

**PRA RULEBOOK: CRR FIRMS AND NON-AUTHORISED PERSONS: CONTRACTUAL
RECOGNITION OF BAIL-IN AMENDMENT INSTRUMENT 2016**

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.

**PRA Rulebook: CRR Firms and Non-Authorised Persons: Contractual Recognition of Bail-In
Amendment Instrument 2016**

- E. The PRA makes the rules in the Annex to this instrument.

Commencement

- F. The Annex to this instrument comes into force on 1 August 2016.

Citation

- G. This instrument may be cited as the PRA Rulebook: CRR Firms and Non-Authorised Persons: Contractual Recognition of Bail-In Amendment Instrument 2016.

By order of the Board of the Prudential Regulation Authority

27 June 2016

Annex

Amendments to the Contractual Recognition of Bail-In Part

In this Annex, new text is underlined and deleted text is struck through.

1 APPLICATION AND DEFINITIONS

1.1 ...

1.2 In this Part, the following definitions shall apply:

debt instrument

means any form of transferable debt security or instrument, whether registered or bearer, including commercial paper, bills of exchange, bankers acceptances, certificates of deposit and bonds, including *additional tier 1 instruments* and *tier 2 instruments*.

...

excluded liability

has the meaning given in section 48B(7A)(a) of the Banking Act 2009. ~~means any liability listed in section 48B(8) of the Banking Act 2009~~ except, in respect of *liabilities* created after 31 July 2016, a *liability* shall not be regarded as secured for the purposes of section 48(B)(8)(b) of the Banking Act 2009 if, at the time at which it is created, it is not a *fully secured liability*.

...

fully secured liability

means a *liability* which, at the time it is created, is fully secured and governed by contractual terms that oblige the debtor to maintain the *liability* fully collateralised on a continuous basis in compliance with regulatory requirements of *EU law* or of the law of a *third country* achieving effects that can be deemed equivalent to *EU law*.

...

material amendment

means an amendment to an agreement, including an automatic amendment, which affects the substantive rights and obligations of a party to the agreement. Amendments which are not *material amendments* 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 adjustment to interest rates.

...

phase two liability

means an unsecured liability that is not a debt instrument.

...

unsecured liability

means

- (1) in respect of liabilities created on or before 31 July 2016, a liability under which the right of the creditor to payment or other form of performance is not (i) secured by a charge, pledge, lien or mortgage, or (ii) subject to other collateral arrangements, including liabilities arising from repurchase transactions and other title transfer collateral arrangements; and
- (2) in respect of liabilities created after 31 July 2016, a liability that is not a fully secured liability.

2 CONTRACTUAL RECOGNITION OF BAIL-IN

...

2.1 Except in the circumstances described in 2.1A 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 a liability of a type described in 2.3.

2.1A 2.1 does not apply in respect of a phase two liability where it would be impracticable for the BRRD undertaking to comply with 2.1 in respect of that phase two liability.

...

2.3 A liability in 2.1(4) is:

- (1) a liability (other than a liability under a debt instrument) created after 31 December 2015, regardless of whether it is created under an agreement entered into on or before 31 December 2015 (including under a master or framework agreement between the contracting parties governing multiple liabilities);
- (2) a liability (other than a liability under a debt instrument) created on or before 31 December 2015 if the agreement governing the liability is subject to a material amendment after 31 July 2016;
- (3) a liability under a debt instrument issued on or after 19 February 2015;

(4) a liability under a debt instrument issued before 19 February 2015 which is subject to a material amendment after 31 July 2016.