



Workshop: Crisis Preparedness in the Banking Industry

21 November 2023

Resolution Unit

*What We Do: Public Interest Assessment SWE,
Resolvability, MIS*



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The Resolution Authority and the Resolution Committee

Article 7B of the MFSA Act

- **The Board of Governors of the MFSA acts as the Resolution Authority which delegates its powers to the Resolution Committee**
- **The Resolution Committee is ultimately responsible for taking resolution decisions**
- **Operational independence of the Resolution Committee from the supervisory arm of the MFSA**

The Resolution Authority and the Resolution Committee



Resolution Unit – Structure



Planning – Overview

Our Duties and Responsibilities

Drafts resolution plans

- Collects data from Banks
- Conducts the Public Interest Assessment for each Bank
- Calibrates and monitors MREL
- Yearly process for banks subject to full obligations
- Bi-yearly process for banks subject to simplified obligations

Collects Contributions

- Yearly contributions are collected from Banks for the Single Resolution Fund

Legal and Policy – Overview

Our Duties and Responsibilities

Review resolution plans

- Review resolution plans from a legal perspective

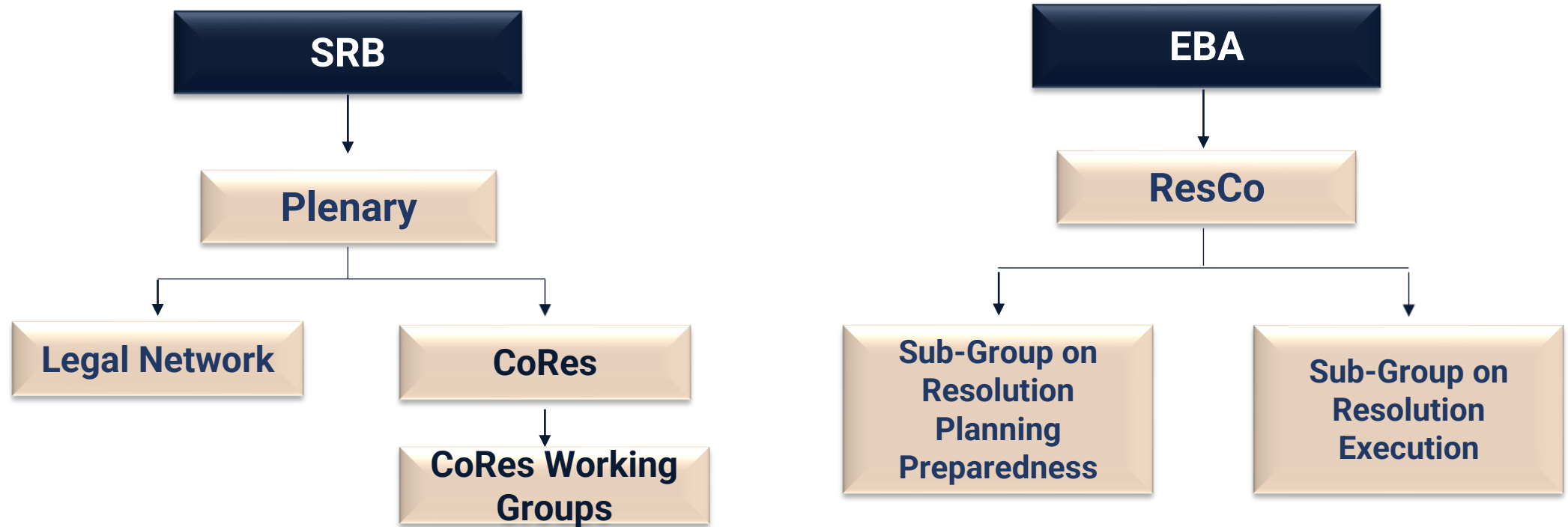
Draft legislations to implement EU Regulations and transpose EU Directives

- The Bank Crisis Management and Deposit Insurance (CMDI) Package
- The Insurance Recovery and Resolution Directive
- Project on the implementation of a Maltese administrative insolvency framework

Implement EBA Guidelines and SRB Policies

- EBA Guidelines: FOLTF, Early Intervention Measures, Resolution tools
- SRB Policies: MREL, PIA, Expectations for Banks, Critical Functions

Committees and Substructures

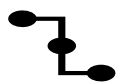


Public Interest Assessment (PIA)

- The Resolution Committee is to assess whether a resolution action is necessary in the public interest
- PIA is to provide justification for Resolution Committee intervention
- A resolution action is in the public interest
 - if it is necessary for achieving of, and proportionate to one or more of the **resolution objectives**, and
 - where winding up under normal insolvency procedures would not meet the resolution objectives to the same extent

Public Interest Assessment (PIA)

- There are five resolution objectives
 - **Positive test** for one of them is a sufficient condition for a resolution action
 - Otherwise, liquidation of a bank under **normal insolvency proceedings** (NIP) is foreseen



Ensure the continuity of critical functions



Avoid a significant adverse effect on the financial system



Protect public funds



Protect covered depositors and covered investors

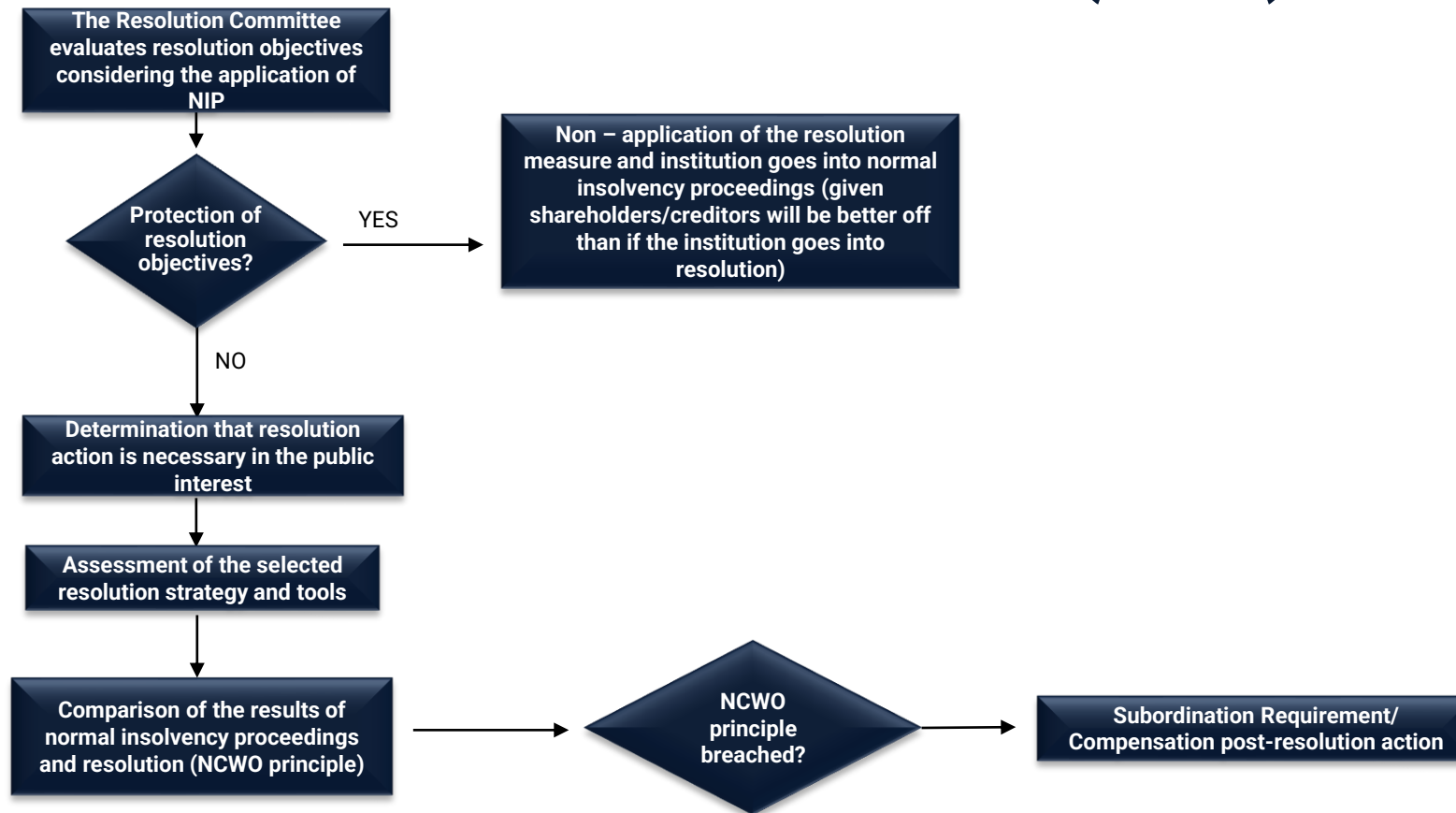


Protect client funds and client assets

Public Interest Assessment (PIA)

- Instances of PIA
 - **Preliminary PIA** : Conducted annually in each Resolution Planning Cycle
 - **Final PIA** : Conducted ad-hoc at the point of failing or likely to fail (FOLTF)
- PIA is a **relative, institution-** and **time-dependent** decision
 - A resolution scenario is always compared to a liquidation scenario
 - PIA is conducted for each bank individually, following a standardised methodology
 - The nature of PIA is dynamic

Public Interest Assessment (PIA): Process



Public Interest Assessment (PIA): Way Forward

- **Updated Approach** to PIA in Resolution Planning
 - Introduce potential System-wide events (SWE)
- **Public Interest Assessment – System Wide Events (PIA- SWE)**
 - From idiosyncratic risk to systemic risk
- The PIA-SWE may change the strategy from **liquidation** to **resolution**
 - Qualitative and quantitative assessment
- Implemented in the **upcoming** 2024 Resolution Planning Cycle

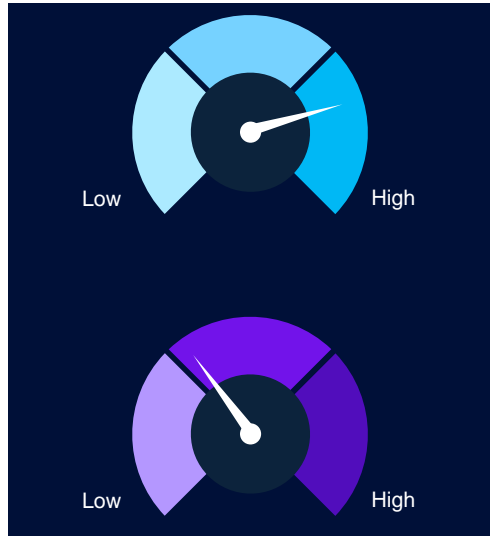
Seven dimensions for Resolvability



Expectations for Banks



Seven dimensions for Resolvability



Governance

Principle 1.1 Active involvement of management body and senior management

Principle 1.2 Governance for resolution activities

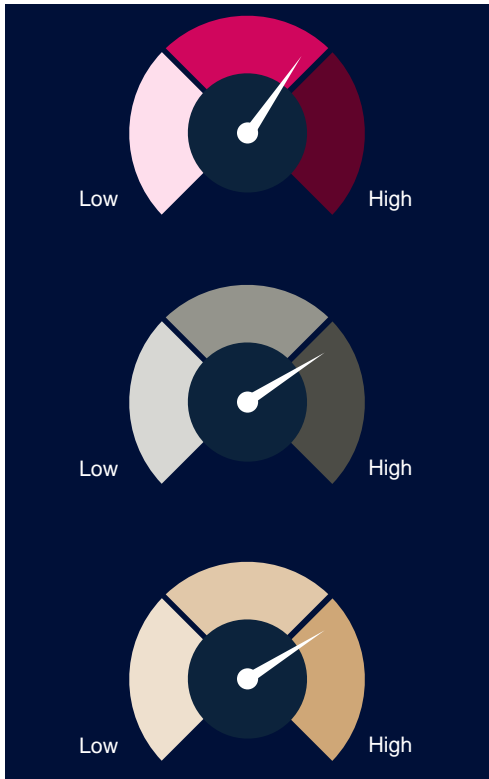
Principle 1.3 Quality assurance and internal audit

Principle 1.4 Testing and operationalisation of the strategy

Liquidity and funding in resolution

Banks are likely to face liquidity stress in resolution because of the reluctance of market participants to roll-over or provide funding to a bank in crisis. Even after a successful resolution, liquidity stress may persist for some time due to the asymmetry of information regarding the viability of the resolved bank's business model.

Seven dimensions for Resolvability



Operational continuity and access to FMIs



Resolution proof contracts



Identification of essential and critical FMIs



Liquidity arrangements



Contingency plans

Communication



Communication plan



Communication governance

Limiting contagion and avoiding uncertainty

Separability and Restructuring

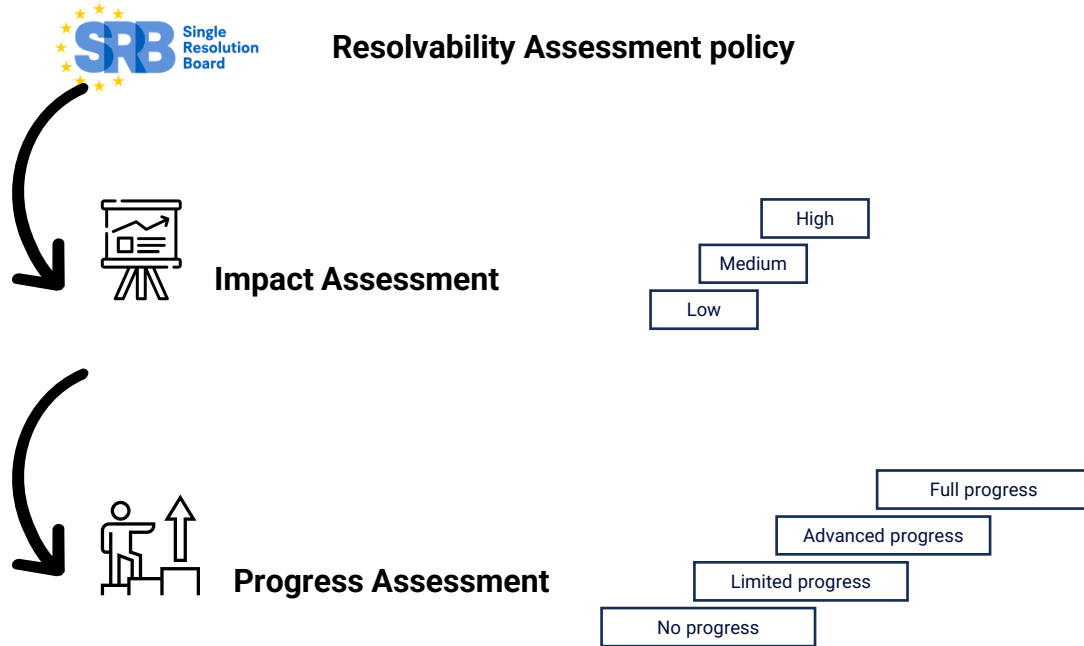


Structure, Complexity and interdependencies

Separability Analysis Report where the PRS or variant envisages a partial transfer tool

+ Transfer playbook

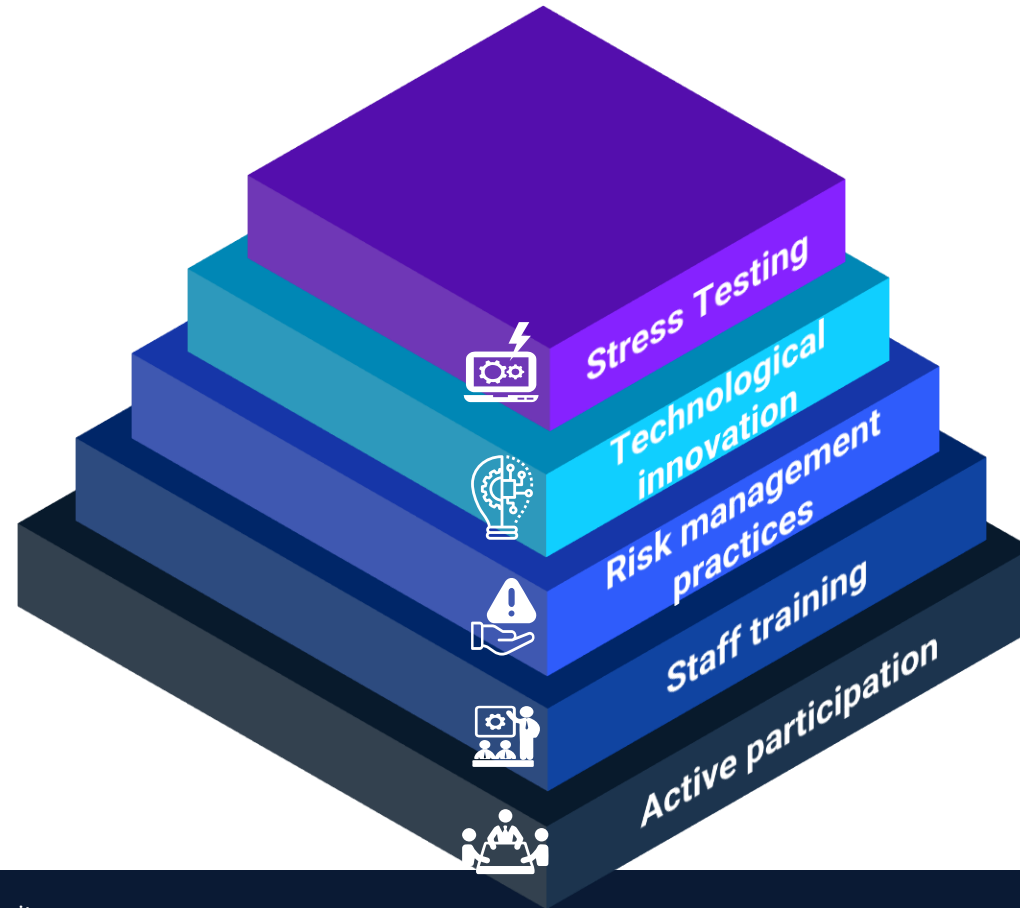
Resolvability Assessment



Heat-map

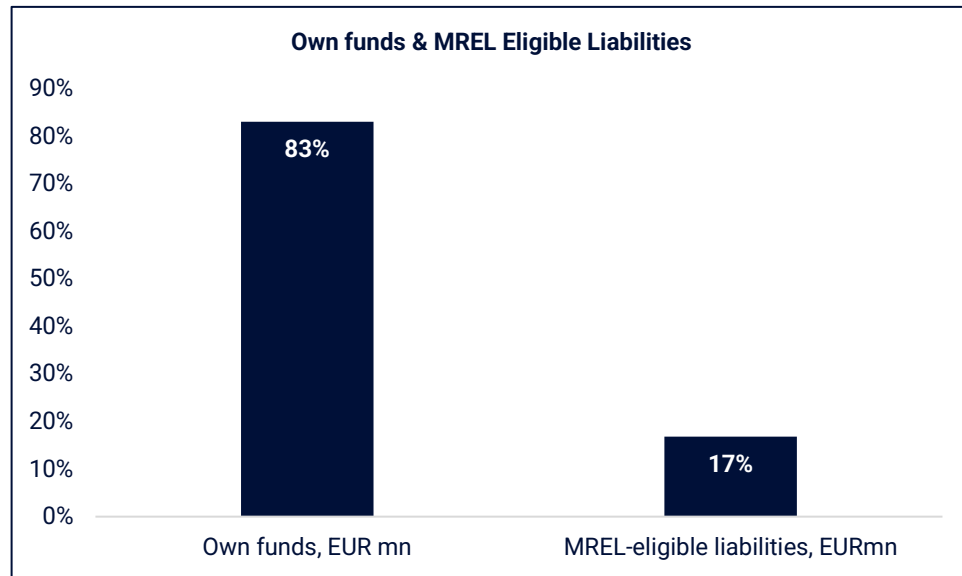
	High impact	Medium impact	Low impact	N/A
Level 0	Potential candidate for substantive impediments	Potential candidate for substantive impediments	No or minor impediment	No impediment
Level 1	Potential candidate for substantive impediments	Impediment	No or minor impediment	
Level 2	No or minor impediment	No or minor impediment	No impediment	
Level 3	Best practice	Best practice	Best practice	
Grey Progress Level	Potential impediment		No impediment	

Role of Banks in achieving Resolvability




Loss Absorption and recapitalisation capacity

MT Banks earmarked for resolution



Data as at 30 June 2023

Net MREL-eligible instruments, as at 30 June 2023	MT Banks average
CET1 Capital	74%
AT1 Capital	0%
T2 Capital	9%
Senior non-preferred liabilities	10%
Deposits, not covered and not preferred	7%
Total	100.00%

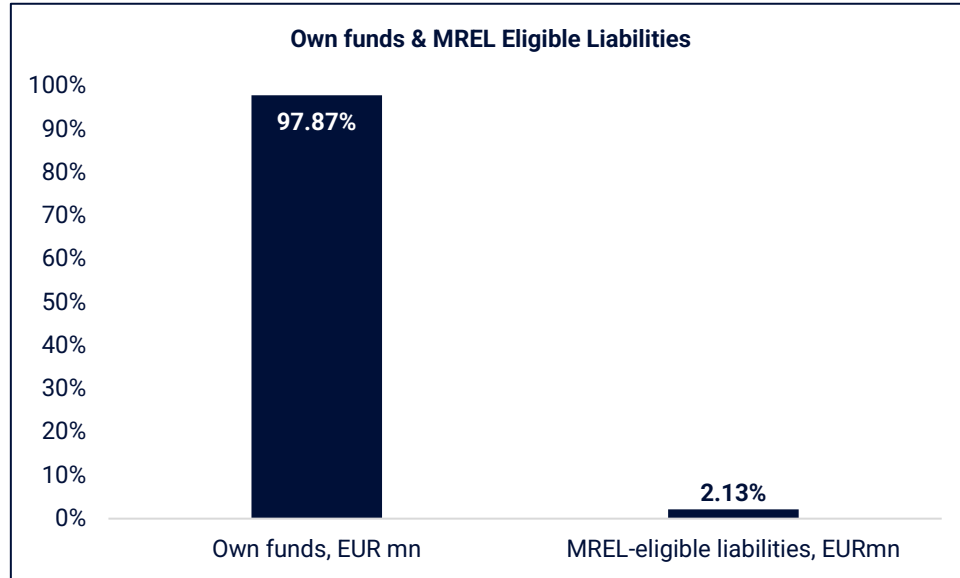


Net MREL-eligible instruments, as at 31 December 2022	BU average
CET1 Capital	66%
AT1 Capital	2%
T2 Capital	4%
Subordinated liabilities (not recognised as own funds)	5%
Other MREL eligible liabilities	1%
Senior non-preferred liabilities	3%
Senior unsecured liabilities	11%
Deposits, not covered and preferred	8%
Total	100%

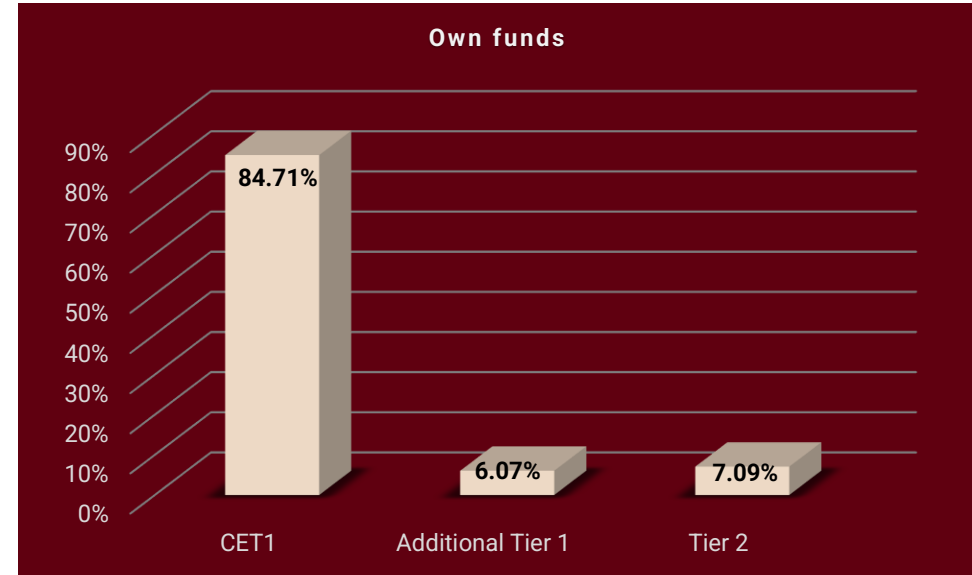
SRB calculations based on data provided by NRAs, as at 31 December 2022

Loss Absorption and recapitalisation capacity

MT Banks earmarked for liquidation



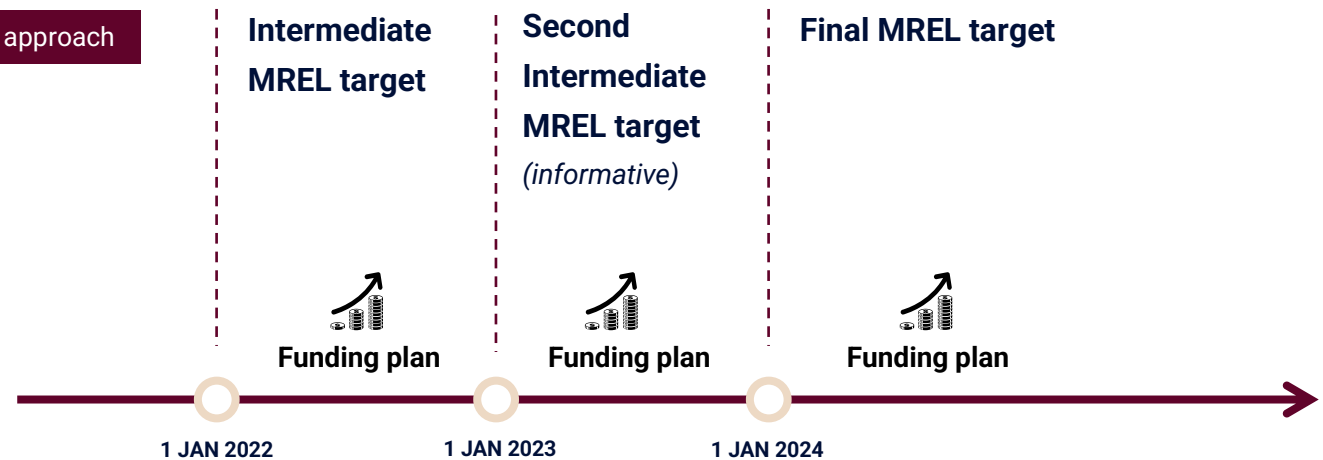
Data as at 30 June 2023



MREL requirements



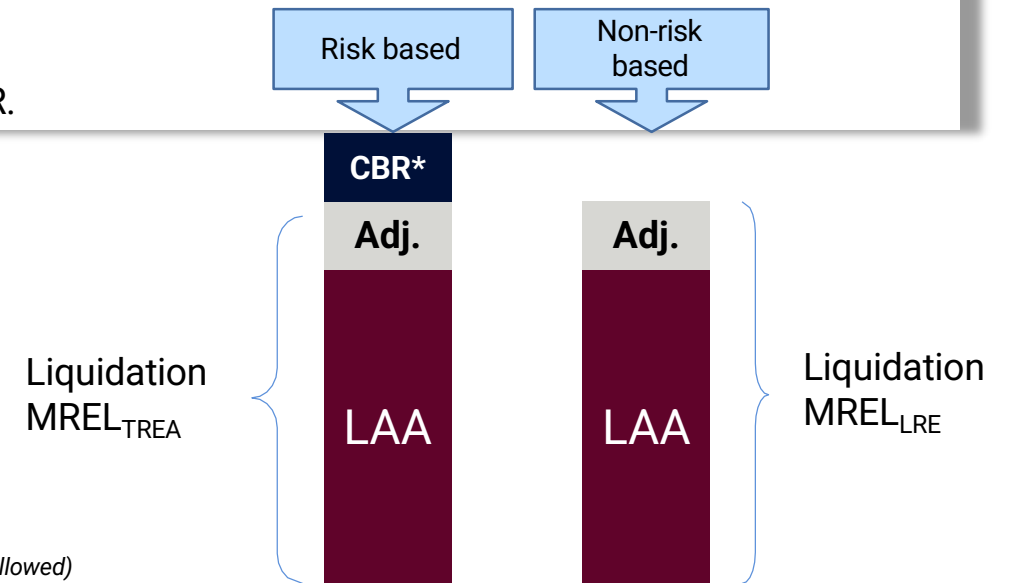
Gradual approach



- Banks shall meet CBR in addition to MREL, at all times;
- Common Equity Tier 1 (CET1) used to meet the MREL-TREA cannot be used to meet the CBR;
- CBR entirely made up of CET 1 instruments

MREL calibration for Liquidation Banks

- In general, the LAA will not be adjusted;
- Specific case for entities to be wound up under NIP (liquidation entities) where an upward adjustment is possible in line with RRR and the applicable SRB MREL policy ;
- This adjustment is justified by high amounts of covered deposits, the possible impact on financial stability and the risk of contagion through pressure on the national DGS;
- Risk based magnitude: Upward adjustment equivalent to CBR;
- Non-risk-based magnitude: Upward adjustment equivalent to 50% CBR.



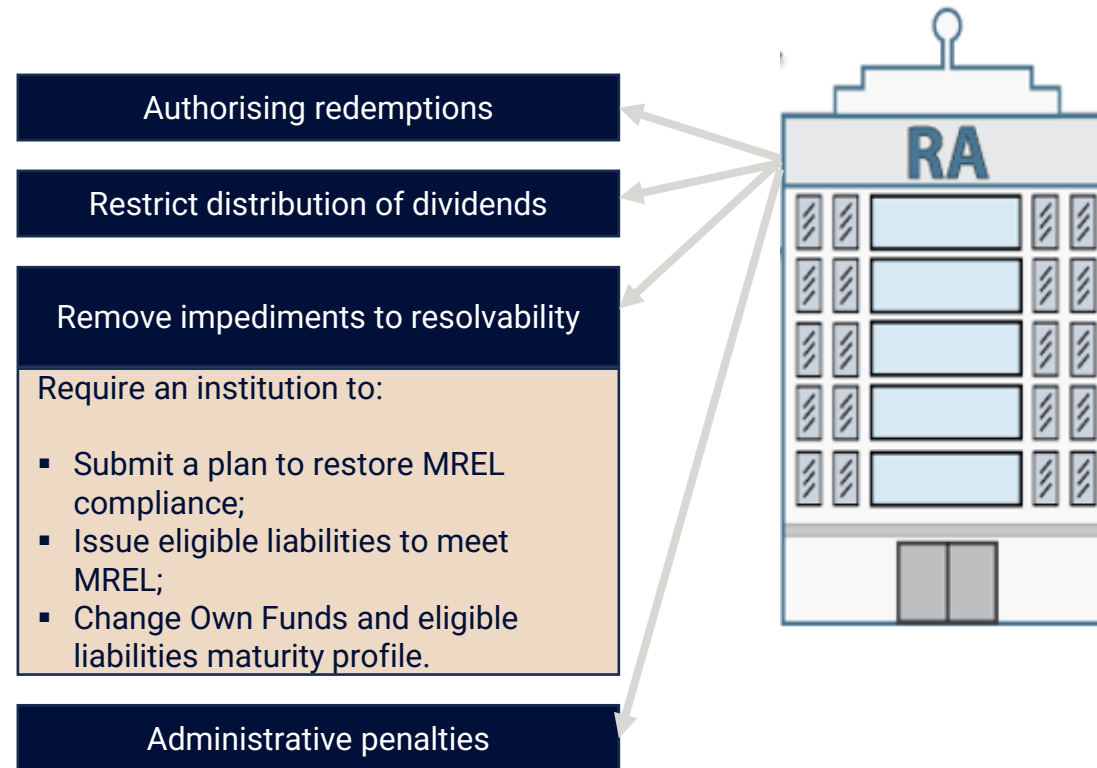
* CBR to be complied with in addition to the risk based requirement with CET-1 instruments only (no double counting allowed)

MREL Decisions



MREL target will be issued **annually** for **ALL BANKS** unless it is subject to simplified obligation (every 2 years)

Enforcement toolkit



Information systems and data requirements

- **Access to information and information sharing** – International standards set by the Financial Stability Board
- Banks are required to:
 - Maintain Management Information Systems (MIS) able to produce information on a timely basis
 - Maintain a detailed inventory of the key MIS used in their material legal entities, mapped to their core services and critical functions;
 - Identify and address exogenous legal constraints among group entities;
 - Demonstrate ability to produce the essential information needed to implement resolution plans within a short period of time

Information systems and data requirements

- Management Information Systems (MIS)
- Valuation Capabilities
- Technological Infrastructure
- Governance
- Quality Assurance and Continuity Arrangements



Information systems and data requirements



Resolution Planning

- Granularity, Timeliness
- Quality of Resolution Reporting
- Internal Manuals
- Dry-Run Exercises



Valuation

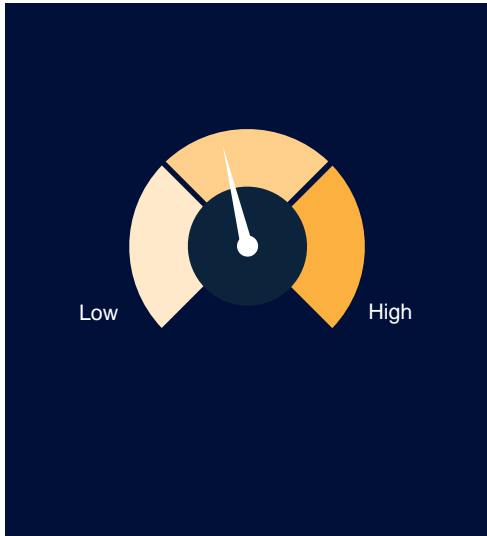
- Self-assessment
- Gap-analysis
- Visibility on data sources
methodologies applied
- Dry-Run Exercises



Execution of Resolution Tools

- Assessing loss-absorption
- Bail-in data points
- Data for Valuations
- Data on Transfer Perimeter
- Access to Virtual Data Rooms
- Dry-Run Exercises

MIS – Working Priorities



Banks with a Resolution Scenario:

- MIS Capabilities for execution of tools (playbooks)
- MIS capabilities for bail-in data as per 2022 SRB Bail-in data list
- MIS capabilities to meet data expectations for liquidity and funding in resolution
- MIS capabilities to support the transfer of the perimeter identified in resolution planning
- MIS capabilities and framework in the context of OCIR
- MIS capabilities for valuation including testing
- Governance arrangements for MIS

MIS – Working Priorities

Banks with a Liquidation Scenario:

Assessing potential barriers to liquidation:

- MIS capabilities for delivery of information to ensure covered depositor and investor protection
- MIS capabilities to produce information necessary for valuation
- Governance arrangements for MIS
- MIS capabilities to maintain resolution plans
- Testing of the continuity of MIS capabilities in a crisis context



Questions



Thank you

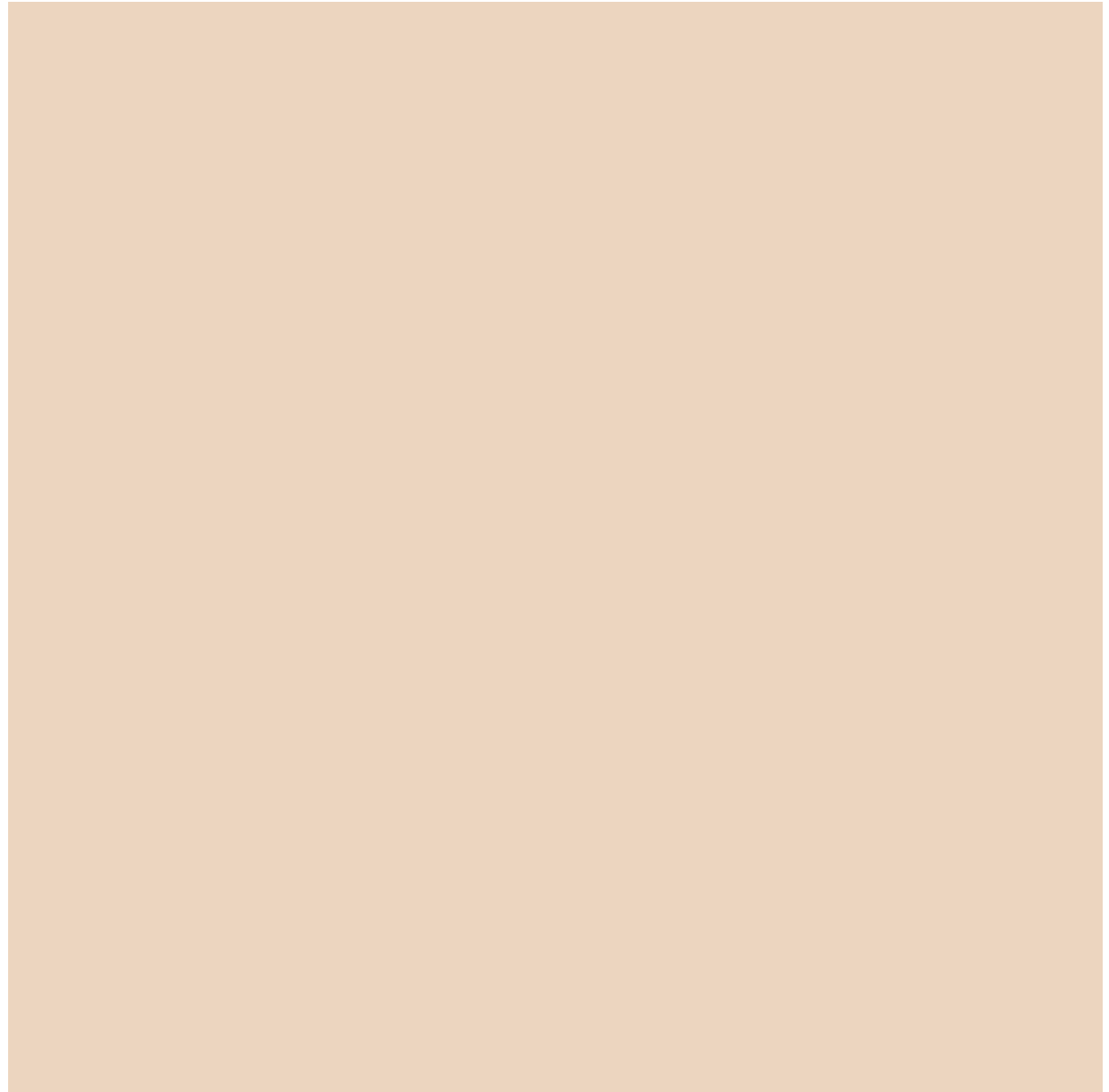
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Resolution Priorities 2024

21 November 2024



MFSa

Strategic priorities

- Strategic Priority 16 – Develop a high level of crisis preparedness and crisis management

Resolution Unit

Capacity building

- Build knowledge, test and improve frameworks

SRB/EBA

Discussions at European level

- SRB strategic review
- SRB and EBA workplans
- European Commission proposals

Resolution priorities 2024

- Resolution Planning and MREL monitoring
- Resolvability Assessments
- Testing Resolvability – EBA Guidelines
- Further development and refinement of the Resolution Framework for Banks
- Crisis Preparedness and Crisis Management Framework
- Simulation Exercises to test the Framework
- Crisis Management and Deposit Insurance
- Bank Administrative Insolvency Regime
- Cooperation with European Authorities and continued participation in working groups
- Sustaining collaboration within the MFSA and with local stakeholders
- Resolution Framework for certain Investment Firms
- Insurance Recovery and Resolution Directive



Resolution Planning and Resolvability

Resolution
Planning and
MREL Monitoring

Resolvability
Assessments

Testing

-
- Ongoing resolution planning – well established
 - Data collection
 - Final binding MREL targets set
 - Updates and monitoring
 - Unless strategy of a bank changes



Resolvability

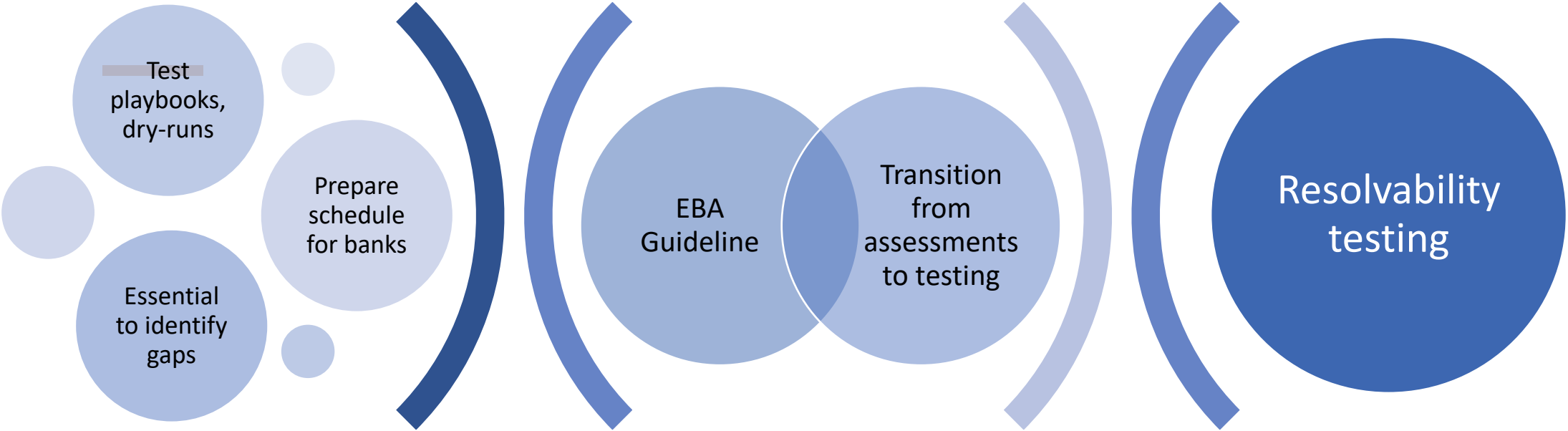
Target for resolution banks – end
2023

Liquidation
banks

Remove
substantive
impediments

Reduce other
impediments

MIS
Communication



Resolution Framework – Banks

- Legislation, guidelines, handbooks and operational manuals in place
- Resolution authorities building knowledge through testing and application
- Priority for 2024
 - Continue assessment of the framework to identify gaps
 - Operationalisation of resolution tools, regulation
 - Testing
 - Crisis Management Framework



Crisis Management and Deposit Insurance

- Will remain fully engaged in discussions and meetings
- Collaborate closely with other stakeholders, particularly the Depositor Compensation Scheme and Ministry for Finance and Employment
- Impact on Framework, the DCS and the financial sector
- Closer relationship between DCS and resolution process



Bank Administrative Insolvency Regime

- IMF FSAP recommendation
- Priority to finalise in 2024
- Address inadequacies in the current regime, based on experience
- Collaboration, consultations and legislative process



Collaboration and Relationship with stakeholders



Single Resolution Board
 European Banking Authority
 European Commission
 Other NRAs



Banking Supervision
 Financial Stability
 Investment Services Supervision
 Insurance and Pensions Supervision

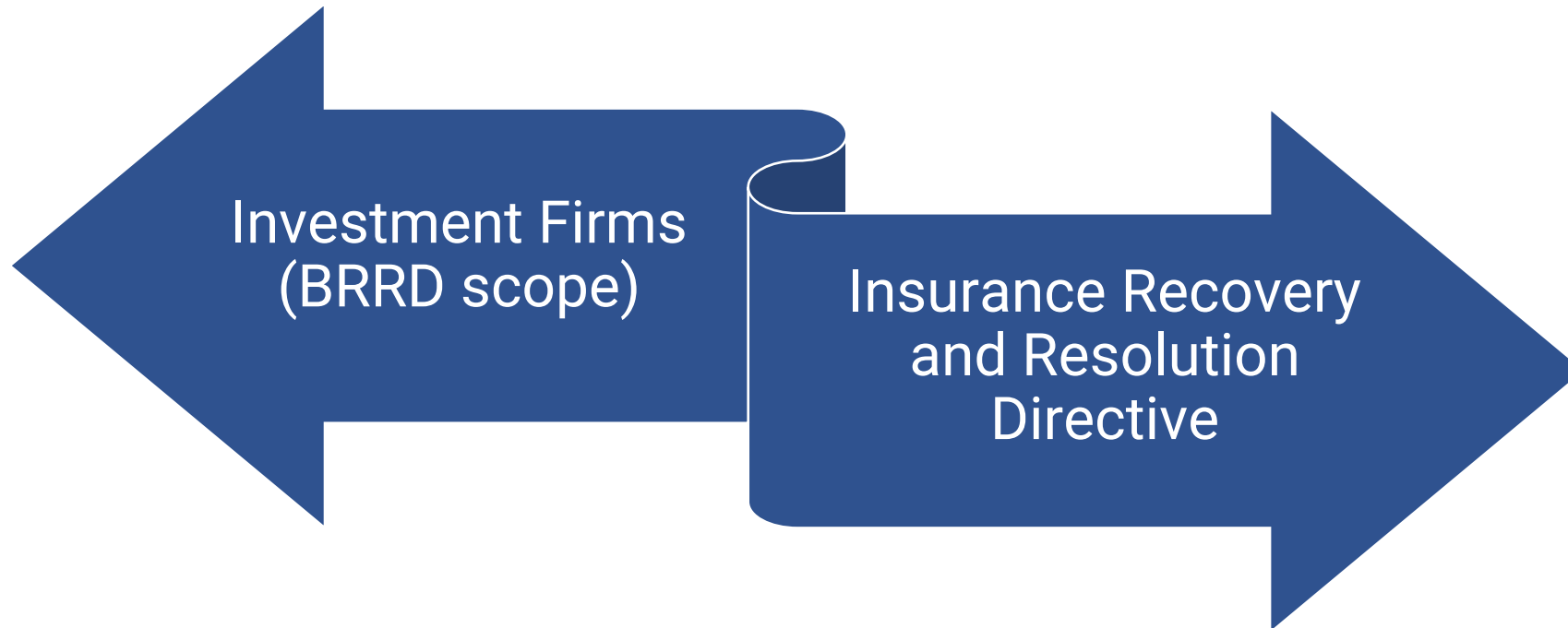


MFE
 Central Bank of Malta
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Sectors other than banks



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An administrative insolvency regime for credit institutions in Malta
Crisis Preparedness in the Banking Industry

Chris Mifsud Bonnici
Senior Manager, PwC

An administrative insolvency regime for credit institutions in Malta

- 1 The need for an administrative insolvency framework
- 2 Lessons learnt from recent banking failures
- 3 Proposed way forward



A project conducted with the financial support of the European Union (via the Technical Support Instrument, in cooperation with the DG for Structural Reform Support of the European Commission). The contents of this presentation are the sole responsibility of the author(s). The views expressed herein can in no way be taken to reflect the official opinion of the European Union.

The need for an administrative insolvency framework

- The BRRD framework operating on an ‘**insolvency first**’ principle.
- The 2 functions of ‘**normal insolvency proceedings**’:
 - the legal mechanisms for an orderly winding up of a bank
 - a reference point to identify when resolution is not in the public interest.



The need for an administrative insolvency framework

- Lack of clarity on the **triggers** of dissolution and winding up of credit institutions:
 - Companies Act triggers
 - Banking legislation triggers



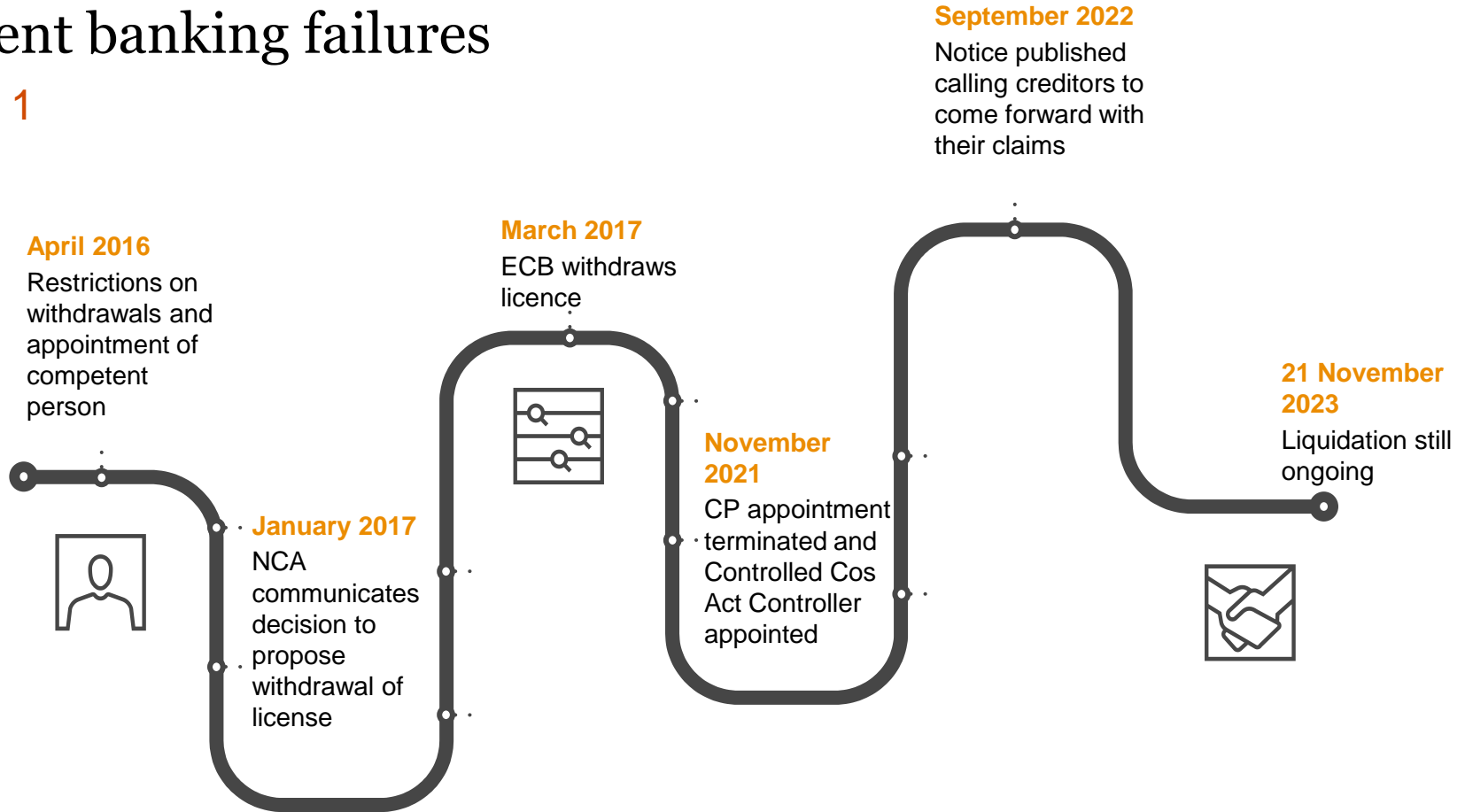
The need for an administrative insolvency framework

- Lack of certainty on the **process**:
 - Companies Act
 - Controlled Companies (Procedure for Liquidation) Act
 - Credit Institutions (Reorganisation and Winding-Up) Regulations
 - Residual Balances Fund Act
- The qualities of the liquidator are largely unregulated



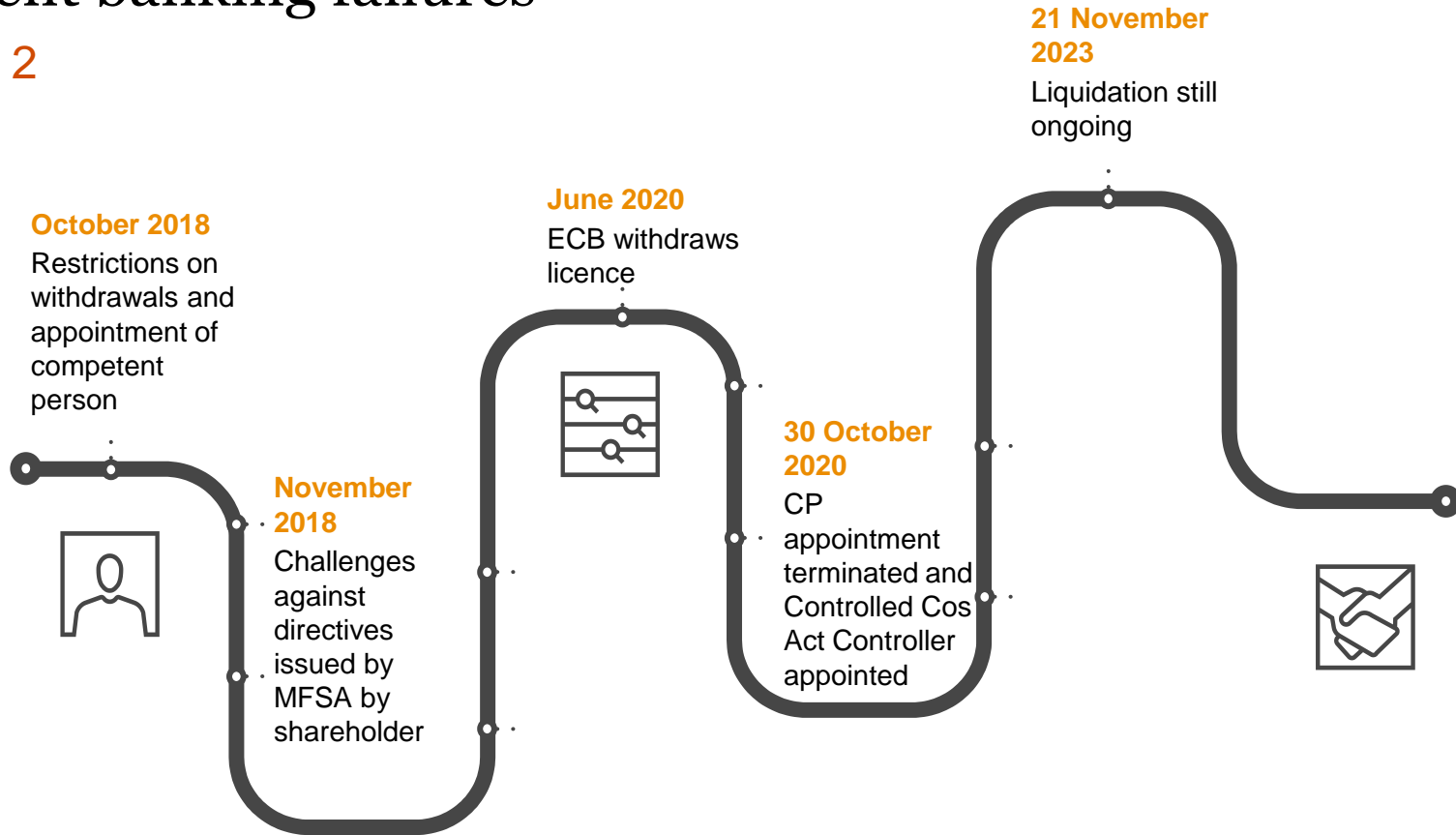
Recent banking failures

Case 1



Recent banking failures

Case 2



Recent banking failures - lessons learnt...

- Competent Person seemingly appointed to attempt to restore the institution but in practice this led to paralysis
- Significant litigation/appeals across various venues protracting the liquidation while value is lost



The international perspective

- 2020 IMF Recommendations and Benchmarking Exercise with best practice jurisdictions:
 - Italy - Freestanding administrative regime overseen by Banca d'Italia
 - Slovenia - Freestanding administrative regime overseen by Bank of Slovenia
 - Germany - Modified court-based regime overseen by BaFin



MALTA

INTERNATIONAL MONETARY FUND

The need for an administrative insolvency framework

- Key takeaways:
 - Free-standing insolvency regime
 - Liquidator should mostly be independent, but subject to close monitoring
 - Roles of competent person, temporary administrator and liquidator should be clarified
 - Role of courts should be limited to avoid undue delays



Proposed way forward

One free-standing, comprehensive regime for mandatory and voluntary proceedings

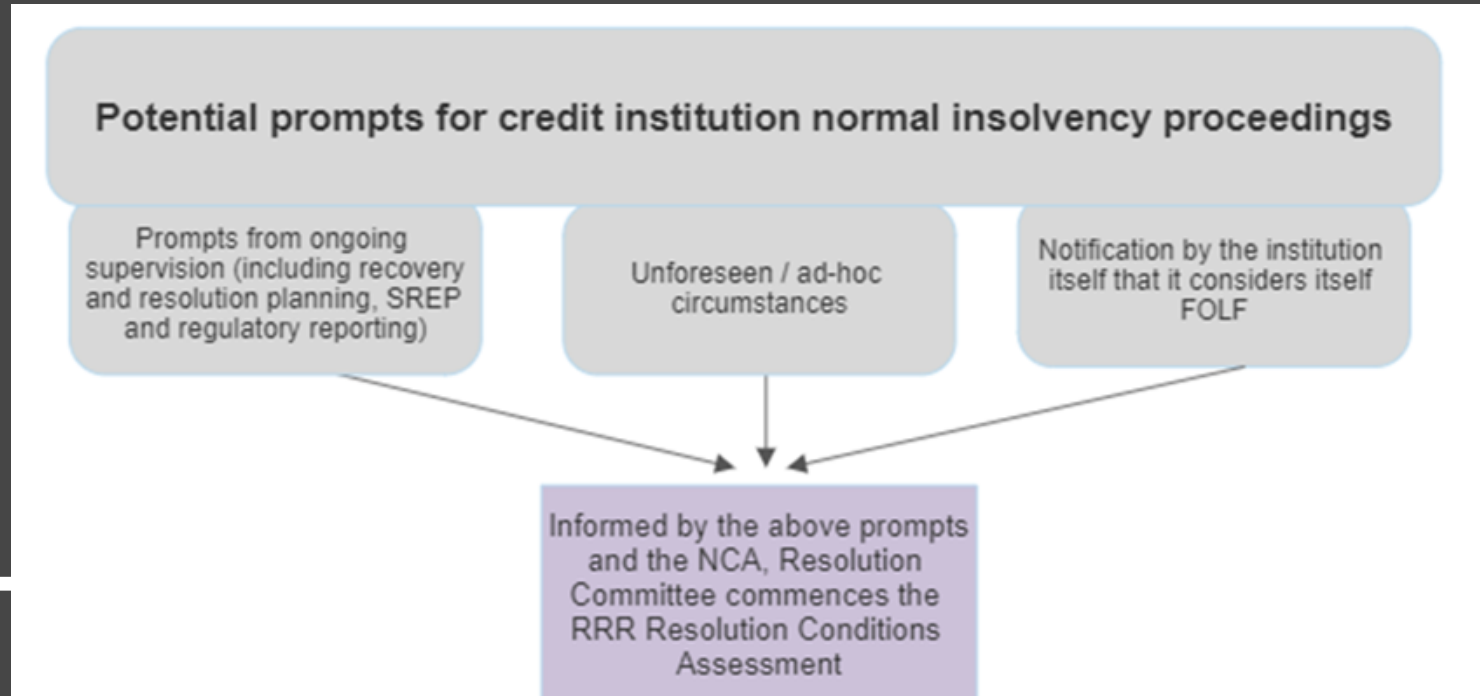
FOLF test as exclusive gateway to normal insolvency proceedings

RC (in consultation with MFSA) administers the liquidation process

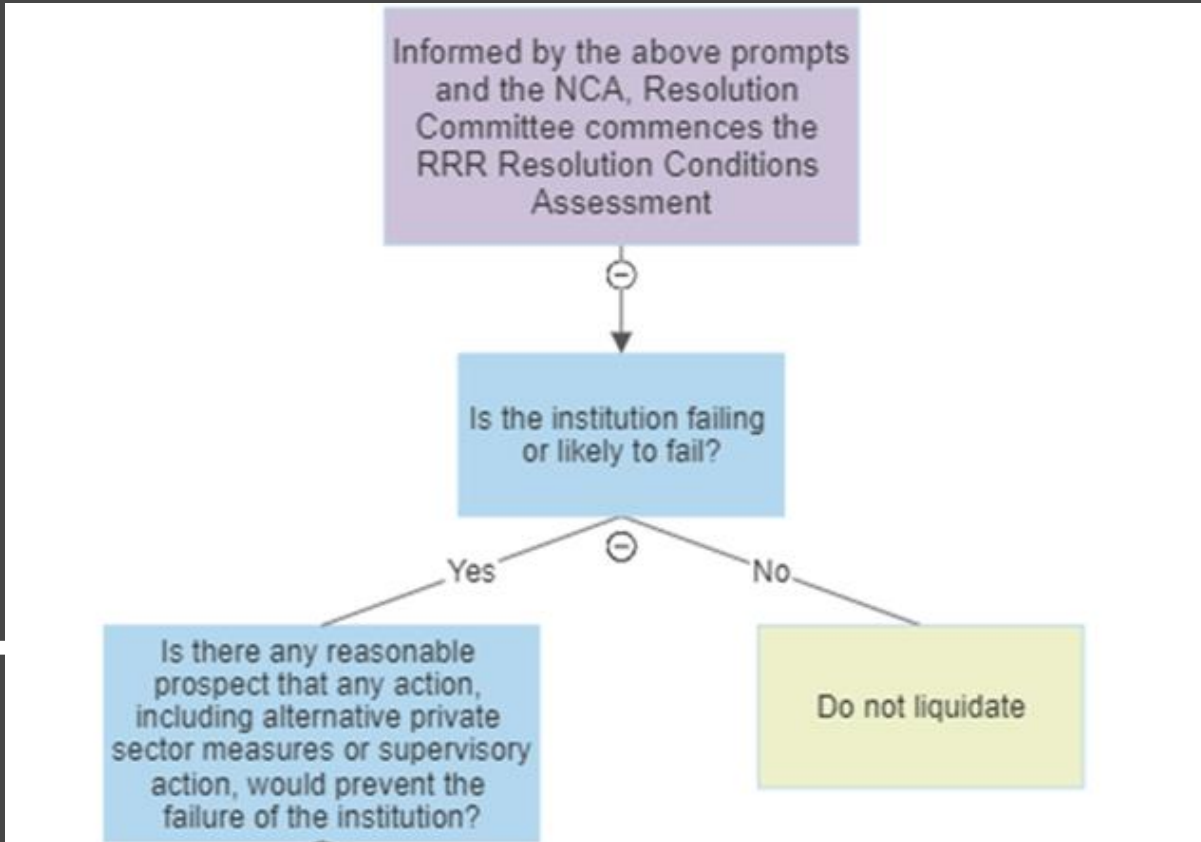
Regulation of bank insolvency practitioners

More 'regulated' role for the Courts

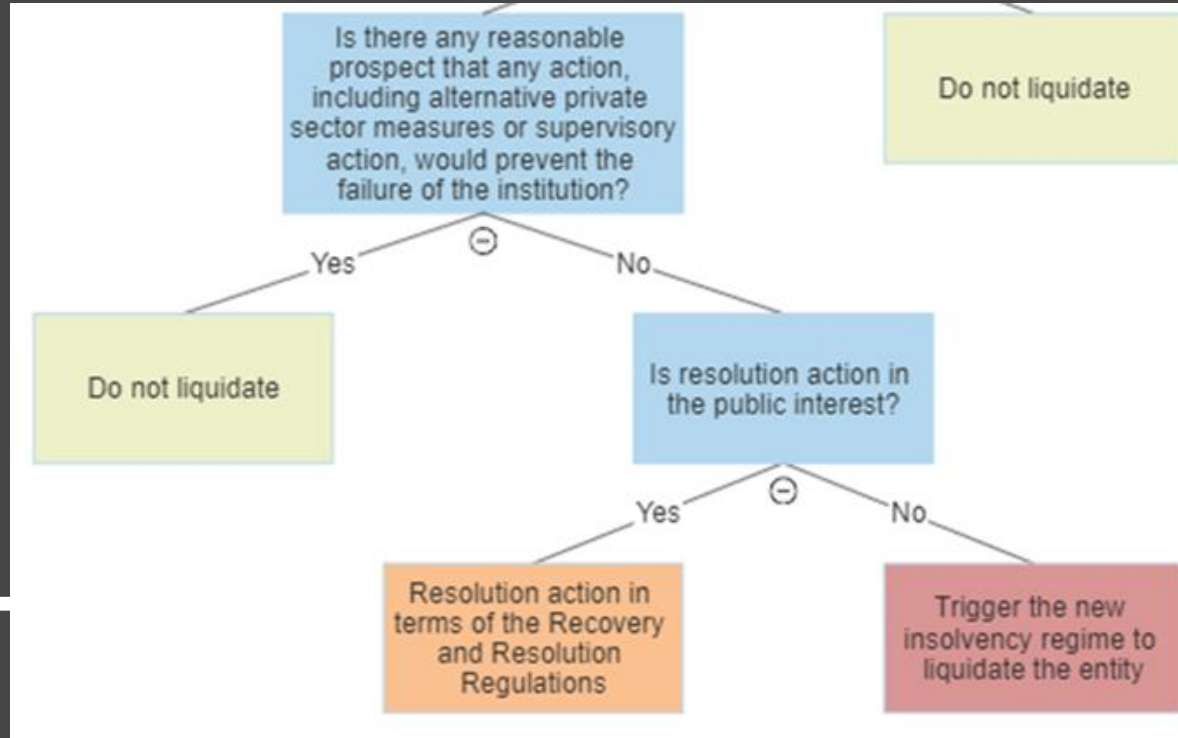
Proposed way forward



Proposed way forward



Proposed way forward



Proposed way forward

More 'regulated'
role for the
Courts

- Difficult balance between a timely liquidation (best achieved through a purely **administrative proceedings**) vs. ensuring **fair hearing** in terms of Art 39 of our Constitution.
- Judgements in FIAU cases re administrative authority acting as investigator, prosecutor, judge and jury in a context where the scale of sanctions involved required the same level of protection as in criminal proceedings.



Thank you

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EU and Non-EU Bank Failures - Lessons Learnt

MFSA Workshop: Crisis Preparedness in the Banking Industry

21 November 2023



The better the question. The better the answer.
The better the world works.



Building a better
working world

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Agenda

1. Introduction

2. Pre-BRRD Cases

3. Post-BRRD Cases

References

1

Introduction



Introduction

From “Too Big to Fail” to “Safe to Fail”



The 2008 financial crisis triggered a paradigm shift for failing Banks (particularly G-SIFs) leading to the designation of administrative bodies as **resolution authorities, empowered with far-reaching faculties and extensive regulation.**

Building Blocks of Resolution Planning



1. New institutional framework: with new resolution authorities with special acting powers.



2. New “Bail-in” paradigm: shareholders and creditors will have to absorb losses.



3. New liabilities requirement (MREL) aimed at building sufficient liabilities to internally recapitalize the bank through bail-in in case of resolution.



4. The cross-border management strategy is a key driver of these plans. (Single Point of Entry vs Multiple Point of Entry).



5. Focus on prevention: Recovery Plans and Resolution Plans.



6. New reporting obligations to authorities.



7. Resolution Funds: financed in principle by the industry with the objective of supporting the resolution costs as a complement to the bailout.

2

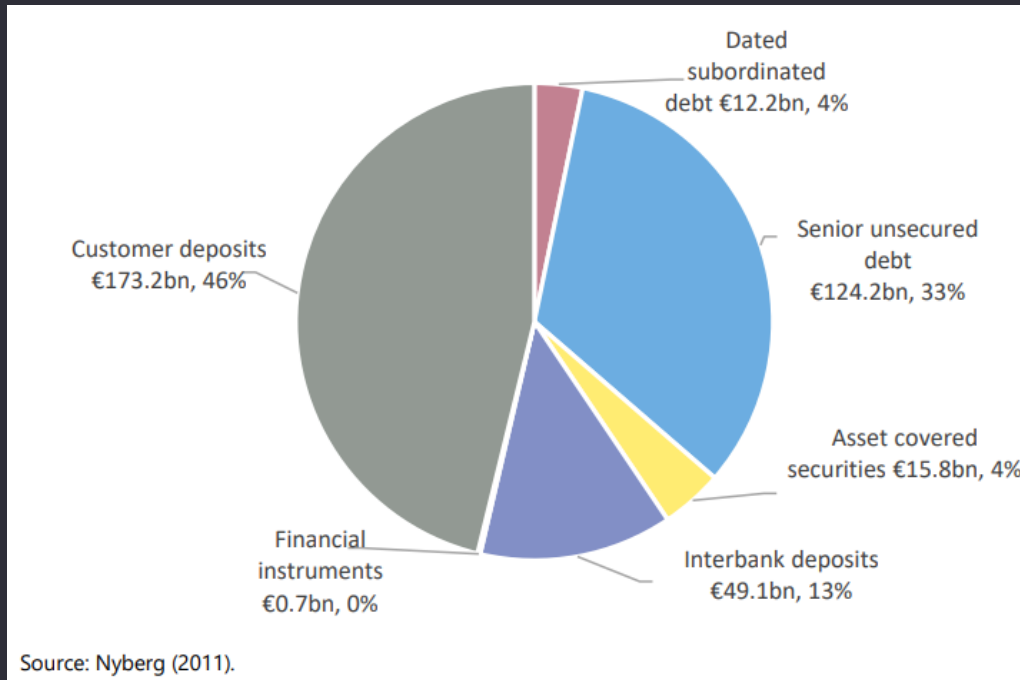
Pre-BRRD Cases



In the early stages, alternatives were very limited

1. System-wide emergency liquidity support.
2. Nationalization of Banks.
3. Guarantees on all liabilities of all Banks.

Liabilities guaranteed by the state as at 30 September 2008



In December 2009, the Eligible Liabilities Guarantee (ELG) Scheme was introduced to replace the 2008 guarantee: it covered only certain liabilities.

Lessons learnt (non-comprehensive)

- State guarantees and direct support created a liability that the sovereign was not be able to cover.
- Some of these options could only be used with viable institutions... therefore, the accuracy of data that would back these decisions was crucial.
- Bank restructuring: initial stress test failed to identify the asset quality issues and capital needs, making non-viable entities continue to consume resources and even merge with other entities.
- The sequence of announcements about increasingly higher capital needs had a negative impact on public confidence in the domestic banking sector.
- Asset management company (NAMA) was established as a 51% privately owned company - to be considered outside the government finances.
- The LMEs conducted in 2010 and 2011 were an early form of burden-sharing with the banks' creditors - the application of burden-sharing before the Spanish financial crisis had not been homogeneous across the EU.

The FROB was created to recapitalize failing entities in 2009. In 2012 a new resolution regime was created influenced by the MoU, which involved three levels of management:

1. Early intervention;
2. Restructuring; and
3. Resolution considered three common elements.
 - a) Financial Support instrument.
 - b) Asset Management Company.
 - c) Subordinated Liabilities Exercises.

Institutions	Outstanding nominal value	of which retailer	Repurchase price exchange for capital	Repurchase price exchange for debt	Initial haircut	Initial haircut (% of nominal value)	Capital generated ⁽¹⁾	Type
BFA-Bankia	6,911	5,062	4,852	242	1,817	26%	6,669	Mandatory
NCG Banco	2,047	1,501	1,355	88	604	30%	1,959	Mandatory
Catalunya Banc	1,818	1,724	1,218	143	457	25%	1,675	Mandatory
España-Duero	1,433	1,011	1,159	0	274	19%	1,433	Mandatory
Liberbank	866	548	787	16	63	7%	850	Mandatory Mandatory
BMN	449	13	309	24	116	26%	425	Mandatory
Banco de Valencia	416	100	59		357	86%	416	Mandatory
Banco Gallego ⁽²⁾	192	86	122	25	45	23%	167	Mandatory
Caja3	91	1	9	47	35	38%	44	Mandatory Mandatory
Total	14,223	10,046	9,870	585	3,768	26%	13,638	

Lessons learnt (non-comprehensive)

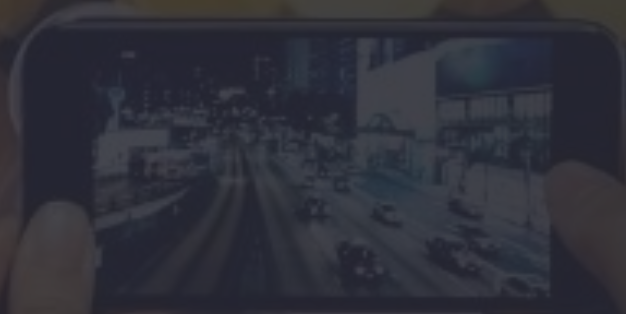
- Absence of public financial support instruments - would also have avoided future complex divestments and large asset protection schemes.
- A strengthened PIA: to reduce the list of entities that went through resolution instead of liquidation.
- Available buffer through MREL: to make resolution more feasible.
- Limited number of retail investors in subordinated financial instruments... could have reduced mis-selling claims
- Available support through the SRF to support the resolution: to avoid using the DGF facility.
- More evolved valuation approaches: to support the resolution decisions and better prepared entities to deliver loan tapes quickly.

Most retail holders ultimately did not absorb the losses, because of:

- DGF liability facility;
- Arbitrage procedures; and
- Court judgements relating to mis-selling of hybrid instruments.

3

Post-BRRD Cases

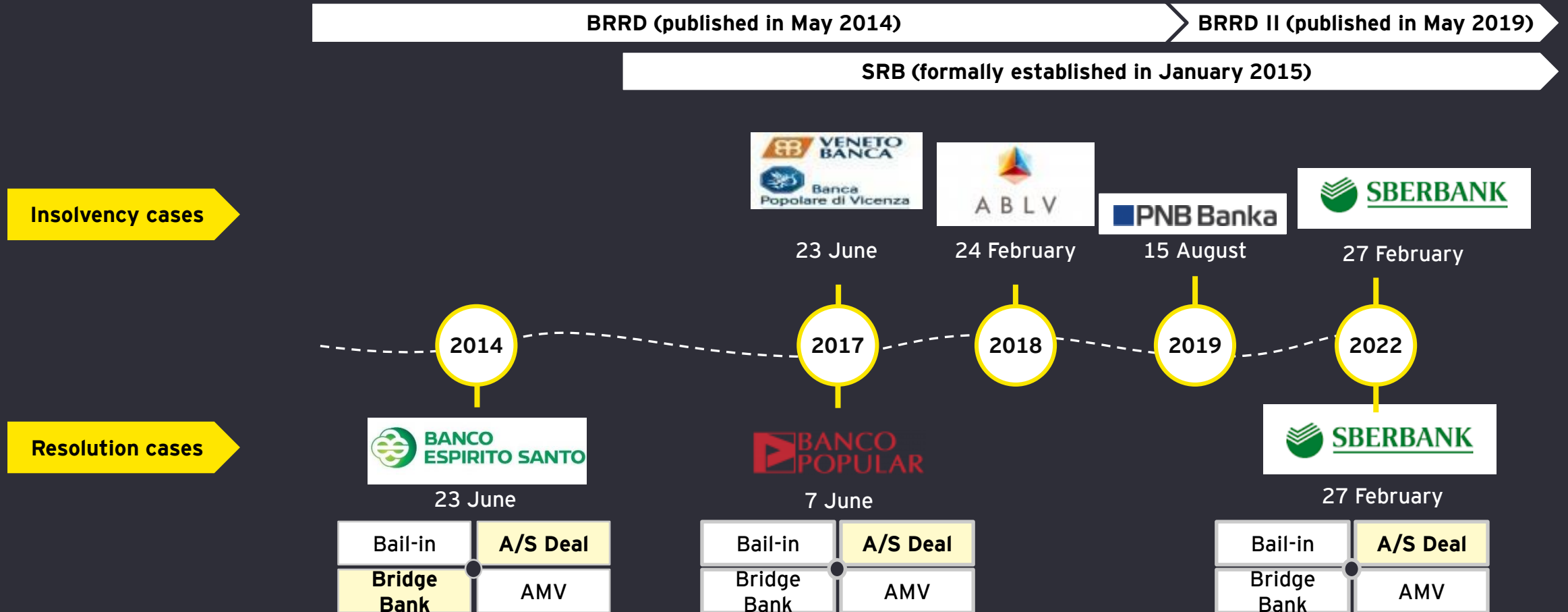


Post-BRRD Cases

EU cases: Overview



Since the approval of the BRRD there have already been a number of real resolution cases from which some lessons can be drawn. Likewise, there have been cases of entities that, after being declared FOLTF by the ECB, have been liquidated following ordinary insolvency procedures after the SRB determined that resolution was not necessary.



Post-BRRD Cases

EU/Non-EU cases: Sberbank



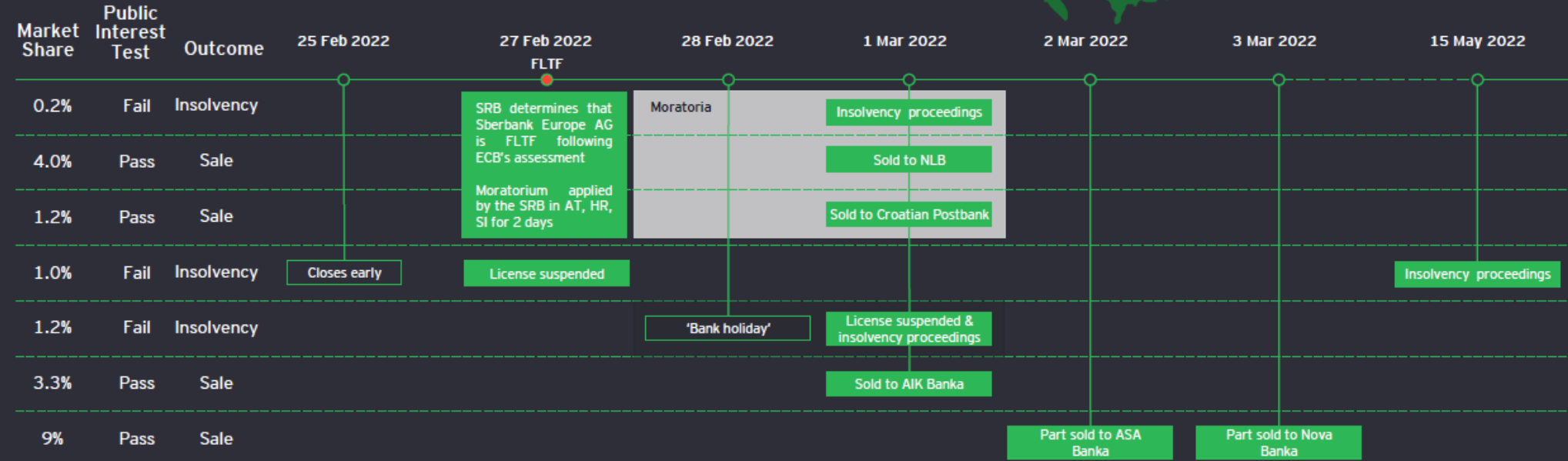
Total Assets: €13.64bn, of which €6.82bn in the Banking Union (AT, SI, HR)

- Eurozone based entity with subsidiaries in Banking Union as well as in other EU and non EU countries.
- Swift resolution process requiring good coordination among NRAs.
- The SRB's actions were effective in protecting financial stability without any cost to taxpayers.
- This was hailed as an outcome of early preparation and well-coordinated execution.



EU rulebook + SRB resolution
 EU rulebook + NRA resolution
 National rules + NRA resolution

Liquidation proceedings of Sberbank's subsidiaries in Austria, Czech Republic and Hungary are still in progress



(Wednesday) 8 March 2023

Portfolio sale and rescue plan:

- Large deposit withdrawals lead SVB to sell its mark-to-market portfolio at loss.
- Moody's downgrade SVB's ratings.
- SVB launch a stock offering (\$2.2 bn).

(Thursday) 9 March 2023

Bank run:

- The offering fails due to lack of credibility and underwriting.
- Share price falls, forcing run on the bank.
- Social media and the ability to transfer funds quickly act as amplifiers.

(Friday) 10 March 2023

Regulator intervention:

- FDIC assumes control.
- US authorities guarantee all US deposits to help deter deposit flight.
- SVB UK (sub) was sold on 13 March.
- SVB Bridge Bank is sold on 27 March.

Comparison with the European Resolution framework (non-comprehensive)

Similarities

- FDIC creates a new entity (DINB) that receives covered deposits and provides banking services from SVB for a limited period.
- Moratorium was implemented during the resolution weekend and online banking suspended.
- Deposits were transferred to a bridge-bank, granting access to clients' funds and announcing that shareholders and bondholders were not protected, similar to write-down powers.
- Cross-border coordination enabled the carve out of SVB UK.

Differences

- All depositors were originally going to be compensated; even non covered depositors received compensation.
- A second transfer of deposits was implemented with all deposits.
- SVB US Parent Bank was placed into insolvency as a relatively large bank.
- Sale involved a loss as well absorbing mechanism between the buyer and the FDIC.
- Estimated cost for FDIC: 20 MM \$.

2021 and 2022

Large Losses and Reputational damage

- Exposure to non-banking financial intermediation (Archegos and Greensill)
- Sanctions for money laundering, tax evasion, conduct...
- Change in management to try to recover confidence, but stock keeps falling.

February 2023

Bank run:

- Delay in Annual accounts and CEO announces more losses for 2023.
- Large investor announces it will not continue to provide capital support, triggering a large deposit run.
- FINMA a liquidity support (50 Bn€)

(Friday) 10 March 2023

Regulator intervention:

- Private solution.
- Sold to a competitor "to ensure global financial stability, avoid contagion risks, and protect the Swiss economy and depositors".

Main characteristics of the Transaction

- Shareholders partially written-down (-60% to market valuation)
- All AT1 instrument were written-down.
- Extraordinary changes to avoid the transaction having to be approved at the General Shareholders' Meeting
- The Swiss central bank provides additional liquidity.
- The Swiss government provided a guarantee.
- The two entities reopen next Monday.
- The transaction generates a "bad-will" for UBS.

Comparison with the European Resolution framework (non-comprehensive)

Similarities (non-Resolution case)

- Share deal was implemented during the weekend.
- Critical functions were ensured, and contagion was prevented.
- Covered deposits were protected, as well as client funds.

Differences

- Shareholders didn't bear losses before AT1 investors.
- A private solution was implemented but included public financial support.

Post-BRRD Cases

Lessons learnt from recent cases



Regime alignment

Global FSB standards have proven to be effective.
Still each jurisdiction has its own varying approach and there are some technicalities on bail-in mechanics worth investigating (cross-border).



Depositor treatment

The FDIC guaranteed SVB US depositors above the insured amount, showing the sensitivity of resolution to deposits.



Public-Interest

There could be challenges to the Public Interest Test, due to contagion effect and depositor sector concentration.



Resolution tools

The sale of business as a resolution tool appears to be very effective (CS, SVB UK, Sberbank subsidiaries, Popular) even for large/ significant banks.



Communication

New technologies and social media accelerated the bank run and the Bank's Communication teams were not able to cope with the situation.



Cross-border

Cross-border cooperation and information sharing was crucial to prepare for an orderly implementation of the resolution strategy.

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