of ~~an institution or a recovery and resolution~~ entity referred to in point (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU under the relevant agreement;

...

- (b) that the terms of the relevant agreement may be varied as necessary to give effect to the exercise by a resolution authority of its write-down and conversion powers and such variations will be binding on the counterparty of ~~an institution or a recovery and resolution~~ entity referred to in point (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU;
- (c) that ordinary shares or other instruments of ownership may be issued to or conferred on the counterparty of ~~an institution or a recovery and resolution~~ entity referred to in point (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU, as a result of the exercise of the write-down and conversion powers;
- (4) the acknowledgement and acceptance by the counterparty of ~~an institution or a recovery and resolution~~ entity referred to in point (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU, that the contractual term is exhaustive on the matters described therein to the exclusion of any other agreements, arrangements or understandings between the counterparties relating to the subject matter of the relevant agreement.

For the purposes of this Article, a mixed-activity holding company established in the United Kingdom shall not be a recovery and resolution entity unless it is 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 the subsidiary of the mixed-activity holding company.

SECTION II

Article 45

General requirements for notifications

- (1) Notifications submitted under ~~Articles 81(1), (2), (3) and 83(2) of Directive 2014/59/EU~~ articles 182 and 183 of the Bank Recovery and Resolution (No.2) Order 2014 and rules 8.2 and 8.3 of the Notifications Part of the PRA Rulebook and rule IFPRU 11.7 of the Recovery and Resolution Part of the FCA Handbook shall be in writing and transmitted by adequate and safe electronic means.
- (2) The relevant authorities ~~referred to in paragraphs 1, 2 and 3 of Article 81 of Directive 2014/59/EU and in Article 83(2)~~ shall specify the contact details for submitting a notification and make these publicly available.
- (3) Before sending a notification, the sender may make contact orally with the relevant authorities ~~referred to in paragraphs 1, 2 and 3 of Article 81 of Directive 2014/59/EU~~ to inform them that a notification is being submitted.
- (4) For the purpose of notifications referred to in Article 45(1) points (a), (b), (c), (d), (h) and (j) of Article 81(3) of Directive 2014/59/EU and in points (a), (b), (f) and (h) of Article 83(2) thereof, competent authorities and resolution authorities shall use the language in common use for cooperation with each other ~~with the consolidating supervisor and the group level resolution authority~~.
- (5) The relevant authorities ~~referred to in paragraphs 1, 2 and 3 of Article 81 of Directive 2014/59/EU and in Article 83(2)~~ shall acknowledge receipt of the notification to the sender specifying the date and time of receipt as recorded by the recipient and the contact details of the staff handling the notification.

Article 46

Notification by the management body to a competent authority

- (1) The notifications submitted by the management body of ~~institution or an a recovery and resolution entity referred to in point (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU~~ to a competent authority, shall include:
 - (a) the name, the address of the registered office and, where available, the legal entity identifier of the ~~institution referred to in point (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU~~ recovery and resolution entity sending the notification;
 - (b) the name and address of the registered office of the immediate and ultimate parent undertaking of that ~~institution referred to in point (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU~~ recovery and resolution entity, where relevant;

- (c) the relevant information and analyses that the management body took into account when performing the assessment for determining that the conditions ~~under Article 32(4) of Directive 2014/59/EU~~ section 7(2) of the Banking Act 2009 have been met;
 - (d) a copy of the management body's written resolution confirming its assessment that the ~~institution referred to in point (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU or the~~ recovery and resolution entity is failing or likely to fail;
- ...
- (2) The notification pursuant to ~~Article 81(1) of Directive 2014/59/EU~~ article 181 of the Bank Recovery and Resolution (No.2) Order 2014 and rules 8.2 and 8.3 of the Notifications Part of the PRA Rulebook shall be communicated immediately to the competent authority following the decision by the management body of ~~an institution or referred to in point (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU~~ a recovery and resolution entity that that entity is failing or likely to fail.

Article 47

Communication of the competent authority to the resolution authority of the received notification

Upon receipt of the notification referred to in Article 46, the competent authority shall immediately send the following information to the resolution authority:

...

- (2) the details of crisis prevention measures or actions referred to in ~~article 104 of Directive 2013/36/EU~~ article 182 of the Bank Recovery and Resolution (No. 2) Order 2014 that the competent authority has taken or requires ~~an institution or~~ a recovery and resolution entity ~~referred to in point (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU~~ to take, where relevant;

...

Article 48

Notification of assessment that an institution meets the conditions for resolution set out in ~~points (a) and (b) of Article 32(1) of Directive 2014/59/EU~~ sections 7(2) and 7(3) of the Banking Act 2009

1. The notification of a competent authority or resolution authority for the purposes of ~~Article article 81(3) of Directive 2014/59/EU~~ 183 of the Bank Recovery and Resolution (No.2) Order 2014 shall include:
 - (a) the name of the ~~institution or~~ recovery and resolution entity referred to in point (b), (c) or (d) of ~~Article 1(1) of Directive 2014/59/EU~~ to which the notification relates;
 - ...
 - (c) a summary of the assessment required in ~~points (a) and (b) of Article 32(1) of Directive 2014/59/EU~~ sections 7(2) and 7(3) of the Banking Act 2009.
2. The notification shall be made without delay following a determination that the conditions referred to in ~~points (a) and (b) of Article 32(1) of Directive 2014/59/EU~~ sections 7(2) and 7(3) of the Banking Act 2009 have been met.

...

Article 49

Notice

1. The notice referred to in ~~paragraph 4 of Article 83 of Directive 2014/59/EU~~ sections 24, 25, 41, 48T and 89J of the Banking Act 2009 to be published by the resolution authority, shall include:
 - (a) the name, the address of the registered office and, where available, the legal entity identifier of the ~~institution or~~ recovery and resolution entity referred to in point (b), (c) or (d) of ~~Article 1(1) of Directive 2014/59/EU~~ under resolution;
 - (b) the name and address of the registered office of the immediate and ultimate parent undertaking of that ~~institution or~~ recovery and resolution entity referred to in point (b), (c) or (d) of ~~Article 1(1) of Directive 2014/59/EU~~, where relevant;
 - ...
 - (ii) information on the access to other clients' assets or funds within the ~~meaning of point (e) of Article 31(2) of Directive 2014/59/EU~~ objectives set out in section 4 of the Banking Act 2009 held at the institution affected by the resolution action;
 - (iii) information on the contractual payment or delivery obligations subject to suspension under ~~Article 69 of Directive 2014/59/EU~~, section 70A and 70D of the Banking

Act 2009 including the commencement and expiration of the suspension period, where applicable;

- (iv) information on the secured creditors of the ~~institution or recovery and resolution~~ entity ~~referred to in point (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU~~ under resolution subject to restrictions on the enforcement of security interest including the commencement and expiration of that restriction period in accordance with Article 70 of Directive 2014/59/EU, section 70B and 70D of the Banking Act 2009 where applicable;
- (v) information on the contractual parties affected by the temporary suspension of termination rights including the commencement and expiration of the suspension period under Article 71 of Directive 2014/59/EU, section 70C and 70D of the Banking Act 2009 where applicable;
- (e) the confirmation of the ordinary course of contractual commitments, including repayment schedules, not subject to suspensions ~~under Articles 69, 70 and 71 of Directive 2014/59/EU~~;
- (f) the point of contact within the institution where customers and creditors can seek further information and updates on the ~~institution or recovery and resolution~~ entity and its operations;

For purposes of this article, termination rights should be interpreted with reference to sections 48Z and 70C of the Banking Act 2009.

...