

Practices Paper on the Operationalisation of Transfer Tools

17 November 2025



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Executive summary

Transfer tools, as a type of resolution tools, are designed to ensure the continuity of critical functions by transferring parts or all of a failed bank to a private sector purchaser or a bridge entity while ensuring that losses are absorbed by shareholders and creditors, rather than taxpayers. The operationalisation of transfer tools is time-sensitive, complex and multifaceted, requiring careful planning and coordination. This report explores the practices and considerations involved in implementing different types of transfer tools to support resolution authorities in enhancing their resolution preparedness.

Whole bank transfers involve transferring the entire bank to a purchaser or bridge entity, while partial transfers focus on critical functions and viable business segments, leaving undesirable assets and loss-absorbing liabilities in the residual entity for liquidation. Loss absorption can be achieved through an estate claims process liquidating the residual entity during which shareholders and creditors absorb losses in line with the creditor hierarchy. Many authorities have the option to achieve loss absorption by writing down the shares and certain liabilities of the failed bank, or by converting eligible liabilities into equity prior to the transfer.

Determining the transfer perimeter therefore involves identifying the parts of a failing bank that must be transferred to ensure the continuity of critical functions and to protect insured deposits. Authorities enhance the marketability of the transfer perimeter by including viable business lines and excluding undesirable portfolios from the transfer perimeter. They also consider the interconnections between the transfer perimeter and the residual entity that may impact the transfer and prepare for their separability to facilitate smooth execution. Loss-absorbing liabilities are left in the residual entity or written down before the transfer.

Ensuring operational continuity during resolution requires solutions tailored to both the residual entity and third-party providers. For the temporary continuity of services between the residual entity and the transfer perimeter, authorities request banks to identify and map internal interconnections and build capabilities for establishing transitional service agreements where and when needed. In some cases, banks have been requested to restructure and simplify operational and financial dependencies pro-actively. Authorities also generally try to avoid the separation of linked assets and liabilities such as derivatives because of dependencies and reduced marketability. For third-party providers, authorities usually avail of statutory powers to prevent termination of contracts in resolution. Additionally, authorities promote contract clauses that ensure the assignability of a contract and enhance its resilience in resolution. Relevant clauses in service level agreements and the pre-funding of outsourced contracts support the continuity of services by third party providers.

Marketing a failing bank or parts of it presents unique challenges. Authorities must maintain confidentiality to avoid further destabilisation while working within tight timelines to identify and engage suitable bidders. Pre-established potential bidder lists, banks' robust data room capabilities and expedited regulatory approvals are critical tools for streamlining the marketing process. Authorities tailor the auction process to the specificities of each case and to deal with bidder concerns, such as uncertainties regarding the quality or location of certain assets and to cushion certain risks.

Bridge entities serve as temporary structures that hold and manage the failed bank or parts of it until a suitable purchaser is identified. Authorities prepare for a swift incorporation of a bridge entity, often using pre-approved forms or fast-track procedures. Licensing typically involves fast-track procedures, allowing bridge banks to commence business immediately after incorporation. With the same objective, some jurisdictions allow temporary waivers or exemptions from certain prudential requirements, such as capital and liquidity standards. Authorities put governance structures in place, usually with experienced board members and management, often drawn from pre-identified pools of qualified candidates. Operational continuity and funding of a bridge entity may require special attention because, unlike a private sector purchaser, it may not avail of own resources and structures such as access to financial market infrastructures. To exit the bridge entity, authorities mainly pursue transfers to private sector purchasers.

Cross-border issues remain a critical focus for resolution authorities and require ongoing collaboration within Crisis Management Groups (CMGs) and other ways of cooperation regarding banks with no CMGs. Key challenges include the cross-border implementation and legal recognition of transfer tools including their loss-absorbing mechanisms. Similarly, the application and cross-border enforceability of resolution powers such as stays on termination rights for contracts governed by foreign law need to be ensured. Banks may need to organise documentation and contracts with foreign third-party providers and include provisions for the contractual recognition of resolution powers. Timeliness of regulatory approvals for foreign purchasers may be a challenge. Jurisdictional differences in sales process expectations, documentation, and legal frameworks need to be navigated. When write-down and conversion mechanisms are used to absorb losses, foreign securities laws may have to be observed.

This practices paper includes several studies of real resolution cases which illustrate some of the presented operational topics. These cases underscore the importance of robust planning, flexibility, and coordination in operationalising transfer tools. By addressing the operational challenges, authorities can enhance their readiness to use transfer tools effectively to ensure the continuity of critical functions, absorb losses in line with the creditor hierarchy, and minimise systemic risks.

Several cross-border dimensions of the topics discussed in the report will continue to require attention from resolution authorities and discussions within CMGs or other applicable means of cooperation. These include the execution of transfer tools and other resolution powers across borders and their legal recognition, timeliness of cross-border regulatory approvals and further clarification and understanding of differences in sales process expectations, documentation requirements and legal frameworks across jurisdictions.

Introduction

A disorderly resolution of banks that would be systemically significant or critical upon failure poses a risk to financial stability. The FSB's Key Attributes of Effective Resolution Regimes (KAs) and related FSB guidance on resolution aim to, among other things, make the resolution of such firms possible without severe economic disruption.¹ Transfer tools ensure the continuity of critical functions of the transferred bank or parts of a bank to a private sector purchaser or bridge entity and achieve the absorption of losses by the shareholders and creditors by closing the remainder of the failed bank through an estate claims process. Additionally, or alternatively, losses may be absorbed by write down and conversion before the transfer. Notwithstanding the utility of transfer tools, the KAs and FSB guidance do not address many operational aspects of executing transfer tools in resolution.

As part of lessons from the 2023 banking turmoil,² the FSB developed this report on the operationalisation of transfer tools to support resolution authorities' preparedness to use transfer tools. The report describes the operationalisation and use of transfer tools in various FSB member and non-member jurisdictions and related practices. It is not intended to set any expectations on how transfer tools should be operationalised. Rather, it should serve to support a continuing engagement amongst authorities and banks in the resolution planning process. It may also assist authorities that are at an earlier stage of operationalising the use of transfer tools or are continuing to enhance their existing resolution arrangements.

The report offers generic descriptions of approaches to resolution transfer tools. References to individual jurisdictions, authorities or banks are intended to be illustrative, rather than comprehensive.³ Jurisdictions' progress in planning for transfer tools is diverse and practical experiences in executing transfer tools are limited to a few jurisdictions. Any actual application of transfer tools will also depend on the facts and circumstances of the particular case.

The report is structured as follows:

- Section 1 starts with an overview of transfer tools and their use.
- Section 2 includes considerations regarding the structuring of the transfer.
- Section 3 presents practices regarding the marketing of the transfer.
- Section 4 describes specificities of the operationalisation of bridge entities.
- Section 5 highlights specific considerations for cross-border contexts.
- Section 6 presents several case studies to illustrate the findings of the earlier sections.

¹ FSB (2024), *Key Attributes of Effective Resolution Regimes for Financial Institutions (revised version 2024)*. April.

² FSB (2023), *2023 Bank Failures: Preliminary lessons learnt for resolution*, October.

³ The preparations of this practices report included a survey of practices of members of FSB's Resolution Steering Group and of FSB Regional Consultative Groups' (RCG) member authorities. Authorities from 29 FSB and non-FSB jurisdictions responded to the survey: Argentina, Australia, Austria, European Union/Banking Union, Canada, Colombia, Czech Republic, Denmark, Guatemala, Hong Kong, Hungary, Iceland, India, Ireland, Japan, Malaysia, Mexico, Netherlands, Norway, Pakistan, Poland, Portugal, Romania, Singapore, Sweden, Thailand, United Kingdom, Uruguay, and United States. A set of examples was selected for this paper for illustration purposes.

- Finally, section 7 considers ways forward.

The report is concluded by a glossary which defines the main concepts used.

1. Overview of transfer tools

1.1. Types of transfer tools

1.1.1. Resolution tools of the FSB Key Attributes⁴

The objective of an effective resolution regime is to make feasible the resolution of financial institutions without severe systemic disruption and without exposing taxpayers to loss, while protecting vital economic functions. To this end, resolution regimes provide mechanisms to ensure that shareholders and creditors absorb losses in a manner that respects the hierarchy of claims in liquidation ('bail-in' instead of 'bail-out') while maintaining continuity of critical functions through:⁵

- an officially mandated creditor-financed recapitalisation of a failed bank that continues providing the critical functions (**bail-in tool, open bank bail-in**), and/or
- a sale or transfer of the shares in the failed bank or of all or parts of its business to a private sector purchaser or to a bridge entity that continues providing the critical functions, and closure of the residual entity (**transfer tool, closed bank bail-in**).

The open bank bail-in stabilises the bank or group that continues providing the critical functions by mandating the write-down of shares and write-down and/or conversion of liabilities into shares. On the other hand, the closed bank bail-in, which includes the use of transfer tools, facilitates the continuity of critical functions that are transferred to a private sector purchaser or bridge entity and closes the remainder of the bank through an estate claims process. Additionally or alternatively, losses may be absorbed by write down and conversion before the transfer.

1.1.2. Types of transfer transactions

Resolution authorities may use their powers to execute different types of transfer transactions. Authorities may transfer the failed bank as a whole or parts of it to a private sector purchaser directly, or indirectly through a bridge entity. A bridge entity can be a holding company or a licenced bank to which the failed bank as a whole or its assets and liabilities are transferred and temporarily administered until they are further transferred to a purchaser.

Resolution authorities may transfer all or parts of the assets and liabilities (portfolios) of the failed bank (asset transaction). Or they may opt to transfer the shares representing the ownership interest in the failed bank as a legal entity rather than the individual assets and liabilities (share transaction). Table 1 summarises different types of transfer transactions.

⁴ FSB (2024).

⁵ Ibid.

Table 1: Types of transfer transactions

	Asset transaction (transfer of portfolios, business segments, or other parts of the failed bank)	Share transaction (transfer of the failed bank as a whole)
To a private sector purchaser (For example: EU: 'Sale of Business Tool'/ SoB, US: 'Purchase & Assumption'/ P&A)	Transfer of assets, liabilities, and rights of the failed bank (e.g. loans, mortgages and securities, rights, ownership rights/ investments/ shares in subsidiaries)	Transfer of shares in the failed bank
To a bridge entity	Transfer of assets, liabilities, and rights of the failed bank to a bridge bank	Share transfer to a bridge holding company

1.1.3. *Types of transfer tools*

The integration of a transfer transaction with a loss-absorbing mechanism represents the transfer tool. Transfer tools ensure the continuity of critical functions of the transferred (parts of the) failed bank through a transfer and can achieve loss absorption by the shareholders and creditors through the closure of the remainder of the failed bank, using an estate claims process or through write-down and conversion of certain liabilities prior to the transfer.

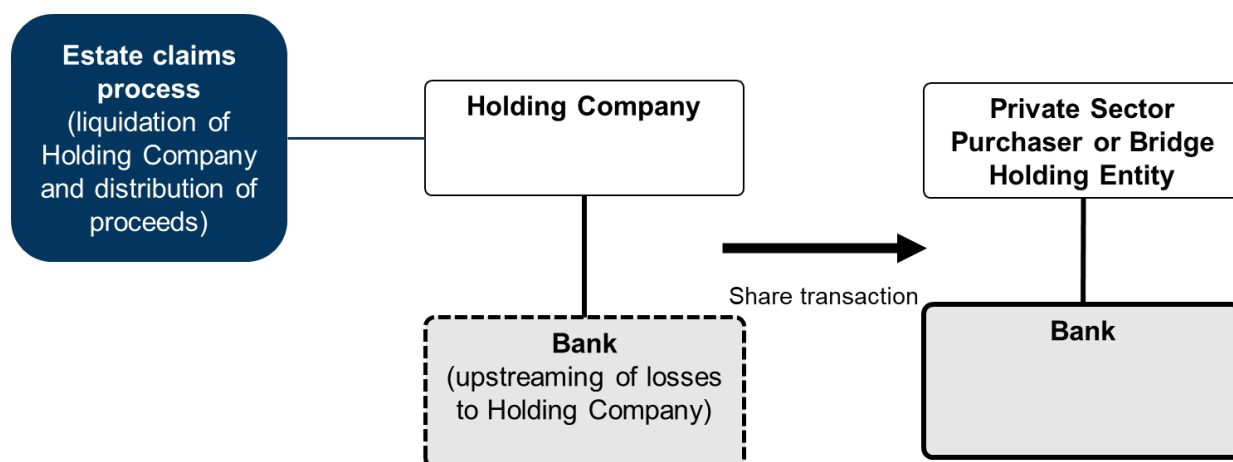
Whole bank transfer and closure of the holding company

One type of transfer tool is the transfer of the shares in the failed bank (operating entities) from a holding company, which will be liquidated, and the distribution of proceeds in an estate claims process. This approach can be applied where the failed bank is a subsidiary of a holding company where the external loss absorbing capacity is located.

- Losses of the operating entities are first up streamed to the holding company, so that its shareholders and creditors absorb losses via the subsequent administration and winding up of the holding company.⁶
- The operating entities are transferred from the holding company to a purchaser, directly or via a bridge (holding) entity, and continue providing critical functions as subsidiaries of the purchaser or bridge (holding) entity.
- The (administration/receivership) estate of the holding company is liquidated, and an estate claims process distributes potential proceeds from the liquidation to the shareholders and creditors according to the creditor hierarchy in liquidation, thereby effecting the loss absorption by shareholders and creditors.

⁶ The upstreaming of losses in operating entities to the holding company may be effected via accounting entry adjustments or the write down and conversion of group-internal debt that right sizes capital ratios.

Graph 1: Whole bank transfer and closure of the holding company



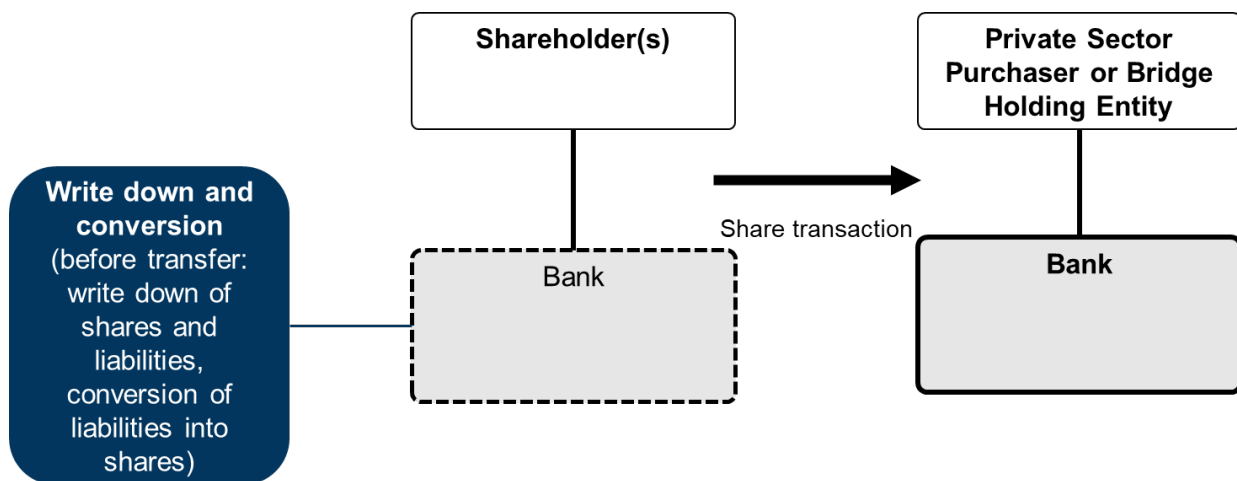
Whole bank transfer without residual entity

In another type of transfer tool, the failed bank is transferred directly from its shareholders. This approach can be applied where the external loss absorbing capacity is located at the operating entity.

- The entire failed bank is transferred directly from the shareholder(s) through the transfer of the shares representing the share capital of the failed bank to a purchaser, directly or via a bridge entity, and continues providing critical functions as an integrated subsidiary of the purchaser or bridge entity.
- Such transfer directly from the shareholder(s) does not leave a residual entity behind which can be wound up in an estate claims process. The absorption of losses by creditors and shareholders is therefore executed before the transfer of the failed bank. This is done through the write-down of capital and the write-down and/or conversion of the liabilities of the failed bank into equity, to recapitalise the failed bank before the transfer.⁷

⁷ Similarly, some jurisdictions also prepare for the absorption of losses by the shareholders and creditors of a holding company through write down of the shares and certain liabilities of the holding company and/or the conversion of eligible liabilities into equity, after the upstreaming of the losses of the operating entities to the holding company and prior to the transfer of the holding company (including its operating entities) to a bridge entity, leaving no residual entity behind.

Graph 2: Whole bank transfer without residual entity



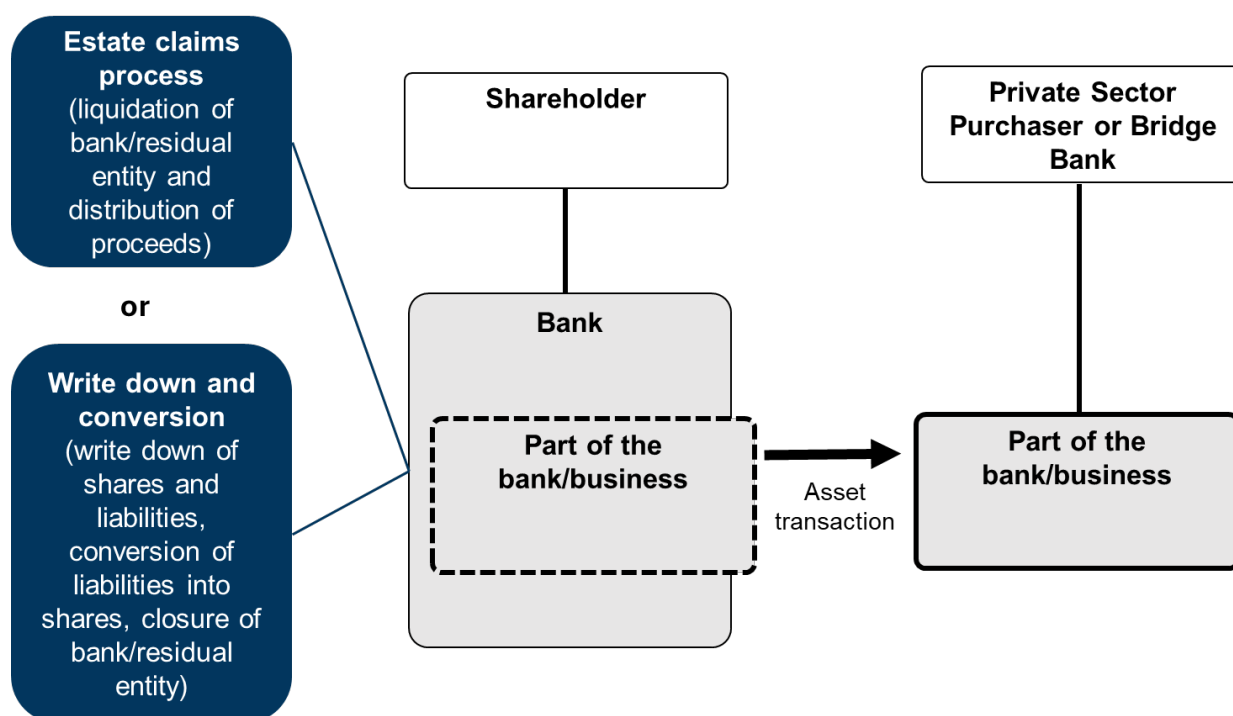
Transfer of parts of the failed bank and closure of the residual entity

The transfer of parts of the business from the failed bank is another type of transfer tool and facilitates the winding down of the residual entity and the loss absorption in an estate claims process. The transfer of parts of the business away from the failed bank allows the separation of critical functions and relevant business for continuation by the purchaser or bridge entity from the loss absorbing liabilities and ‘bad’ or undesired assets that are liquidated with the residual entity to absorb losses in an estate claims process. This approach suits both cases, where external loss absorbing capacity is allocated at a holding company or at the operating entity level.

- The business segments of the failed bank, which perform critical functions, are transferred from the operating entity to an acquirer, which may be a private purchaser or a bridge entity and will continue to provide the critical functions. The part of the business determined to be wound up, including loss absorbing debt and shareholder interests, remain in the residual entity to be liquidated.
- The residual entity is liquidated, and potential proceeds are distributed to the shareholders and creditors in an estate claims process according to the creditor hierarchy, thereby effecting the loss absorption by shareholders and creditors. The legal framework of several jurisdictions facilitates the support of loss absorption by write down and conversion before the transfer of the part of the business and the liquidation of the residual entity.

After execution of the transfer tool(s), the failed bank or the parts of the failed bank that were transferred may be restructured to address the causes of the failure. This may be done by the purchaser, while owned by a bridge (holding) entity, or as part of the exit from the bridge (holding) entity, as the case may be.

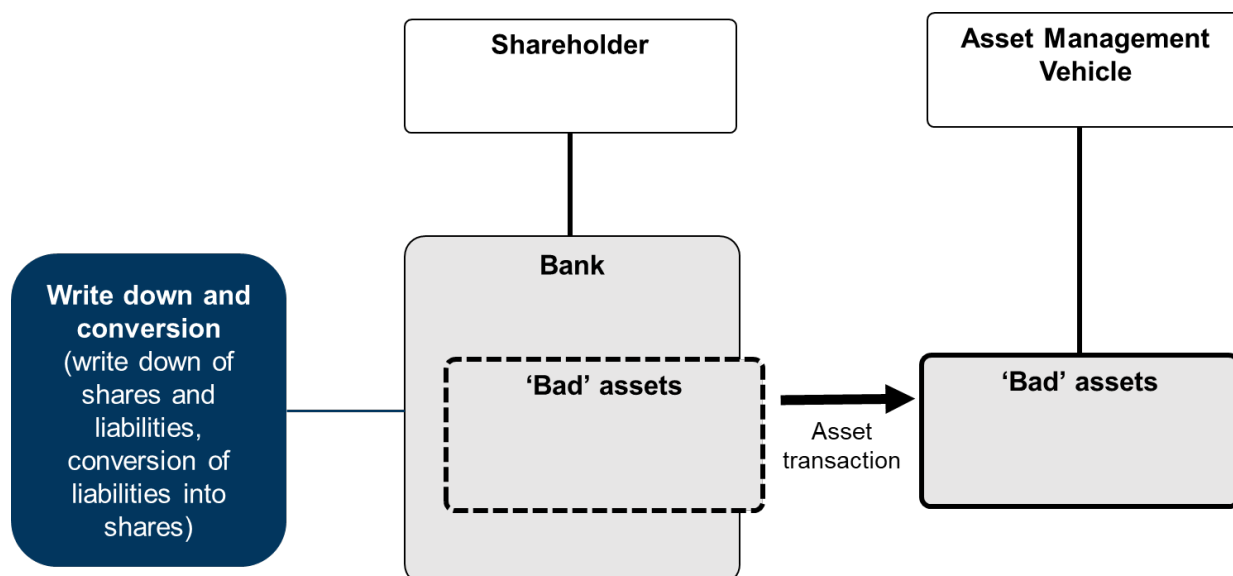
Graph 3: Transfer of parts of the failed bank and closure of the residual entity



1.1.4. Transfer transactions in support of an open bank bail-in

In contrast to the transfer tool options outlined above, the open bank bail-in tool stabilises the failed bank for it to continue to exist as a legal entity which operates and provides critical functions, without the transfer of the failed bank or parts of it. However, to support the stabilisation of a failed bank through an open bank bail-in, a different set of transfer transactions may be used to restructure the stabilised bank. This may include carving out 'bad' assets and transferring them to an asset management vehicle or carving out business segments that do not provide critical functions. These types of transfer transactions are not part of this report. However, some of the takeaways from this report, for example regarding the marketing of a transfer portfolio, may be relevant to these transfer transactions as well.

Graph 4: Transfer transactions in support of an open bank bail-in



1.2. Loss absorption

1.2.1. Loss absorbing mechanisms

The operationalisation of a transfer tool includes the use of loss-absorbing mechanisms to ensure that shareholders and creditors absorb losses thereby, minimising exposure to loss for the taxpayers and public funds and supporting the continued viability of the transferred business. To address this, the shares and liabilities which will absorb losses remain in the residual entity and the loss absorption will be achieved through the liquidation of the remainder of the failed bank in an estate claims process. Alternatively, many resolution authorities have the option to write down the shares and certain liabilities of the failed bank, or to convert eligible liabilities into equity prior to the transfer.

The purchaser will receive a sufficiently recapitalised bank or portfolio or provide their own recapitalisation resources. The price paid will generally reflect the value of a failed business. If the value of the transaction is negative or negligible because liabilities are higher than assets the transaction may occur at a near zero symbolic price.⁸

In both an estate claims process and write-down and conversion, the goal is to make sure that losses are absorbed by shareholders and creditors, thereby minimising exposure to loss for the taxpayers and public funds. However, each loss absorbing mechanism has distinct characteristics, which are outlined below.

⁸ Such symbolic price (1€/€) may in certain cases not even require any financial transaction to occur from the purchaser or the bridge bank to the shareholders (share transaction) or to the residual entity (asset transaction).

Estate claims process

Jurisdictions with loss absorption through an estate claims process provide liquidation options that facilitate an orderly wind-up of all or parts of the failed bank in a court supervised process or a receivership procedure. In an estate claims process after the transfer, the distribution of the proceeds from liquidation of the residual entity or holding company to creditors ensures that losses are absorbed in line with the creditor hierarchy in insolvency. For example, in the receivership process in the US, which applies regardless of whether the failed bank has a holding company, allows claims against a failed bank to be paid from monies recovered by the FDIC as Receiver through its liquidation of the failed bank. Where the failed bank is a subsidiary of a holding company, shareholders and creditors of the holding company absorb losses via the winding up of the holding company where the external loss absorbing capacity is located in an estate claims process. The operating entity is transferred to a purchaser or bridge entity.

Similarly, in the case of a transfer of a part of an operating bank, capital instruments and loss absorbing liabilities remain in the residual entity which will be liquidated in an estate claims process. This mechanism was applied, for example, during both resolution cases of Portuguese banks, Banco Espírito Santo, in August 2014, and BANIF (Banco Internacional do Funchal), in December 2015.

Write-down and/or conversion

The mechanism to absorb losses through write-down and/or conversion involves initially writing down the shares of the failed bank and writing down and/or converting eligible liabilities into equity of the failed bank, to effectively recapitalise the institution before the transfer. This mechanism was applied, for example, in the resolution of Banco Popular Español, in June 2017 and Silicon Valley Bank UK, in March 2023.

The creditors may in these cases become the shareholders of the bank before it is transferred. Alternatively, or additionally, resolution authorities may also have the option to write down existing creditors (without conversion into shares) and directly transfer the shares from the shareholders to the purchaser or the bridge entity. For example, these mechanisms are embedded in the legal frameworks of the EU and the UK. In circumstances where after write-down and conversion only parts of a failed bank are transferred, the residual entity is liquidated.

1.2.2. Least cost test, creditor hierarchy, and NCWOL principle

Where loss absorbing capacity of a failed bank is insufficient to execute a transfer and resolve the bank, authorities may have to rely on the availability of additional funding provided by a resolution fund, deposit insurer, or other industry-funded or government assisted funds. Safeguards apply to the use of these funds: In some jurisdictions, the use of these sources may require consideration of a least cost test, requiring comparison of the relative costs of resolution funding options against the cost of liquidation to support the selection that is least costly for the fund. Other jurisdictions apply similar tests that consider costs outside of direct financial impact such as public interest, financial stability and depositor continuity to inform overarching decisions such as the choice of the resolution tool.

Safeguards also apply to the absorption of losses by shareholders and creditors: Loss-absorbing mechanisms ensure that losses are allocated according to the statutory hierarchy of creditor claims in insolvency. Where the resolution involves additional funding provided by a resolution fund, deposit insurer, or other industry-funded or government assisted funds, it is important to consider how any claims from providers of fresh funding may be privileged in the estate to ensure that their claims are satisfied before the claims of shareholders and creditors that are supposed to absorb losses. For example, in Portugal, the claims of the resolution fund are privileged and above all shareholders, subordinated creditors and senior creditors retained in the residual entity. As a result, the resolution fund receives payment of claims against the failed bank before the shareholders and other creditors of the residual entity.

Resolution frameworks of most jurisdictions allow for exemptions from the requirement to treat creditors in the same creditor class equally, if considered necessary for the success of the resolution. For example, excluding creditor claims subject to litigation from the transfer perimeter, to remain in the residual entity for liquidation, may require the differential treatment of creditors of the same class. This possibility proved beneficial in past resolution cases but was carefully considered in the context of potential legal and reputational risks arising from deviating from the strict application of the creditor hierarchy.

The No Creditor Worse Off than in Liquidation (NCWOL) principle is another safeguard applicable to all loss absorbing mechanisms and aims to ensure that creditors do not suffer greater losses in resolution than they would have in a normal insolvency (liquidation) scenario. Jurisdictions that support write-down and conversion as the loss-absorbing mechanism usually facilitate an administrative claims process to compensate creditors where the result of the write down and conversion exceeds losses that would have been suffered in liquidation. To this end, authorities may conduct valuations both before and after resolution to assess the financial impact on creditors. The estate claims process used by other jurisdictions distributes the proceeds from liquidation, if any, to the creditors in line with the creditor hierarchy and subject to the NCWO principle.

In the case of transfers to bridge entities, some authorities have the option to make adjustments to the transfer perimeter by returning assets or liabilities from the bridge entity to the residual entity, or by transferring additional assets or liabilities from the residual entity to the bridge entity. Adjustments to the consideration paid by the bridge entity to the residual entity are also possible. These adjustments may also support compliance with the NCWOL principle.

During resolution planning, some authorities require banks to replace senior liabilities with subordinated liabilities to ensure that there are sufficient subordinated liabilities to uphold the NCWOL principle in the event of a crisis. This is done via comparing quantitative estimates of resolution versus liquidation scenarios.

1.3. The use of transfer tools

1.3.1. *Choice of resolution tools*

While in most jurisdictions more than one option is available, resolution authorities identify their prevailing approaches to the use of resolution tools, and their overarching perspective on the use of transfer tools.

Open bank bail-in is the prevailing resolution tool in several jurisdictions such as Canada, UK, the Banking Union and several other European jurisdictions. In many of these jurisdictions, the use of open bank bail-in is often preferred for the largest banks. Regarding other banks, factors considered in these jurisdictions, such as those set out in box 1 below, point towards authorities actively choosing transfer tools as the preferred option. For example, a preference for transfer to a private sector purchaser, with transfer to a bridge bank as a designated back-up option, could be the strategy for mid-sized or smaller banks in these jurisdictions. Authorities with write-down and conversion powers mainly prepare for the use of these powers as the loss absorbing mechanism of transfer tools.

The general approach to the resolution of banks of different sizes in the US is the closed bank bail-in mechanism which includes the transfer of the failed bank or parts thereof to a purchaser. The approach may include the use of bridge entities if doing so is supported by prevailing facts and circumstances and statutory requirements. Malaysia's framework also relies on transfer tools. For banks in jurisdictions with closed bank bail-in strategies, authorities would consider factors such as those listed in box 1 below if they were actively choosing transfer tools as the preferred option. These jurisdictions use an estate claims process as the loss absorbing mechanism of the transfer tool.

More specifically, there are several important factors authorities consider when choosing preferred resolution tools as part of resolution planning, as outlined in box 1.

Box 1: Criteria for the choice of resolution tools

Authorities evaluate several factors to determine the resolution tool which is to be prepared during resolution planning. These factors may also be re-evaluated in specific crises, and authorities remain flexible in how they execute their powers.

- **Resolution objectives:** Authorities aim at applying the resolution tool which in the specific case best maintains financial stability and ensures the continuity of critical functions while minimising the use of public funds. For example, even for a small firm where liquidation might initially appear suitable, the nature of its customer base may result in significant discontinuity during insolvency, resulting in a preference for the use of a transfer tool.
- **Legal framework:** Authorities' choice depends on the measures allowed by their legal framework. The legal framework of a jurisdiction determines whether a resolution authority avails of transfer powers and/or of write-down or conversion powers. It determines whether a bridge entity can be created and whether an appropriate estate claims process is available. The statutory creditor hierarchy in insolvency and the availability of support powers such as the suspension of termination rights also impact authorities' options.
- **Size and complexity of a bank:** For less complex banks providing a limited number of non-complex critical functions, many authorities prefer transfer tools. For more complex banks several authorities prefer open bank bail-in tools or the use of a bridge entity as part of a closed bank bail-in process. This is because it may be more challenging to find a private sector purchaser with sufficient financial resources to absorb a larger bank or a purchaser with sufficient operational or management capabilities to execute the integration of the failed bank.
- **Marketability of the transfer perimeter:** The viability of an envisaged transfer transaction depends on asset quality, the design of the transfer perimeter and the availability of a suitable pool of interested and capable purchasers. Resolution planning will include an assessment of the desirability of the bank or its portfolios, the relative size of these against potential acquirers and the capability of the bank to support the exercise of a transfer transaction. Considerations also

include competition and concentration in the banking system. For example, the transfer of a larger bank may cause competition challenges in case it results in a significant consolidation of a jurisdiction's banking or financial system.

- **Protection and timely access to insured deposits:** Authorities assess whether the resolution tool can ensure legal certainty and enable swift and transparent access to insured deposits during and after resolution. For example, in some past resolution cases, the type of product offering of a bank made it difficult to place the bank into insolvency and execute the deposit insurance payout process in a sufficiently timely manner, even though it was small, non-systemic and its depositors are mostly insured. The bank offered significant current, sight or easy access accounts, the discontinuity caused by the payout mechanism of the DGS would have been significant as retail consumers were unable to, for example, pay their mortgages while they await payout.
- **Complexity of execution:** Other relevant factors are the complexity of the operationalisation of a specific tool. For example, the internal interconnectedness of a bank may increase the complexity of separating a transfer perimeter from the residual entity. The international profile of a group may impact the complexity of conversion of liabilities, of cross-border coordination between authorities and of the separation of the transfer perimeter.

1.3.2. Optionality and combination of tools

Resolution authorities generally emphasise the importance of preparing for transfer tools to maintain flexibility and optionality in resolution planning to ensure effective responses to varying crisis scenarios.

- An effort to increase optionality is evident in jurisdictions that prioritise open bank bail-in as a resolution tool, for example the Banking Union, where authorities may still prepare for transfer tools as alternatives or additions, including the creation of bridge entities.
- In jurisdictions where transfer tools are the primary resolution tool, such as the United States, authorities prepare for the need to make adjustments to the transfer tool based on the specific crisis. These adjustments can include the modification of transfer perimeters to meet bidder interest. For example, authorities may contemplate carving out undesirable assets from the transfer perimeter and keeping them in the residual entity which will be liquidated. Adjustments may also include the creation of a bridge entity where private sector solutions are unavailable.
- Some jurisdictions, for example the UK, choose not to define specific alternatives during resolution planning but instead focus on developing operational readiness and maintaining a universal set of capabilities to ensure the most appropriate tool can be deployed during an actual resolution. These authorities could then consider different options or combinations of tools during a crisis, even if such combinations are not explicitly detailed in their planning.

Authorities increase their options by combining elements of resolution tools. For example, open bank bail-in may be supported by transfer transactions to asset management vehicles to facilitate divestments of bad assets to restructure the bank after it has been stabilised by the open bank

bail-in.⁹ On the other hand, some jurisdictions use administrative powers or contractual terms for write-down and conversion powers, which would also be employed in an open bank bail-in, as the loss-absorbing leg of a transfer tool.

As optionality increases, so does complexity, given the need for the authority to resource preparations for multiple possible resolution outcomes, and to ensure that any actions taken do not hinder the ability to execute the range of options. Each additional option incurs costs as it requires dedicated planning, systems readiness and coordination, as well as safeguards to ensure that different options do not undermine each other. It also contributes to enhancing agility and operational readiness if the resolution authority cannot, for whatever reason, apply its preferred resolution strategy in a given crisis. This creates a trade-off between optionality and strategic flexibility against the cost of operational readiness. The approach to investing in a range of options is a necessary, recurring judgment for resolution authorities. It is worth noting that certain authorities face regulatory constraints that limit the use of combined tools or prefer a single-tool approach to simplify execution.

2. Structuring the transfer

2.1. Determination of the preliminary transfer perimeter

A crucial early step in resolution planning is the determination of the preliminary transfer perimeter to identify the parts of a bank that would need to be transferred, or carved out of the transfer, in the event of failure. Factors that are considered in determining the perimeter may include:

- **Loss absorbing capacity:** The execution of a transfer tool requires that the shareholder equity and certain creditor liabilities remain in the residual entity to absorb losses whereas the parts of the bank which should continue their functions will be transferred to the purchaser or bridge entity. In several jurisdictions, loss absorbing shares and liabilities are written down before the transfer.
- **Preservation of critical functions and protection of depositors:** When determining the preliminary transfer perimeter, the primary focus of authorities is the preservation of critical functions and the protection of depositors. The critical functions and insured deposits are therefore always included in the transfer perimeter.
- **Marketability:** Authorities also focus on the marketability of the transfer perimeter and therefore on designing attractive perimeters, for example by including core business lines or segments that generate a positive net asset value or by excluding undesirable portfolios.¹⁰ Understanding the market drivers and having a granular understanding of

⁹ This type of transaction is not covered by this report (section 1.1.4 above).

¹⁰ While non-viable or distressed assets may attract interest, their sale typically requires substantial valuation adjustments and a significant discount to compensate for the associated risks. These assets are therefore often excluded from the transfer perimeter and remain within the residual entity or are carved out and transferred to AMV to be managed or disposed separately at a later stage.

the business functions of the institution is therefore an important part of resolution planning.

- **Separability:** Authorities also use the outcome of the separability analysis as a practical consideration. The separability analysis entails the assessment of the operational, financial and legal interconnections of legal entities, business lines or portfolios of assets and liabilities of the bank with a view to their potential separation from each other. As an outcome, authorities may require the bank to take measures during resolution planning to enhance separability of certain parts or businesses. To this end, balancing the granular interconnectedness assessment with the possibility to leverage on the bank's legal structure is crucial to ensure proportionality of efforts during resolution planning on both banks' and authorities' sides while avoiding legal risks and operational hurdles. For example, in the United States, the resolution planning rule for large FDIC-Insured Depository Institutions requires identifying key franchise components, such as business segment, regional branch network, material asset portfolios that can be sold or divested as-is during resolution, without significant obstacles or need for restructuring.

The transfer perimeter may cover the failed bank as a whole or certain portfolios, business segments, or other parts of the failed bank. Authorities generally retain flexibility whether to transfer the preliminary transfer perimeter determined and prepared during resolution planning in an actual resolution case. The final interest of potential purchasers will only be determined in the resolution situation itself. Table 2 presents practical examples of assets and liabilities that were included in or excluded from the transfer perimeter in real resolution cases, without providing a comprehensive overview of the respective transfer perimeters.

Table 2: Real cases of determining transfer perimeters

Jurisdiction	Examples of assets and liabilities included in or excluded from the transfer perimeter
EU	In the case of Parex in Latvia¹¹, the failing entity was split into a “good” bank (Citadele) and a “bad” bank (Reverta). To the good bank were transferred almost all deposits except a few term-deposits, while the minority shareholders, legacy subordinated deposits, senior syndicated loans and part of State aid were left in the “bad” bank. In the case of Sberbank banka d.d. in Slovenia, the resolution planning did not define a transfer perimeter of specific assets, mainly justified by the absence of complex or exotic portfolios. In the execution of resolution, the whole bank was transferred by means of a share deal.¹² In the case of BES in Portugal, some assets, notably holdings and other exposures to the non-financial part of the former Group Espírito Santo were left behind and not transferred to the bridge bank. As for liabilities, all shareholders, subordinated creditors, unknown and contingent liabilities, as well as a set of senior bondholders (professional investors) were left in the residual entity to absorb losses. In the case of BANIF in Portugal, some assets which were of no interest to the purchasers but could still have some value were transferred to an AMV. Other assets, such as holdings in third-countries subsidiaries, were retained within the residual entity.

¹¹ See [European Commission, 11 May 2009](#)

¹² See [SRB communication 1 March 2022](#)

	As for the liabilities all shareholders, subordinated creditors and unknown and contingent liabilities were left in the residual entity to absorb losses.
UK	In the case of Dunfermline, Dunfermline's retail and wholesale deposits, branches, head office and originated residential mortgages (other than social housing loans and related deposits) were transferred to an acquirer over the weekend. Dunfermline's remaining social housing loan book and deposits of the social housing lending customers were held in a bridge bank while a competitive auction process was conducted for their sale. The remaining parts of the business not transferred to the acquirer or bridge bank, including commercial loans, certain residential mortgages, subordinated debt and most treasury assets, were placed into administration. ¹³
US	In a recent case, FDIC closed the bank after identifying its false and deceptive records and other information suggesting fraud that revealed depletion of the bank's capital. Because of these concerns, FDIC elected not to sell the loans to the acquirer.

Different considerations may apply depending on whether transfers occur to private sector purchasers or bridge banks. A comparison of the treatment of selected types of liabilities included in transfer perimeters to a private sector purchaser and to a bridge entity of real crisis cases in Poland is summarised in table 3, without providing a comprehensive overview.¹⁴ The insured deposits constituted the baseline for defining the scope of the transfer perimeters of these cases, whereas the Resolution Authority strived to achieve full protection of all deposits as their protection and continuity of access to depositors' funds were instrumental resolution objectives. The aim of preserving critical functions and the protection of depositors therefore guided the calibration of both asset and liability transfers, and alignment was sought with the commercial expectations and capacity of potential purchasers. Accordingly, the transfer perimeter on the asset side was typically proposed by the purchaser.

Table 3: Example of treatment of specific liabilities in resolution cases in Poland¹⁵

Liability type	Transfer to a private sector purchaser	Transfer to the bridge entity
Insured deposits	Transferred.	Transferred. All insured deposits were transferred to the purchaser or bridge bank and guaranteed on general provisions.
Social security liabilities	Left in residual entity (a certain cash amount was also left for liabilities settlement).	In all cases, social security liabilities, due on the resolution date, were left in the residual entity. However, in one bridge bank case, where the resolution initiation date deviated from the usual end-of-month (which did not correspond with settlement of social security liabilities, additional

¹³ Bank of England (2010), *Report under Section 80(1) of the Banking Act 2009 on the Dunfermline Building Society (DBS) Bridge Bank*, July.

¹⁴ Transferred liabilities were analysed by an independent valuer, and a NCWO test was conducted during valuation before issuing the transfer decision. In Poland (EU) the NCWO test is carried out ex-post resolution decision (valuation 3). However certain references to NCWO testing are included in ex-ante valuation (Valuation 2).

¹⁵ Since 2019, there were 4 resolution cases in Poland: (i) 2 transfers to a private sector purchaser (Cooperative Bank in Przemkow and Idea Bank), and (ii) 2 transfers to bridge bank (Cooperative Bank in Sanok and Getin Noble Bank).

Liability type	Transfer to a private sector purchaser	Transfer to the bridge entity
		settlements were needed in order to cover the liabilities between resolution date and end-of-month.
Liabilities to Central Counterparties (CCPs)	Transferred.	Transferred.
Derivative contracts	Transferred.	In one of the bridge bank cases, partly left in the residual entity (connected to assets left in the residual entity) and partly transferred (connected to transferred assets).

In summary, authorities have adopted different approaches in determining the size of the preliminary transfer perimeter as they balance between comprehensiveness and optionality. The transfer of the entire bank in a crisis may mitigate execution and legal risks, as well as overcome separability challenges. Where this is not possible or preferable, larger transfer perimeters, encompassing a broader range of assets, liabilities, and functions, offer a more holistic approach to maintaining business continuity but can be more complex and expensive to execute, making them less attractive to potential acquirers.

Conversely, smaller, more focused transfer perimeters, concentrating on core critical functions and the most viable business lines, tend to be more flexible and provide greater optionality for resolution authorities when they engage with potential purchasers. Smaller transfer perimeters, however, also imply that more of the business is left behind in the residual entity to be managed and liquidated.

2.2. Separating the transfer perimeter from the residual entity

In cases where only a part of the failed bank is transferred to the purchaser or bridge bank, authorities separate the failed bank into the transfer perimeter and the residual entity. To that end, authorities applying transfer tools ensure that the interconnections between the transferred activities and the residual entity are identified and addressed.

Box 2: Key areas of internal interconnections

Typically, authorities address four key areas of internal interconnectedness, operational, financial, legal and business, when separating the failed bank into the transfer perimeter and residual entity.

- **Operational interconnection:** Authorities may temporarily maintain the continuity of certain services provided by the residual entity to the transfer perimeter through Transitional Service Agreements (TSAs) until the purchaser is able to replace these services with their own.
- **Financial interconnection:** These interconnections include intra-group loans, guarantees, and hedging arrangements. Authorities avoid separating these linked contracts and generally either transfer these interconnected instruments or leave them behind to be unwound in the residual entity. Authorities generally expect the purchaser to have in place their own funding arrangements to replace vital financial interconnections.

- **Legal interconnection:** These interconnections involve ongoing litigation, legacy contractual obligations and other contingent liabilities. These are often excluded from the transfer perimeter and left with the residual entity to avoid transferring legal uncertainties and potential future exposures to the acquirer.
- **Business interconnection:** These interconnections include business relationships with customers or suppliers that could affect the bank's brand/franchise value. In jurisdictions where there are both Islamic and conventional banking business, for example Malaysia, business interconnections include shared infrastructure as well as sales and service channels. Where deemed important, transitional arrangements may be implemented to ensure these relationships are effectively managed, oftentimes by addressing also underlying operational and financial interconnections.

To ensure that these interconnections can be removed, and the transferred activities can be separated from the residual entity and continued without reliance on the residual entity, authorities include relevant preparations in their resolution planning:

- **Identification of interconnections and timely information:** To ensure a smooth separation of the transferred activities from the residual entity, it is important to facilitate a rapid retrieval of critical information about these service relationships during resolution. Most authorities therefore mandate that banks enhance Management Information System (MIS) capabilities to provide reliable and timely data. Part of the expectations are the identification, mapping, and maintenance of comprehensive records of critical contracts, reflecting the services and operational dependencies between group entities. This is often done through service catalogues or repositories of contracts.
- **Transitional service agreement:** To facilitate a smooth separation, operational interconnections such as the provision of services between the transferred activities and the residual entity may have to be maintained during a transition period to ensure the continuity of these services until they can be replaced¹⁶. To this end and as a matter of resolution planning, many resolution authorities require banks to develop capabilities to produce Transitional Service Agreements (TSAs), when needed (during recovery, resolution and related restructuring). This includes having appropriate operational arrangements and the availability of relevant information. These contractual agreements oblige intra-group service providers of the failed bank which remain in the residual entity to continue their services to the transfer perimeter during a transition period.
- **Ex ante restructuring:** Restructuring efforts during resolution planning also play a role in reducing complexity and easing interconnections to facilitate easier separation in case of resolution. For example, in Australia, there is at least one example where shared services entities have been moved to be direct subsidiaries of the bank, and trademarks and intellectual property have been transferred to the banking group to be included in a potential transfer. Additionally, in the same example intragroup service arrangements were restructured through legal agreements to support provision of

¹⁶ The continuity of intra-group services for a transition period may be relevant for both the transferred activities and the activities of the residual entity in liquidation.

services directly to the bank, banking group or residual entity, as appropriate to the resolution strategy.

- **Linked assets and liabilities:** When linked structures of assets and liabilities, such as secured liabilities and their collateral, cannot be separated within the timeframe necessary to fulfil resolution objectives, they will be included jointly in the transfer perimeter or jointly left behind with the residual entity. The transfer of derivatives or other linked liabilities poses operational challenges to which jurisdictions apply different approaches. For example, authorities may consider that derivatives tied to transferred assets are included in the transfer perimeter only if they can be segregated from the portfolio remaining in the residual entity, otherwise, they must be closed out. In the EU, legal safeguards prevent the splitting of linked liabilities, rights, and contracts, as applicable.¹⁷ In the US, an acquiring institution would assume liabilities related to Qualified Financial Contracts (QFCs) as part of a P&A transaction. In these cases, the FDIC, as Receiver, must notify counterparties of any QFC transfers by the business day following its appointment; otherwise, counterparties may exercise termination rights.
- **Contingencies:** When it comes to legal interconnections, authorities may decide not to pass on certain contingencies and litigation to a purchaser or bridge entity. In the United States, the FDIC as the Receiver, retains all liabilities that are not transferred to an acquiring institution as specified liabilities under the specific P&A transaction for a failed bank. The acquiring institution does not take liability for claims based on the acts or omissions of the failed bank or FDIC as the Receiver. This includes claims subject to the mandatory administrative claims process, claims that cannot be proved due to the Receiver's special powers and all defensive litigation against the failed institution. In Portugal, both resolution cases (BES, in 2014 and BANIF, in 2015) featured the introduction of clear and specific criteria in the resolution decision, ensuring that some contingencies and litigation were kept in the residual entity and not transferred to the bridge bank or to the purchaser.

2.3. Operational continuity with third parties

The smooth separation of the transfer perimeter also requires that contracts with third-party service providers can be transferred together with the transfer perimeter, or that the continuity of third-party services after the transfer is ensured for at least a transition period.

- **Contract identification and timely information:** To ensure the continuity of third-party contracts, it is important to facilitate a rapid retrieval of critical information about these contracts during resolution. Banks therefore need to avail of adequate MIS capabilities to provide reliable and timely data for resolution planning and execution and post-stabilisation restructuring. Authorities therefore often mandate banks to maintain service catalogues or repositories of contracts which facilitate the identification,

¹⁷ Legal safeguards and frameworks, such as EU's Article 76 of the Bank Recovery and Resolution Directive (BRRD), address specific linked assets and liabilities, including financial collateral, set-off and netting arrangements, secured transactions, and clearing, trading, and settlement systems. These safeguards are designed to preserve the enforceability of contractual arrangements that are considered essential for financial market stability.

mapping, and maintenance of comprehensive records of critical contracts reflecting the services and operational dependencies with third parties, including memberships in financial market infrastructures.

- **Assignability:** To ensure the assignability of third-party contracts covering critical systems and services, several authorities require banks to include provisions in their contracts with third parties which facilitate the transfer or assignment, or novation of contracts in resolution. Other resolution authorities rely on their legal powers to transfer contracts or amend contractual terms in resolution without requiring the consent of the contractual counterparty. Assignability concerns could be less relevant where the transfer is structured as a transfer of shares because the parties to the existing contracts remain unchanged, including memberships in Financial Market Infrastructures, since the transferred entity keeps those existing contractual relationships. In some jurisdictions, this is facilitated by way of a universal succession rule.
- **Powers to enforce contracts:** Many authorities avail of statutory powers to impose stays or moratoria to avoid counterparties taking certain actions, for example terminating contracts upon insolvency or under change of control clauses or starting enforcement procedures during resolution. As an example, in the United States, the FDIC Receiver is granted two specific powers to enforce contracts: first, the ability to protect against “ipso facto” clauses that purport to automatically terminate contracts upon the institutions’ insolvency or receivership and second, the authority to stay counterparties for 90 days from exercising certain contractual rights.
- **Service level agreements:** Some authorities require that Service Level Agreements (SLAs) with third-party service providers incorporate minimum service provision times aligned to the time required for the substitution of the service in resolution, to ensure a smooth transition during the separation of the transfer perimeter.
- **Funding for operating expenses:** The continuity of third-party services is also supported by earmarking adequate liquidity or funding for service providers of outsourced services, for example via pre-funding arrangements, to maintain uninterrupted service provision. For instance, in the EU banks are required to pre-fund the contracts outsourced to third parties outside of the EU for a period adequate to the resolution strategy and for no less than six months. The liquidity should be ring-fenced and made of high-quality assets.
- **Backup service providers:** Where the continuity of contracts cannot be assured during resolution, alternative third-party providers may have to be found. Some authorities require banks to identify alternative providers or develop strategies for transferring contracts to alternative providers to ensure operational continuity in these cases.
- **Staff retention plans:** Furthermore, some authorities develop staff retention plans and measures to retain critical staff during resolution. In some jurisdictions, the assignment of employment contracts may require consideration.

Authorities and banks prepare operational and contingency plans to ensure continuity with third parties. In addition, some jurisdictions focus on effective communication strategies with third-party providers and simulation exercises to prepare for resolution scenarios.

3. Marketing the transfer

3.1. Marketing Process

Marketing the transfer of a failing bank is a critical component of the resolution process. Authorities face a different set of challenges when selling a failing bank as part of a resolution than those typically experienced in a business-as-usual transaction. These challenges impact the approaches employed to execute the sale of a failing bank and/or its portfolios.

Given the distressed nature of any transfer situation in resolution, authorities need to avoid further destabilising the failing bank. This means authorities balance competing priorities such as confidentiality, timeliness, regulatory compliance, and achieving the best possible economic outcome for stakeholders – while ensuring that a resolution is executable and there is sufficient certainty for the parties involved. Each step in the process requires careful planning, and authorities have to draw on practical experiences to refine their approaches and address recurring challenges.

Marketing timelines for a failed bank can range from a weekend in urgent situations, to between two and twelve weeks where there is greater advance warning. However, it is important that authorities develop expedited protocols related to regulatory approvals (including consultation with other authorities) and decision-making, in order to manage shorter pre-failure periods and to ensure they have sufficient flexibility to execute a swift transfer transaction in resolution. This good practice of designing marketing processes that can be compressed when required is commonly employed, but it can be challenging where restrictions are in place preventing marketing activities from beginning only once a bank's failure has been confirmed.

Maintaining pre-established lists of potential acquirers, developed during peacetime through exchanges with banks about their appetite and capability for acquisitions, allows for a more targeted marketing process in time-constrained scenarios. Alternative approaches that also support a more targeted marketing process are for authorities to require failing banks to proactively identify potential bidders or for authorities to analyse secondary markets and/or historical investor records to gauge interest. Where a failing bank has already engaged the market pre-resolution, and has therefore established a going concern sales process, authorities can leverage the interest already generated to further target potential bidders.

Box 3: Identification of suitable bidders

The identification of suitable bidders is a fundamental first step in the marketing process. Factors that may be relevant in this identification process include each bidder's:

- capability to facilitate the enactment of the transaction, including by providing the required documentation, in the required timeframe,
- strategic fit and business model compatibility,
- understanding of the local jurisdiction's market and regulatory environment,

- financial resources (including the ability to absorb the purchase in terms of capital requirements) and capacity to provide any necessary liquidity,
- ability to absorb the failing bank within existing operations including credible arrangements for the continuity of banking services,
- senior management capability to oversee the integration of the failed bank,
- existing banking authorisation in the relevant markets (for example, in certain jurisdictions, non-bank acquirers may require approval from authorities for the acquisition, including on a non-objection basis, or approvals may be required related to the resulting ownership of the failed bank),
- financial and regulatory terms of the sales agreement proposed by the bidder, and
- financial stability and/or national interest, balanced against any required competition considerations.

One of the central challenges in marketing a failing bank is maintaining confidentiality to avoid further destabilisation of the institution. An early step in the marketing process is therefore the requirement for any identified bidders to sign non-disclosure agreements (NDAs) before accessing sensitive information. These confidentiality requirements often conflict with the need for transparency and are an example of the different priorities that exist in a resolution sale in comparison to a business-as-usual transaction. For example, in addition to NDAs, to protect confidentiality throughout the full marketing process, it is helpful if authorities are able to waive certain disclosure requirements, for example in relation to market abuse regulations.

The involvement of external advisers is often necessary to support the marketing and sales process. Authorities may work with legal, financial (including investment banks), and valuation advisers to navigate the complexities of the transaction. Pre-approved lists of and contacts with advisers can be maintained to facilitate rapid onboarding and access to this third-party support. As part of this, where authorities are able to seek fairness opinions from these advisers on the transaction, including its value, they may be better placed to respond to any subsequent legal challenges related to the transaction.

3.2. Due diligence

It is important that authorities work closely with their supervisory counterparts and/or the failing bank's management to best leverage any existing due diligence arrangements. In the case of a bank failure, the bank may have already established a data room to support a going concern sales process.

However, where the failing bank has not already established a data room, authorities will either need to direct the institution to do so or they will need to arrange a data room themselves. To facilitate ease of access to the data room for any third parties supporting the sales process, authorities can make use of third party hosted, industry-recognised solutions. Once potential bidders have been identified and they have agreed to any confidentiality requirements, access to the data room can be granted.

Box 4: Data room content

Authorities may standardise data room content requirements to facilitate rapid creation and population of the data room. These contents would typically be made up of the following items, among other:

- data tapes for portfolios within the business to be sold/transferred that provide details on asset quality, depositor details, etc.,
- financial information (such as historical and forecast statutory/management accounts, capital and risk weight positions),
- corporate legal documents such as group structures, organisational charts, and memoranda and articles of association,
- business model information such as strategic reports,
- information related to any branch network/physical presence such as the details of any leases,
- human resources documentation such as standard employee contracts, remuneration structures and Transfer of Undertakings (Protection of Employment) (i.e. TUPE) analysis,
- detail on any litigation cases/provisions,
- tax considerations, and
- legal transaction documents (i.e., the form P&A, NDA, etc.).

To ensure that the creation and population of the data room can be carried out quickly in a resolution sales process, authorities in some cases set requirements for firms to have capabilities to do so within 24-48 hours. Authorities typically require firms to carry out some form of testing of their valuation and data room capabilities to provide assurance that this will be possible.

3.3. Bidding and selection of winning bidder

Once bidders are identified and due diligence processes are underway, authorities will have a process in place to ultimately select a winning bidder. The timeframes for this bidding process can range from days to multiple weeks.

The auction processes adopted by authorities can vary, and will ultimately depend on the specifics of the case, but some examples are provided below:

- Authorities may run a two-phase process, whereby bidders initially submit non-binding offers. These are then negotiated, and subsequently short-listed, with a smaller subset of bidders (or a sole preferred bidder), which are then requested to share binding offers. Authorities may adopt a 'best and final offer' bidding round for this second stage.
- Authorities may run a one-stage process, whereby all bids are considered once a set deadline is passed. Authorities may consider conferring 'first offeror' advantages whereby the initial bidder has a first refusal option to match any more favourable bids received later.
- Authorities may allow alliance bidding or alternatively single bidders to submit multiple bids.

As with the approach to the initial marketing of the failing bank, authorities may adopt a more targeted approach to the selection and shortlisting of bidders in a fast burn failure case. However, authorities carefully balance adaptability of approach versus consistency with any established processes. To support this, they may promote consistency around the bid terms, to ensure ease of comparison across multiple bids received. For example, bidders may only be invited to bid on the entirety of the failing bank or may be invited to bid on particular portfolios.

Box 5: Evaluation criteria for bids

Authorities maintain pre-defined evaluation criteria for bids based upon the required outcomes in a resolution scenario. This could mean considering the following:

- how well the resolution objectives may be advanced with the potential bids,
- timeliness of the transaction,
- credibility and suitability of the bidder(s) including the factors set out in box 3,
- preference for taking over the failed bank in its entirety (versus individual portfolios only) and,
- impact on public funds.

It will often be the case that bidders have concerns that must be addressed by authorities in order to facilitate the sale. For example, constricted timeframes could result in limited due diligence opportunities (in spite of practices employed by the authorities to arrange data room capabilities), which in turn create concerns around the quality of assets and liabilities being transferred. There may also be sensitive circumstances surrounding the specific resolution or regulatory matters to be addressed such as impacts the transaction may have on the capital requirements of the bidder post purchase.

Authorities may consider in advance the measures that could be taken to alleviate any uncertainties bidders may face. In past resolution cases, authorities have excluded uncertainties from the transfer perimeter, for example by leaving litigation issues behind in a residual entity that is subsequently wound down. Furthermore, uncertainties of the transfer perimeter have been addressed by guarantees or loss-sharing agreements. Authorities' powers to stagger or temporarily waive regulatory requirements to ease the burden on acquirers, or to employ exemptions on financial stability or public interest grounds related to regulatory, competition and tax approvals, vary across jurisdictions.

3.4. Documentation of the transaction

The transfer of the failed bank and/or its portfolios to the successful bidder(s) is typically enacted via a legal resolution instrument, which can for example include the acceptance of a bid, without the need for consent of the shareholders of the failed bank. This ensures that resolution action can be taken swiftly, and authorities develop and maintain templates of legal instruments that can be easily and quickly adapted during a sales process.

Some authorities can obtain the purchaser's consent through the final offer letter, in accordance with pre-defined process letters. However, if authorities require other legal arrangements and documentation to obtain purchaser's consent and these aspects of documentation cannot be delayed until after resolution action has been taken, easily adaptable templates such as Sales and Purchase Agreements (SPAs) are maintained as well. The same consideration applies to

any documentation required to support other non-resolution authority regulatory approvals or government department consultation. It may be the case that authorities can exempt, waive or delay these requirements as well by invoking financial stability grounds, reducing their potential impact on resolution actions.

Authorities may also develop and maintain templates that support steps in the sales process leading up to the final enactment of the transfer. These include, for example, non-disclosure agreements, invitations to submit expressions of interest for the entity being sold, bid submission templates, non-binding and binding offer process letters, and decision-maker memos. These templates support each step of the sales process and can be provided as part of wider execution documentation that is maintained to support the authority to deliver a transfer transaction (for example, transfer playbooks).

Having consistent sales processes and templates not only ensures smooth operations but also helps to reduce legal risks as it supports the authorities in demonstrating that they have run fair processes. Authorities also maintain flexibility within the templates to address the specifics of the case and to adapt to new information that may prompt a change in approach.

3.5. Communication

Clear, factual communication following the execution of a transfer tool is crucial to ensure that the resolution action has the intended effect of reassuring market participants and depositors. Authorities are well placed to deliver this at the most suitable time, for example, when considering market opening hours and coordination with other authorities.

Box 6: Key messages

Ahead of time, authorities consider likely key messages to market participants and the public that would endeavour to ensure restoration of confidence. These prepared messages are then updated to reflect the specifics of any individual bank failure/market stress scenario. Key messages include:

- that operations will continue with no disruption to depositors or clients,
- that taxpayer and financial stability have been protected,
- reassurance for covered depositors,
- that strong domestic and international authority coordination led to a successful outcome, and
- a successful outcome resulting in minimal contagion/disruption to wider financial markets, which remain sound.

Authorities maintain business-as-usual relationships with media to facilitate proactive monitoring of media reports in the event of a bank failure. The use of social and digital networks is a helpful addition alongside more traditional forms of communication such as press notices and conferences. Many authorities also consider undertaking more outreach in peacetime to educate market participants on transfer tools as a resolution option.

Authorities test their marketing and communications processes in various ways including socialising templates and documentation required to support the sales process, dry runs of specific parts of the transfer transaction (such as any regulatory approvals and/or authorisation that may be required), and working through the strategic considerations required to choose the successful bidder(s).

4. Using a bridge entity

4.1. The use of bridge entities

Occasionally a bank may fail so swiftly that the resolution authority does not have time to market it. Consider, for example, the United States experience in the spring of 2023 when Silicon Valley Bank failed overnight and Signature Bank failed days later. In such cases, resolution authorities may consider a transfer to a bridge entity to bridge the transitional period between resolution of a failed bank and returning it to the private sector.

The bridge entity acquires assets and assumes deposits and other liabilities of the failed entity or the shares of the failed entity and operates as a going concern while the resolution authority attempts to arrange a transfer transaction with a suitable purchaser. In some cases, a non-bank parent holding company will be placed in resolution and its assets, which likely will include its shares in, and loans to, the group's (operating) subsidiaries and cash and securities, may be transferred to a new bridge holding company.

The loss absorption mechanisms impose losses on shareholders and creditors who remain with the residual entity and whose instruments are not transferred. They are then subject to the estate claims process in accordance with national legislation. For bridge entities, additional mechanisms may include converting liabilities transferred to the bridge entity into equity per EU legislation or allowing claims against the residual entity to be exchanged for securities issued by the bridge entity as is the case in the United States.

The stabilisation of the failed bank or parts of it in a bridge entity preserves franchise value and provides time to market the failing entity. It also provides prospective purchasers with the time necessary to perform due diligence. These benefits also provide the resolution authority with a better negotiating position for a more thorough bidding process and minimise losses and recourse to public funds.

Bridge entity resolutions can be costly. Financial support may be essential in executing a bridge entity resolution due to the shortfall between the value of a failed bank's assets and liabilities to be transferred. Deposits and customers could still exit due to the bank failure, which would reduce franchise value and increase resolution costs. Some jurisdictions require that a bridge entity resolution must satisfy a least cost test, meaning it must be less costly for the resolution fund than a liquidation. Authorities must be prepared in advance to manage the bank once in a bridge entity and establish a sustainable footing prior to exit. It will be important that authorities take measures to establish sufficient confidence in the bridge bank, including communications like those outlined in box 6.

4.2. Establishing a bridge entity

While the requirements vary by jurisdiction, the administrative process for incorporating a new bridge entity generally includes preparing and submitting incorporation or chartering forms and other necessary documentation, such as articles of association, including details about shareholders, directors, the company secretary, and the company name. Other requirements

may include additional documentation relating to corporate governance, such as a remuneration policy, strategic plan, operational goals, and risk policies.

Box 7: Organisation of bridge entities

Bridge entities can be organised in a number of different ways. For example:

- organised at the point of bank failure as needed,
- organised as dormant shelf entities to be activated as needed,
- organised as an open and operating institution and utilised as needed, or
- organised by acquiring an existing entity.

Several jurisdictions incorporate bridge entities in business-as-usual, which remain dormant until they are used if and when a resolution occurs. Other jurisdictions establish a bridge entity only in the run-up to resolution. In these cases, most jurisdictions require at least one day to establish a bridge entity. The timeframe, however, can range from weeks to as little as three hours. Certain jurisdictions have a fast-track incorporation process, whereby the resolution authorities are empowered to set up bridge entities through administrative actions. In some cases, publishing the resolution authority's order in the official journal to organise a bridge entity can in these jurisdictions have a similar legal effect as registration with the commercial registry. In Malaysia, a bridge entity is designated by the resolution authority, upon the approval of the finance minister. Upon its designation, the bridge entity is deemed by legislation to be licensed to carry on business as a licensed bank.

4.3. Licensing and regulatory requirements

Licensing requirements for bridge entities differ across jurisdictions. In some jurisdictions, the bridge bank is established administratively and authorised to commence and carry on business immediately after being organised. For example, in the United States, the resolution authority can form a bridge bank by preparing and submitting the application materials and organisational documents to the supervisory authority for approval and licensing. The bridge entity may then be chartered as a national bank or federal savings association. In other jurisdictions, the bridge bank is licensed as part of the incorporation process or is provisionally authorised to carry out banking activities after the incorporation procedure is completed.

Several authorities have ongoing collaboration or arrangements with relevant authorities (e.g. central bank, bank supervisor) that facilitate swift licensing. This includes fast-track procedures or a detailed legal licensing framework providing for one-step licensing or exempting the bridge entity from the need to obtain permission to commence business activities. In several jurisdictions, however, there is no fast-track licensing process for a bridge entity.

Prudential requirements for bridge banks are also different across jurisdictions. In several jurisdictions, a temporary waiver on certain prudential requirements (for example capital and liquidity requirements) can be granted to the bridge bank upon being licensed, subject to needs or certain conditions being met. In some jurisdictions, a license may be granted even though the bridge entity only meets part of the prudential requirements. In other cases, once organised and licensed, the bridge entity is exempted from any supervisory and prudential requirements.

In the United States, capital requirements do not apply to a bridge entity. The bridge entity is deemed by its chartering authority to have capital equal to 6% of the bridge entity's total assets for purposes of statutes, regulations, and supervisory guidance that use capital levels in setting requirements.

4.4. Governance, ownership structure and funding

The governance of bridge entities poses specific challenges, as authorities must ensure that individuals nominated to the board are subject to adequate fit and proper assessments, with particular emphasis being put on professional experience, independence and integrity.

Experienced professionals from the financial services industry and the professional service firms (such as law and accounting firms) are typically considered as board member candidates. Staff from resolution authorities or other supervisory bodies, as well as central bank staff and government officials, are in many jurisdictions not considered for these roles due to potential conflicts of interest and a lack of relevant industry expertise. However, some jurisdictions, for example the U.S., do make use of these types of individuals in an oversight role, typically when the governance structures include retention of the failed bank's staff who remain responsible for day-to-day management of the bridge entity. Given the expected time constraints, a common approach to expedite board appointments to the bridge entity involves maintaining a pool of qualified candidates at all times. Additional mechanisms include executive search programs for the identification and placement of executives and waivers granted by the competent authority regarding fit and proper assessments.

Approaches to the ownership structure of the bridge entity vary, with some jurisdictions providing for full shareholding by the resolution authority, while others allow private parties to be shareholders. In all cases, however, the resolution authority retains special governance powers, maintaining control over the bridge entity at all times, regardless of its shareholding structure, to ensure its operation aligns with the objectives of resolution.

Box 8: Establishing bridge entities

Practices for establishing a bridge entity include:

- Comprehensive view of organisational and licensing requirements,
- Framework to facilitate fast track organisation and licensing procedures,
- Standardised preapproved forms to support establishment of the bridge entity,
- Standardised processes for corporate governance (including form bylaws and an organisational meeting resolution), and
- Form appointment and employment agreements if third party directors and a third-party chief executive will manage and operate the bridge entity.

To adequately capitalise the entity, jurisdictions rely on various funding sources. A common practice involves the use of industry-funded resolution financing arrangements, with shareholder financing also being used in some jurisdictions. For example, UK legislation allows the resolution authority to request recapitalisation funds that are sourced from the industry via the Deposit Guarantee Scheme's levy mechanism. EU legislation allows the bridge banks to be capitalised through the transfer of a higher amount of assets than liabilities from the residual entity, provided

that the holders of the liabilities remaining in the residual entity would not incur greater losses than would have been incurred if the failed bank had been wound up under normal insolvency.¹⁸

In addition to capitalisation, bridge entities are generally subject to prudential liquidity requirements, hence liquidity provision is also essential to the establishment of the bridge entity. It must have the resources needed to sustain operations from the beginning, in order to ensure that it can meet its obligations to depositors and creditors and achieve confidence from the market, even if its establishment may have benefited from waivers to said requirements. Although the central bank is the most common provider across jurisdictions, provision by resolution authorities, industry-funded resolution financing arrangements, or a conjunction of all of these solutions is also possible in various jurisdictions.

4.5. Operational continuity with third parties

While aspects of operational continuity with third parties are similar for transfers to private sector purchasers and bridge entities, the latter requires specific considerations to be taken into account. This is because, when assets and liabilities are transferred to a private sector purchaser, the acquiring institution typically has its own systems, contracts, and infrastructure, while a bridge entity must depend on the transferred systems, services, and contracts of the failed bank to maintain functionality.

To this end, authorities must carefully structure the transfer transaction to a bridge entity to ensure that critical systems and contracts remain operational, for example by including entities that provide internal services in the transfer perimeter. Special attention should be given to transferring contracts for critical services and systems to the bridge entity, addressing any potential disruptions caused by termination rights under change of control clauses, legal complexities, or operational dependencies.

Some of these issues may be addressed by resolution-specific exemptions in the legal framework. For instance, to deal with change of control issues, Polish law allows a grace period of up to 24 months (extendable) for the bridge entity to meet the conditions for participation in a regulated market or in another organised trading system for financial instruments and in payment, settlement or clearing systems, provided that it fulfils the material obligations arising from its participation. Other issues may be resolvable by clear communication regarding the actual legal obligations. For example, in the case of SVB and Signature Bank, some third-party counterparties were hesitant to continue doing business with the bridge banks, which led to the authorities in the United States publishing a Financial Institution Letter, reminding service providers of their legal obligation to continue to perform under the contracts, so long as the bridge banks continued to make timely payments.¹⁹

Ensuring continuity of access to FMIs is another area where bridge entities face unique challenges. Unlike private sector purchasers, which typically have already established relationships with FMIs, bridge entities must often negotiate access during the resolution

¹⁸ Although the transfer perimeter could have a positive net asset value even though the failing bank does not have, such situation would increase the risk of NCWOL principle breach.

¹⁹ FDIC (2023), *Financial Institutions are Required to Meet Contractual Obligations with Bridge Banks*, (March).

process. In this context, continuity may be ensured with the transfer of key identifiers such as BIC codes and bank identifiers to the purchaser or bridge bank, if adequate.

Sufficient relevant experience of the (new) post-resolution management is fundamental to ensure operational continuity, along with the close cooperation of the resolution authority with middle management during the resolution weekend, as even the involvement of external advisors may not guarantee full operational continuity.

4.6. Ending a bridge entity

Strategies for ending bridge entities include asset sales, share sales, initial public offerings, mergers, and liquidations. The need to end the bridge entity depends on how it is eventually returned to the private sector, that is, through an asset transaction or share transaction, and the jurisdiction's regulatory framework. In an asset transaction, authorities may consider what structure best supports the disposition of assets and liabilities retained in the bridge entity after the asset transaction. In a share transaction the bridge entity continues as a going concern under new ownership.

In transferring the whole bridge entity to a private sector purchaser by a share transaction, the shares representing the ownership interest in the bridge entity are transferred to the acquirer, rather than the individual assets and liabilities. The acquirer, in its capacity as the new shareholder, is able to recapitalise the entity, for example by injecting its own funds. The acquirer then operates the new entity as a going concern.

After an asset transaction, there are several alternatives for ending the bridge entity, for example:

- Liquidation of the bridge entity in bankruptcy,
- Dissolving the bridge entity and placing it into receivership,
- Terminating the bridge entity's status, and
- Solvent wind down of the bridge entity.

The practical challenges associated with exiting bridge entities correspond to the challenges of transfers directly to private sector purchasers, such as identifying suitable purchasers, maintaining deposits and customers to support franchise value, resolving regulatory approvals, ensuring critical services and functions and mitigating resolution costs. However, the timing aspect may be less critical in regard to bridge entities.

When determining the term of a bridge entity, jurisdictions balance the need for time constraints to limit the exposure of resolution funds and taxpayers with the flexibility required to reach best economic outcomes for creditors. The legal framework of some jurisdictions provides for an initial term of two years as the lifetime of a bridge entity that can be extended for additional periods of one year. In the United States, with permissible extensions, the term cannot exceed five years. In Singapore, there is no statutory maximum lifetime. Another possibility is that the bridge entity is maintained for use in future resolutions.

5. Cross-border implications of transfer tools

5.1. Purchasers from foreign jurisdictions

In a cross-border context, the transfer transaction may be subject to specific requirements. In most jurisdictions, foreign entities must obtain regulatory approval before acquiring banks or banking assets in resolution. Most jurisdictions have mechanisms to assess the potential national security risks of foreign investments in the banking sector. Mainly, considerations about foreign control and competition apply.

Only a small number of jurisdictions impose outright prohibitions or significant restrictions on transfers of a failed or failing banks to foreign purchasers. In Guatemala, for instance, resolution transfers to a foreign purchaser are not allowed, but a foreign bank that wants to acquire a bank in resolution can do so by establishing a local branch. In the US, only FDIC insured depository institutions may acquire a failed bank.

However, in several jurisdictions, foreign investments are screened for national security and public interest implications. Similarly, some jurisdictions require foreign purchasers to secure specific regulatory approvals to acquire banking assets or shares, such as qualifying holding approvals or approvals to address competition and concentration issues, with additional considerations for economic security or control. Transfers of shares are also likely to trigger change-in-controls approval requirements from the relevant authorities, which may be more complex in a cross-border scenario. Legal restrictions on asset ownership and transaction size could therefore complicate foreign purchases.

The timing of these approvals often poses significant challenges and may not support the urgency of resolution timelines. In the UK for example, while approval processes are streamlined for known purchasers, they can be slower for new entrants. In the EU, the resolution framework does not provide for resolution-related exemptions to its member states' competence to apply foreign investment screening, leaving it to them to set up appropriate procedures for urgent cases where they make use of that competence.

Additionally, authorities may assess the supervisory, regulatory and resolution framework of foreign jurisdictions to determine whether their frameworks are equivalent to the domestic rules. Such determination may support the assessment of the eligibility of a foreign purchaser.

5.2. Operational continuity with foreign third parties

Operational continuity is a critical consideration when third-party service providers from foreign jurisdictions are involved. Operational continuity during the execution of a transfer tool requires that third-party service providers cannot make use of termination and enforcement rights, that contracts with third party service providers can be transferred together with the transfer perimeter, and that the continuity of third-party services after the transfer is ensured for at least a transition period.

Several authorities have statutory powers to impose stays or moratoria, or to transfer contracts. Statutory powers become less reliable where contracts are governed by foreign laws and there

may be a need for a cross-border recognition of resolution powers and measures to ensure operational continuity across borders.

One option to handle cross-border third-party service provision is to request resolution-resilient contracts, by including for example non-termination clauses.²⁰ In Canada for example, the resolution authority requires systemically important banks to include relevant clauses in critical contracts and to be able to provide key information on said contracts within 48 hours. Similarly, in the EU, contracts with foreign third parties, particularly those governed by non-EU laws, must be amended to include resolution-resilient features.

Where such amendments are not possible, several jurisdictions require banks to justify their inability to do so and propose alternative strategies, such as maintaining sufficient liquidity to pre-fund service costs for a set period. In the EU, for example, banks must pre-fund third-country outsourced contracts for at least six months using high-quality liquid assets. In Hong Kong, if the inclusion of resolution resilient clauses is not possible, banks are requested to investigate alternative substitutes where appropriate.

Access to the contracts with foreign third-party providers or governed by the law of a foreign jurisdiction is also deemed important in the context of resolution. In the United States, for instance, insured deposit institutions are required to document the physical locations and jurisdictions of critical service providers and critical services support that are located outside of the United States. To support retrieval, banks identify the systems that store these contracts and how this information is stored. Another example includes Guatemala which has regulations in place for the access to information stored or processed abroad by banks.

5.3. Operational and legal complexities

Operational and legal complexities may complicate cross-border transfers. Differences in sale process expectations, documentation requirements, and legal frameworks across jurisdictions can create cross-border barriers.

The operational and legal differences between jurisdictions, involved in a transfer, may limit the pool of potential purchasers or limit access of foreign interested parties to transactions. Additionally, a general lack of familiarity of foreign purchasers with domestic and overseas operations, including foreign branches, may impact their appetite for transactions as well. To address these matters and encourage both local and foreign purchasers, the Bank Guarantee Fund in Poland for example hired independent advisors to address legal and operational aspects, such as language and contract terms, to increase transparency in the acquisition process with foreign purchasers.

Differences in legal frameworks may create impediments to the ability to swiftly transfer assets, rights and liabilities ruled by foreign law. Authorities therefore ensure robust legal assessment during resolution planning and due diligence in the run-up to resolution by identifying the relevant cross-border contracts and instruments and understanding the legal and regulatory requirements for the implementation of the transfer such as assignability and regulatory

²⁰ FSB (2024), *FSB Guidance on Arrangements to Support Operational Continuity in Resolution (revised version 2024)*, March.

equivalence. For example, in the resolution of BES in Portugal, exposures to third-country jurisdictions without equivalent resolution regimes were retained in the residual entity namely due to uncertainties regarding the recognition and enforceability of the effects of the resolution action taken by Banco de Portugal in those jurisdictions.

Where the parent entity under resolution is transferred in a share transaction, its subsidiaries, including those abroad, may also be subject to local regulatory approval processes triggered by the change in ultimate owner/controller. Where a foreign subsidiary or other assets located in or subject to the law of a foreign jurisdiction are transferred in an asset transaction, local requirements may apply to the transfer. Overseas branches, while ultimately the same legal entity as the parent, could still introduce complexities in terms of whether the acquirer understands the international operations and legal operating framework in order to continue to run the overseas branch without disruption. Similarly, in order for host authorities to be able to support the transaction and resolution strategy it is important that they have an appropriate understanding of the relevant legal framework of the parent entity. Cross-border recognition provides legal certainty in this regard.

Where authorities use write down and conversion as the loss-absorbing mechanism of the transfer tool, authorities assess whether cross-border considerations apply to the execution of these measures, for example because liabilities to be affected are governed by foreign law, traded or deposited in foreign jurisdictions or held by foreign investors.²¹ The issuance of new equity securities as part of the conversion may in some jurisdictions imply certain requirements that do not exist in the jurisdiction of the failed or failing bank. As part of resolution planning, authorities and banks therefore prepare for compliance with requirements or available exemptions under the law of foreign jurisdictions to ensure the smooth execution of write down and conversion measures.

Box 9: Cross-border considerations for transfer tools

Authorities' considerations regarding cross-border aspects of transfer tools may include:

- timeliness of regulatory approvals for foreign purchasers (assessment of foreign control, competition, national and economic security, public interest, depending on the jurisdiction),
- application of resolution powers (transfer powers, stays on termination and enforcement rights to contracts governed by foreign law) and cross-border recognition of such powers,
- documentation and access to contracts with foreign third-party service providers, contractual recognition of resolution powers ('resolution resilient contracts'), and regulatory equivalence,
- clarification of differences in sales process expectations, documentation requirements and legal frameworks across the involved jurisdictions, including with the help of advisors,
- where write-down and conversion are chosen as the loss-absorbing mechanism, compliance with foreign laws regarding securities governed by foreign law, traded or deposited in foreign jurisdictions or held by foreign investors.

²¹ FSB (2021), *Bail-in Execution Practices Paper*, December.

5.4. Coordination among authorities

Resolution authorities of cross-border groups cooperate within institutionalised cooperation mechanisms, such as discussion fora including FSB working groups, bank-specific CMGs, resolution colleges, supervisory colleges and informal bilateral discussions, and agreements such as cross-border cooperation agreements and memoranda of understanding. These mechanisms enable authorities to discuss the preferred resolution strategy and transfer perimeter of a cross-border group, to review resolution planning work, to work through operational cross-border issues such as communication strategies and documentation, and to consider regulatory matters including facilitating approvals and equivalence checks. Close collaboration between home and host authorities is necessary throughout resolution action to ensure that jurisdictions do not inadvertently destabilise the firm further by acting inconsistently.

Coordination with additional foreign authorities such as supervisors, finance ministries, central banks or market regulators may be required regarding specific approvals, requirements or marketing options. To this end, the development of strong working relationships among authorities over years, fostered through extensive engagement on financial stability, supervision, and resolution issues, is invaluable in facilitating coordinated and swift responses during times of crisis.

Box 10: International cooperation for the resolution of Silicon Valley Bank

The resolution of Silicon Valley Bank (SVB) case in United States illustrates the cooperation among several authorities across borders. SVB provided financial services to clients in multiple jurisdictions. SVB had a UK bank subsidiary, loan production branch offices in Canada and Germany, and a representative office in Hong Kong. To facilitate the transfer of the UK bank subsidiary to HSBC UK Bank Plc, the Bank of England and the FDIC worked in close collaboration. In Canada, the Office of the Superintendent of Financial Institutions sought the appointment of a liquidator for the branch, with whom the FDIC Receiver worked closely to ensure a smooth process. The FDIC Receiver also cooperated with the Hong Kong Monetary Authority (HKMA) to bring about the orderly closure of SVB's legacy representative office in Hong Kong. In addition, the FDIC coordinated closely with Germany's Federal Financial Supervisory Authority (BaFin) for the recognition of actions taken with respect to SVB's German branch by FDIC as Receiver under German law, which enabled a smoother resolution process, including the wind-down and sale of local assets.

Authorities have engaged in cross-border crisis simulation exercises to test the effectiveness of cooperation in resolution transfers in a cross-border context. This is critical for identifying potential regulatory misalignments and enhancing execution capacity. For instance, in the Banking Union, procedural aspects of the execution of the transfer tool have recently been tested in two different dry-runs. The exercises tested the execution with two different national authorities, focusing on the preparation, marketing, loss absorption, and sale processes. In 2024, the Financial Stability Institute (FSI) organised a crisis simulation exercise for resolution authorities in the Americas. The exercise focused on testing the crisis management frameworks for resolving a cross-border banking group, during which the involved authorities explored the transfer of the local business lines to another domestic institution.

6. Resolution cases using transfer tools

The following studies of real resolution cases illustrate the topics discussed in this report. The case of Banco Espírito Santo spans across the entire timeline of a crisis management process, from the resolution by an transfer of the majority of assets and liabilities to a bridge bank and loss absorption through an estate claims process, to the end of the bridge bank condition and the return to the private sector relieved from any crisis management measures. The Doral Bank case is a detailed example which focuses on the sometimes-complex transfer perimeter design, bidding and marketing of asset transactions to private sector purchasers. The case of MBf Finance illustrates how issues considered in this report played a role in crisis management at a time where modern resolution frameworks based on FSB Key Attributes were not yet in place. The cases of Banco Popular and SVB UK describe how resolution by share transfers and loss absorption through write down and conversion can be executed within a condensed timeline and in coordination across borders.

6.1. Case study: Banco Espírito Santo

6.1.1. *Circumstances of the case*

The resolution of Banco Espírito Santo (BES) took place on 3 August 2014, under highly challenging circumstances.²² BES was the third-largest Portuguese banking group and had a leading role in lending to small and medium enterprises (SME). It was also one of the largest deposit-taking institutions and a deeply entrenched brand in the Portuguese market, on top of having a significant international presence. It had, however, limited loss-absorbing capacity, as capital requirements were less stringent at the time and there were no specific requirements on loss-absorbing capacity, such as Minimum Requirement for Own Funds and Eligible Liabilities (MREL) or TLAC. The failure was abrupt, triggered by the unveiling of substantial losses, at a time when Portugal had just exited an EU/IMF economic adjustment programme and its banking sector was still undergoing restructuring. In this context, there was an absence of market appetite and capacity to acquire BES's business, whose continuity was essential for financial stability and for the Portuguese economy.

6.1.2. *Transfer transaction and loss absorption*

Type of transaction

Given these circumstances, and in order to avoid further disruption to the financial system, Banco de Portugal applied a transfer resolution tool to BES, creating the bridge entity Novo Banco, which received most of the assets and liabilities of the failed bank. The transfer took the form of an asset deal, preserving BES as a legal entity, left only with the assets, rights and liabilities not transferred to Novo Banco, and which was later placed into liquidation.

²² More information about this case is available at the [website of Banco de Portugal](#).

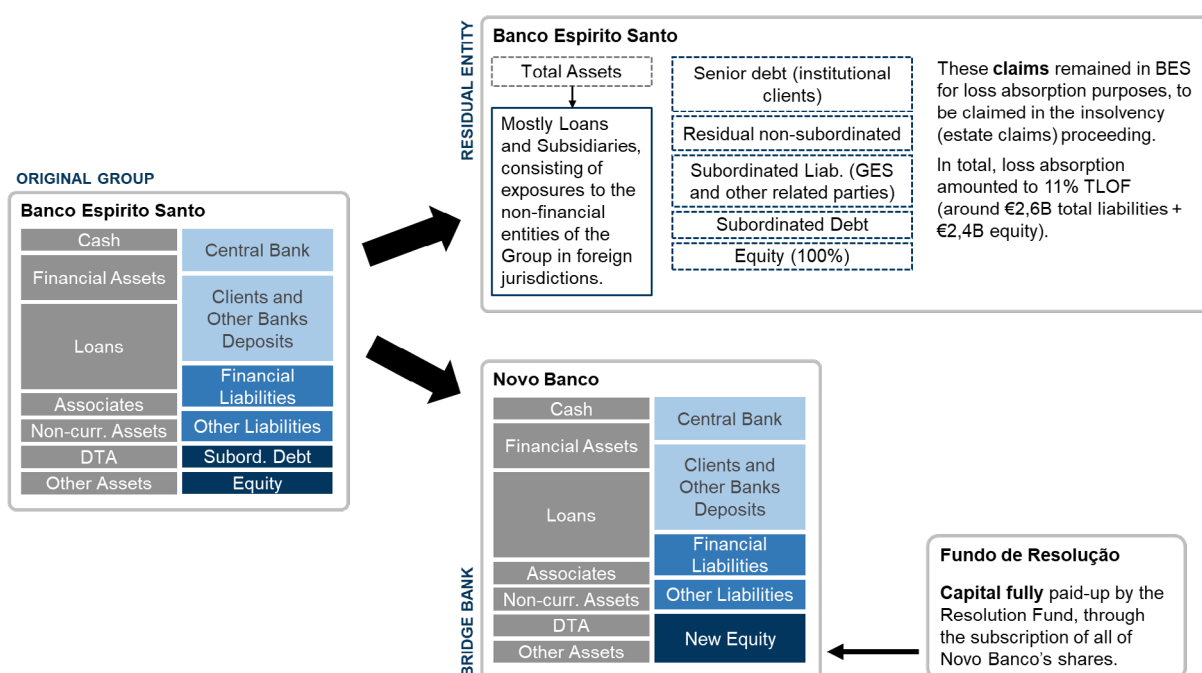
Loss absorption

Loss absorption by shareholders and subordinated and senior creditors was not attained through the exercise of powers to write-down and convert before the transfer, but by excluding their claims from the transfer to Novo Banco. These claims remained in BES, to be satisfied from the residual assets through the estate claims process under normal insolvency proceedings.

In 2015, there was a need to adjust the initial scope of loss absorption, due to the fact that losses of the failed bank had not been fully identified in August 2014 and only became evident after the initial resolution decision. The adjustment involved transferring senior bonds from Novo Banco back to BES to absorb these losses, complying with the principle that losses must be borne by shareholders and creditors existing at the time of resolution. At the time, Novo Banco was still a bridge entity under the resolution framework, and BES had not yet been put into insolvency proceedings. Therefore, the Banco de Portugal had the legal power to adjust the transfer perimeter.

In total, although capital requirements were lower at the time and there were no TLAC (MREL) requirements in place, the loss absorption imposed by Banco de Portugal to shareholders and creditors of BES represented approximately 11% of total liabilities and own funds of BES at the time of resolution, which was the maximum loss absorption available without significantly endangering the continuity of the bridge institution's business and depositor confidence.

Graph 5: BES and Novo Banco: Loss absorption and recapitalisation



Funding

In this context, the Portuguese resolution financing arrangement (the ‘Resolution Fund’)²³ also played a key role, by subscribing to the entirety of Novo Banco’s shares at the time of resolution and thus becoming the single shareholder of the bridge institution, in accordance with the Portuguese legislation at the time. The equity capital of Novo Banco, of €4.9 billion, was therefore fully paid-up by the Resolution Fund, thus ensuring that the bridge institution met the capital requirements applicable at the time.

Considering that the Resolution Fund had only been established in 2012 and thus had not raised sufficient financial means through contributions, it had to raise funds in a short space of time: complementary means of financing consisted of a loan of €3.9 billion, granted by the Portuguese State, and a loan of €700 million granted by a group of participant credit institutions.

6.1.3. Structure of the transfer and continuity of operations

The adequate structuring of the transfer required a clear legal separation between the resolved (BES) and the newly created entity (Novo Banco). Particular attention was given to operational, financial, legal and business interconnections.

Transfer perimeter

To preserve viable business and value to the maximum extent possible, most of BES’s assets, rights and services were transferred to Novo Banco, while some assets and liabilities were left behind. This also ensured loss absorption by shareholders and creditors ‘left behind’ in the resolved entity and minimised service disruption and impact on customers and other third parties. The loss absorption by shareholders and creditors respected, to the maximum extent possible, the hierarchy of claims in insolvency, although, when needed and justified in line with applicable rules, some differences in treatment between creditors of the same class were implemented (e.g. all depositors, regardless of their ranking in insolvency, were protected) in line with applicable legal exemptions.

- As for the assets, the exclusion from the transfer perimeter aimed to shield Novo Banco from the risks that led to BES’s collapse. These were mostly related to the bank’s exposure to the non-financial part of the conglomerate of which BES was part (the “Espírito Santo Group”). Assets which were perceived to have no relevant value or which could generate liability going forward, such as certain equity holdings, were also excluded.
- As for liabilities, all privileged and guaranteed creditors were protected and included in the transfer perimeter to the bridge institution, as were all depositors, regardless of their insolvency ranking. On the contrary, all subordinated liabilities were excluded, as were any claims held by persons or entities holding more than 2% of the failed bank’s share

²³ The Resolution Fund is a public legal person, with administrative and financial autonomy. The Fund is directed by the Management Committee, which is composed of three members: one member of the Board of Directors of Banco de Portugal, designated by Banco de Portugal, which is the President of the Committee; one designated by the Ministry of Finance and; one designated by agreement between Banco de Portugal and the Ministry of Finance.

capital and Board members of the bank. Senior creditors were included in the transfer perimeter except those that were retransferred to the resolved entity in 2015 when it was found that the initial scope of loss absorption needed to be adjusted, as mentioned above. Contingent liabilities were generally excluded from the transfer perimeter. These included any liabilities or contingencies arising from wilful misconduct, fraud, violations of regulatory, criminal or administrative provisions; relating to past issuances of shares or subordinated debt; and relating to the marketing, financial intermediation and distribution of debt instruments issued by entities which were part of the non-financial part of the Espírito Santo Group.

Operational continuity

Access to FMIs was ensured through the transfer of the Business Identifier Code (BIC) of BES to Novo Banco, along with the necessary staff, applications, databases and connection to SWIFT's Secure IP Network. Consequently, there was no disruption in FMI access or in the processing of transactions, including those pending at the moment of resolution.

The resolution decision adopted by Banco de Portugal as resolution authority determined that Novo Banco was the successor of BES in all contracts and legal documents (except those excluded from the transfer perimeter). Such determination had automatic legal effect pursuant to the legal framework in place. However, certain counterparties, including critical service providers, initially challenged the legal effects of such determination. Eventually, those counterparties acknowledged the enforceability of the decision adopted by the resolution authority. But this showed that, despite the resolution authority's power to transfer contracts and to enforce their continuity, the decision might not be immediately acknowledged and understood by all counterparties and underscored the importance of pre-identifying critical service providers, their proper information about resolution matters, and the inclusion of resolution-proof clauses.

Cross-border implications

At the time of BES's resolution, global resolution experience and understanding were very limited. This made it crucial, in terms of communication and international cooperation, to establish contacts with authorities in foreign jurisdictions where BES had subsidiaries and thoroughly explain the effects of the resolution action. One aspect that required particular attention was the transfer of foreign subsidiaries and branches to the bridge entity (either directly or indirectly owned by the bridge entity), as the new ownership was subject to qualified shareholder licensing processes with foreign authorities. In these cases, the actual ownership of such subsidiaries and branches by the bridge entity and its ability to control such foreign businesses depended on the recognition of the resolution decision by the host country and on a decision by the respective authorities in foreign jurisdictions, which, in some cases, was not immediate and required lengthy licensing procedures post-resolution. Nonetheless, Banco de Portugal maintained close contact with the relevant authorities, ensuring there was no relevant interruption of the activities carried out by those subsidiaries.

Restructuring

After the transfer to the bridge entity, a restructuring plan was designed to ensure the long-term viability of the bridge bank and ensure its marketability. The plan was submitted to the European

Commission in December 2015 and was implemented in the following years until the bank's sale. It included separating core from non-core business units and earmarking holdings in insurance companies and other subsidiaries for divestment.

6.1.4. Establishing the bridge entity

Resolution Decision

Novo Banco was established through the publication of the resolution decision on 3 August 2014, Sunday, at 20:00 h. The decision, alongside all other relevant provisions, incorporated Novo Banco as a public limited company (sociedade anónima) and approved its bylaws. The incorporation decision by the resolution authority had automatic legal effects and the newly created bank was authorised and had legal capacity to operate immediately, with no additional licensing requirements. The new entity was registered in the Commercial Registry two days after the incorporation decision.

Licensing and capital requirement

As Banco de Portugal was also the competent supervisory authority at the time no additional licensing decision was required. The licensing process was carried out by Banco de Portugal, in its capacity of supervisory authority and ran in parallel to the preparation of the resolution decision. Novo Banco was legally required to comply with the prudential requirements and capital requirements in force at the time. The capital requirements were immediately met through the subscription of all of Novo Banco's shares by the Resolution Fund, in the amount of €4.9 billion.

Management and supervisory bodies

The appointment of the members of the management and supervisory bodies of Novo Banco, as well as of its chartered accountant, was made in the resolution decision itself. While Novo Banco was entirely owned by the Resolution Fund, its control was then entrusted on Banco de Portugal as the resolution authority, which established its corporate governance framework and conveyed guidelines and instructions to the members of management regarding management decisions and the strategy and risk profile of the institution.

6.1.5. Ending and marketing of the bridge entity

Lifetime of the bridge entity

The constrained timeline, the significant uncertainty surrounding BES's business and the lack of market interest, as other banks were not in a position to acquire BES and overall market conditions in Portugal and in Europe were adverse, did not allow for the outright sale of BES in August 2014. In these circumstances, the bridge institution tool was the evident fallback solution. It would allow to sell the bridge entity when the adequate market conditions were in place, allowing for the implementation of a competitive process. Pursuant to the legal framework in place at the time, the bridge institution had to be sold within a deadline of two years (although this could be extended for additional time in exceptional circumstances).

This implied that a competitive sale process had to be initiated a few months after the incorporation of the bridge institution. Banco de Portugal launched the sale process four months after the resolution decision, in December 2014, to ensure compliance with the legal deadline and the requirements set by the European Commission. However, the bridge institution was still facing multiple uncertainties, and the Portuguese and European financial and economic landscape were facing severe headwinds.

In particular, losses that had not been estimated initially were uncovered after the incorporation of the bridge institution, which resulted in the need to adjust the transfer perimeter. Moreover, the capital requirements applicable to the bridge institution were being revised due to regulatory changes and the transfer of supervisory responsibility to the Single Supervisory Mechanism (SSM): the capital requirements were eventually adjusted upwards, and the bridge institution was also subject to a stress testing exercise which determined additional capital needs.

Eventually, Banco de Portugal had to suspend the sale process in September 2015 as the offers received in such sale process were being materially affected by those uncertainties. A second sale process was then launched in January 2016, when more favourable conditions to obtain proposals aligned with the relevant authorities were in place, benefitting from the work carried out under the first sale attempt. However, Novo Banco was still facing significant challenges, as restructuring was not yet completed and it was facing increased capital requirements.

Marketing process

The sales process followed a dual track process, combining an M&A approach (through which several potential acquirers were contacted and invited to present offers) with a market sale approach (through the implementation of a process towards the listing in the market of the shares of Novo banco – IPO), which maximised competitive tension and attracted diverse investor profiles. The initial non-binding phase of the M&A approach had the participation of invited investors who signed an NDA, while the subsequent binding phase had shortlisted investors' bids, from which Banco de Portugal selected a preferred bidder for the final phase of one-to-one negotiations to complete the sale of Novo Banco.

This process culminated in the selection of Lone Star by Banco de Portugal as the purchaser of Novo Banco, on 31 March 2017, within the deadline set under the Portuguese State's commitments to the European Commission – 3 August 2017 – which was one year above the bridge entity's originally anticipated two-year lifespan.

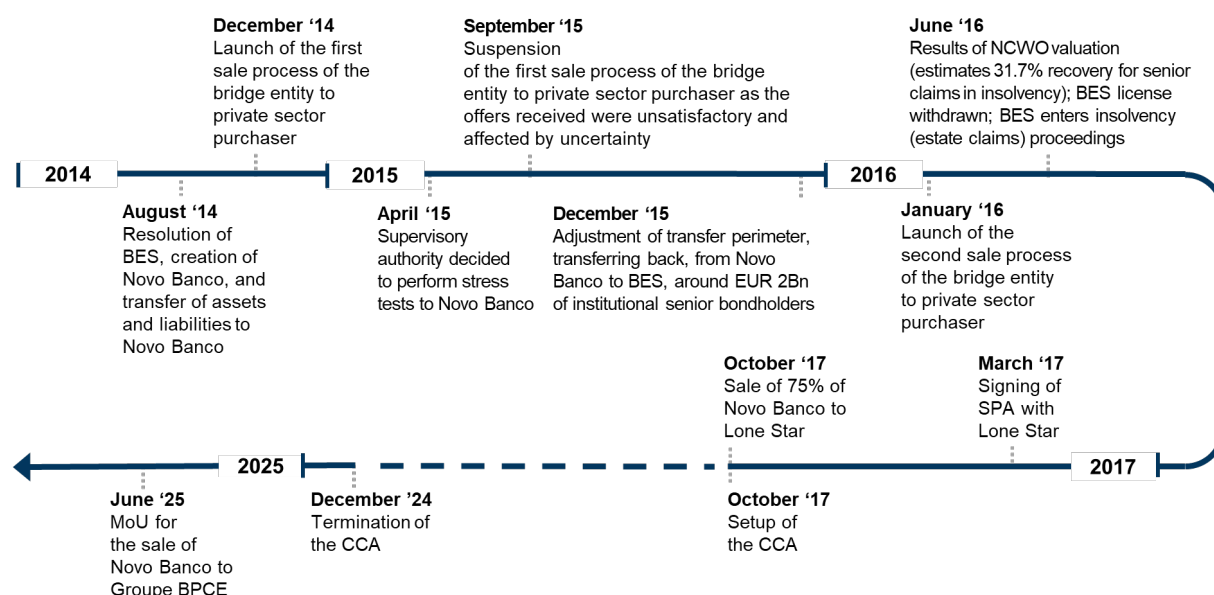
The bidder submitted its own restructuring plan, which was approved by the European Commission, and demonstrated capacity to ensure long-term viability of Novo Banco. The outcome of the sales process increased investor diversification in the Portuguese banking sector, reinforcing its credibility through the successful completion of an open, transparent, competitive, and international sale process. Since the sale of Novo Banco was structured as a share deal (and not as an asset deal, as was the transaction from BES to Novo Banco), it was more appealing to foreign entities, who would themselves not have to comply with authorisation nor licencing requirements, but only the qualifying holding authorisation. Ultimately, it was, indeed, a foreign private equity fund acquiring the majority of the shares of Novo Banco. The assessment of the qualifying holding was carried out by the European Central Bank (ECB) –

Banking Supervision as the competent supervisor at the time, who eventually authorised the acquisition by Lone Star.

The time available for the sales process allowed adequate due diligence, as well as running different tracks for the sale process at the same time. Compared to an outright sale of business of the failed bank, the additional time strengthened the resolution authority's negotiating position and improved the suitability of the offers from interested buyers, even if the resolution authority remained under the obligation to eventually sell Novo Banco. When Novo Banco was marketed to be returned to the private sector, the time allowed for a comprehensive sales process, similar to usual private practices, where due diligence considered the collection of all the necessary information to structure the transaction and enhance investor engagement.

The completion of the transaction took place on 18 October 2017 and marked the end of Novo Banco's status as a bridge entity, with its sale to Lone Star via the vehicle Nani Holdings, which acquired 75% of its shares through a €1 billion cash injection, while the Resolution Fund retained the remaining 25%.

Graph 6: Timeline BES and Novo Banco



From August 2014 to October 2017, while Novo Banco qualified as a Bridge Bank:

- Fundo de Resolução was the sole shareholder
- Banco de Portugal, as Resolution Authority, controlled Novo Banco

Documentation

Both the non-binding and binding offer stages featured comprehensive sets of documentation, including Terms of Reference and standardised templates for the identification of potential purchasers and the submission of their proposals. The transaction itself was finalised through the signing formalities, where the legal documentation was signed by the representatives of each of the parties involved in the transaction (Banco de Portugal, the Resolution Fund and Lone Star).

Purchaser concerns

Due to the capital needs that Novo Banco was facing and the pending finalisation of its restructuring, as well as more stringent supervisory requirements in terms of exposure to non-performing assets, the terms of the sale required the setup of a Contingent Capital Agreement (CCA) to address purchaser concerns based on risks related to a portfolio of Novo Banco's problematic assets. Under this agreement, the Resolution Fund committed to make payments to Novo Banco when losses in such portfolio were registered, but only to the extent the bank's capital fell below agreed thresholds. By ensuring that Novo Banco remained adequately capitalised throughout the conclusion of its restructuring and the clean-up of the balance sheet, this mechanism was essential to complete the sale of the bridge institution, as no bidder was willing to acquire the bank without such assurance in place. It implied, on the other hand, that the Resolution Fund remained exposed to Novo Banco after its sale as a provider of the funds necessary to replenish the bank's capital as losses materialised. During such period, the Resolution Fund had to be consulted on the management of the portfolio covered by the CCA.

When the sale of the bridge institution was agreed, Novo Banco was approaching the end of its legally established lifetime as a bridge entity and thus faced the prospect of either being subject to further resolution action or liquidation proceedings, which would have had serious effects on the Portuguese economy and financial stability. Such scenario was avoided with the sale of the bridge institution which finally ensured the continuity of the critical financial services provided by the bank to the Portuguese economy.

6.1.6. Conclusion of the process

Concluding restructuring and transformation

On 9 December 2024, following a decision by the Board of Directors of Banco de Portugal, the Resolution Fund signed an agreement with Novo Banco and Nani Holdings to terminate the CCA, signed in 2017 as part of the sale of Novo Banco. This agreement brought forward by one year the anticipated end of the CCA, originally scheduled for the end of 2025.

During the term of the CCA, the Resolution Fund issued a binding decision on 405 operations related to the assets covered by the mechanism, including on their divestment, loan restructuring, execution of collateral, among others. The Resolution Fund opposed to operations proposed by Novo Banco on 13% of those cases; 42% operations were subject to conditions set by the Fund, 16% were subject to recommendations, and 28% merited non-opposition. The net amount of payments made by the Resolution Fund to Novo Banco from 2018 to 2021 totalled €3.4 billion, which was less than the cap set for the CCA (€3.89 billion) and less than the total amount of losses relating to the covered assets (€4.3 billion), as a result of the loss-sharing nature of the mechanism.

On 13 June 2025, six months after the agreement between Banco de Portugal, Novo Banco and Nani Holdings to terminate the CCA, Nani Holdings signed a Memorandum of Understanding for the sale of Novo Banco to the French banking group BPCE, for a cash consideration payable at closing which values 100% of the share capital at an estimated €6.4 billion as of end 2025. Pursuant to the shareholders' agreements between Lone Star, the Resolution Fund and the Portuguese State, Lone Star exercised the drag option on the remaining 25% shareholding (held

jointly by the Resolution Fund and the State, which had previously acquired a part of the Resolution Fund's shares through the exercise of conversion rights granted to the State under the special regime applicable to deferred tax assets), under the same contractual terms. This ensures that the entirety of Novo Banco's shares will be sold to BPCE, completing the multi-year transformation of the institution and starring the largest cross-border transaction in the Euro Area in more than a decade.

Estate claims process and litigation

While the resolution process can be considered closed, there is still extensive litigation remaining for some years, since judicial courts are not only in charge of conducting BES's liquidation including its estate claims process but also of addressing the litigation that has arisen in connection with the resolution and the sale of the bridge entity, including in civil and administrative proceedings. Litigation has also arisen in other Member States where BES had operating branches, before the European Court of Justice (ECJ) (in the context of requests for preliminary rulings) and even in international arbitration proceedings. Judgements and rulings issued so far have been largely favourable to the Portuguese authorities. Courts have confirmed the legality and validity of the decisions adopted by Banco de Portugal and overall have dismissed the actions brought forward by plaintiffs. Going forward, authorities can enhance their crisis preparedness capabilities by acknowledging early on that litigation is unavoidable, since resolution is inherently subject to legal risk, which authorities must expect and prepare for.

6.2. Case Study: Doral Bank

6.2.1. Circumstances of the case

Doral Bank, San Juan, Puerto Rico²⁴ was originally established as a mutually owned federal savings bank in 1981²⁵. In September 1993, Doral Bank was acquired and recapitalised by Doral Financial Corporation (DFC), a financial holding company. In October 1997, the bank changed its charter from a federal savings bank to become a state non-member bank²⁶ regulated by the Federal Deposit Insurance Corporation (FDIC). The conversion was part of DFC's strategy to increase Doral Bank's size and market share. Although Doral Bank focused on residential mortgage lending, it also developed a commercial real estate loan portfolio.

Doral Bank operated twenty-six branches, eighteen branches in Puerto Rico, five branches in Florida, and three branches in New York. Doral Bank also operated five first-tier subsidiaries, including Doral Money, Inc., a commercial lender based in New York City, New York, Doral Mortgage Corporation which provided mortgage lending in Puerto Rico, and Abbey Depositor, a special use subsidiary involved in the sale and securitisation of mortgage loans.

²⁴ Puerto Rico is a territory of the United States (the "U.S.").

²⁵ Mutual savings banks are owned by their depositors rather than by shareholders.

²⁶ State non-member banks include commercial and savings banks that are state-chartered and not members of the Federal Reserve System (the "FRS"). The FRS is the central banking system of the U.S. The FRS provides member banks with a range of payment and related services including collecting checks, an automated clearinghouse service, transferring funds and securities, and settlement services.

Doral Bank's business activities and credit exposure were concentrated in Puerto Rico. Like other banks operating in Puerto Rico, Doral Bank relied heavily on wholesale funding.²⁷ Puerto Rico went into recession in 2006 and the resulting economic conditions in Puerto Rico had a severe impact on Doral Bank's loan portfolio.

Negative earnings resulting from losses associated with the loan portfolio progressively eroded capital. As of September 2014 Doral Bank had 28,460 loans with a gross balance of \$3.5 billion. Approximately 15,546 loans, 10.5% of the gross loan balance, were delinquent 30 days or more. Of these loans, 11,150, or 6.3% of the gross balance, were over 120 days delinquent or more. Doral Mortgage Corporation had recourse exposure to sold loans.²⁸ On the deposit side of the balance sheet, Doral Bank held approximately \$4.1 billion in deposits, of which approximately \$230 million were uninsured (211,000 deposit accounts).

DFC served as a source of strength for a period of time, but the amount and quality of DFC's capital eventually proved to be insufficient.

6.2.2. Structuring and marketing the transfer

Under the Federal Deposit Insurance Act (FDI Act) shareholders and unsecured creditors of the failed bank become claimants of receivership and absorb the losses of the failed bank in an estate claims process.

Finding a workable solution for the rapidly deteriorating bank was far from easy. Doral Bank held a large amount of uninsured deposits and a portfolio of nonperforming loans, neither of which was attractive to potential bidders. It was not only difficult to find interested and qualified buyers, it was also difficult to get regulatory approval for interested buyers because of concerns about deposit concentration and the volume of non-performing loans.²⁹

Other than Doral Bank, only five banks were headquartered in Puerto Rico. Further, only five banks with a presence on the island qualified to bid and two of those five were not interested. Puerto Rico banks were precluded from bidding for all Puerto Rico deposits because of high market concentrations.³⁰ Most of the potential Puerto Rico buyers did not want to operate in New York and Florida and the buyers from U.S. states did not want to operate in Puerto Rico. Regulators would either not allow banks to bid on certain non-performing portfolios of loans or the banks did not want to bid on certain loan pools.

For the FDIC, the challenge was to find a strategy that would transfer as many of Doral Bank's deposits and asset portfolio as possible and to sell deposits to more than one bank to avoid overconcentration. Therefore, FDIC's resolution strategy which emerged for Doral Bank was to:

²⁷ Wholesale funding includes, but is not limited to, brokered deposits, internet deposits, deposits obtained through listing services, foreign deposits, public funds, Federal funds purchased, Federal Home Loan Bank advances, correspondent credit lines, and other borrowings.

²⁸ For regulatory purposes, recourse is generally defined as an arrangement in which the seller retains the risk of credit loss in connection with an asset transfer.

²⁹ Concerns that an acquiring bank would gain a dominant market share reducing consumer choice.

³⁰ Insured depository institutions qualify for acquisitions based on location, total assets, capital level, and regulatory ratings.

(1) Structure transactions based on interest, (2) Offer assets aligned with regulatory approval, and (3) Allow bidders to form alliances.

Marketing of the transfer: tailoring transfer perimeters

Twenty-eight Virtual Data Rooms (VDRs) were established to host loan files. Bidder interest changed as they evaluated the transactions offered. Loan pool offerings were established based on bidder interest and what the regulators would allow interested banks to acquire. Regulators were reluctant to approve bank acquisition of non-performing pools, plus they were not very desirable for the banks, so these pools were offered to asset buyers.

To access the Virtual Data Rooms prospective bidders were required to sign a confidentiality agreement. The FDIC's current confidentiality agreements provide liquidated damages for breach. Damages are based on the size of the bank, for example, \$100,000 if bank's total assets are \$500 million or less.

The FDIC planned for a variety of resolution outcomes in resolving Doral Bank, as set out in tables 4 and 5. This included the tailoring of several possible transfer perimeters for different types of bidders and different options of combination of bids.

Table 4: Transactions offered

Franchise Buyers	Asset Buyers	Stand-alone Assets
• Whole Bank Purchase & Assumption Transaction³¹ • Basic Purchase & Assumption with Optional Loan Pools Transaction³²	• Primarily non-performing loan pools • Modified performing single family residential	• Doral Money, Inc. (subsidiary) • Owned real estate • Mortgage Servicing Rights

Franchise bidders could bid on all pools, as well as Doral Money, Inc. Assets bidders could only bid on the stand-alone pools and Doral Money, Inc.

Table 5: Asset pools

Franchise loan pools	Stand-alone pools
• Deposit secured, consumer, credit card, overdraft (required) • Performing single family residential ("SFR") • Performing commercial real estate ("CRE") and commercial	• Performing SFR modified loans • Non-performing SFR • Government guaranteed • Performing and non-performing CRE, land, and construction

³¹ A Whole Bank Purchase and Assumption transaction includes the deposits and assets of the failing institution except items specifically excluded in the transaction.

³² A Basic Purchase and Assumption with Optional Loan Pools transaction includes the deposits of the failing institution with the option to bid on pools of loans. Bidders interested in purchasing these deposits and only certain assets may bid using this transaction type.

The FDIC initiated marketing for Doral Bank on December 29, 2014. Bidders conducted onsite due diligence between February 2nd and February 13th, 2015, and the deadline to submit bids was February 19, 2015.

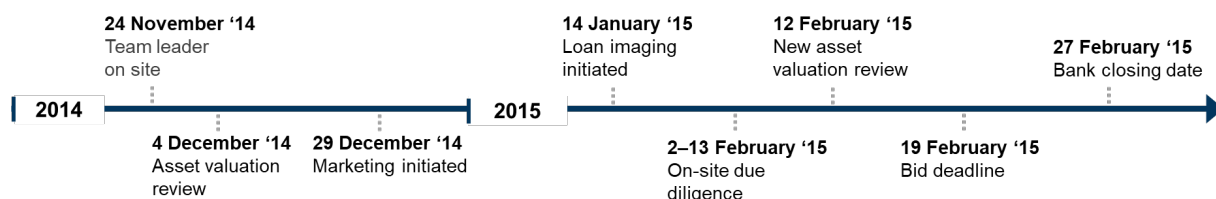
The FDIC successfully navigated the execution risks, including: (1) Pace and the changing environment (asset valuation dates, transaction structures, volume of loan files to be imaged), (2) Confidentiality (determining interest), and (3) Media coverage (speculation about the bank's stability, reports of an acquirer before closing).

Marketing the transfer: alliance bidding process

As marketing progressed, the FDIC determined there was interest in acquiring parts of Doral Bank without having to acquire all of the bank. Some potential bidders had restrictions prohibiting them from purchasing the entire bank and others were not interested in either the Puerto Rico market or acquiring nonperforming assets.

In response, the FDIC offered an alliance bid option in which a lead acquirer would buy the entire failed bank and then immediately sell off parts of the failed bank to its partners or allies. By structuring the transaction into two stages, it became possible to include more than one bidder. During the marketing period, the FDIC engaged in a process to introduce potential buyers to each other in order to conduct an alliance bid.

Graph 7: Marketing Timeline Doral Bank



Alliance agreements had to be executed and approved by all relevant state and federal regulators of each party to the transaction before submitting a bid, meaning before the deadline to submit bids. The intent was for secondary transactions between the alliance partners, the non-lead acquirers and the lead acquirer, to occur simultaneously with the resolution transaction between the FDIC and the lead acquirer. Asset buyers could participate in alliance bidding, but not as the lead acquirer.

The winning lead acquirer, the franchise buyer, signed the Purchase and Assumption Agreement (the P&A Agreement) with the FDIC. The alliance agreements addressed how every asset, right, obligation, and liability acquired or assumed under the FDIC P&A Agreement would be allocated among the alliance parties post bank failure. The P&A Agreement included a pass-through indemnification for loans acquired in the initial transfer to the alliance partners in the winning bid alliance.³³

³³ The Receiver indemnifies the assuming institution against claims based on the acts or omissions of the failed bank. For the Doral Bank purchase and assumption agreement, the definition of indemnitees was revised to include each non-lead alliance member by name. They were indemnified only with respect to failed bank assets or liabilities assumed by the lead acquirer and subsequently transferred under the alliance agreement and only to the extent that the lead acquirer would have been an indemnitee had it retained the asset or liability. Non-lead alliance members were also included as third party beneficiaries under

The FDIC, the Office of the Comptroller of the Currency (OCC),³⁴ the Federal Reserve Bank of New York (“FRB”),³⁵ and state regulators approved an expedited approval process for the lead bidders and non-lead bidders. This allowed the Alliance partners to be approved by the regulators to submit bids before the FDIC’s bid submission deadline.

Table 6: Doral Bank Alliance Bidding

FDIC and other authorities	Bidders
Potential buyer introductions conducted by the FDIC	Partner a franchise buyer with one or more prospective buyers to form an alliance
P&A transaction between the FDIC and lead alliance bidder	Alliance bidders responsible for preparing and enforcing alliance agreements amongst themselves
Expedited regulatory approval	Pass through indemnification

The FDIC received eleven franchise (alliance) bids and 9 asset bids.

Table 7: Doral Bank Bid Summary

Franchise Bids		Asset Bids		
Received 11 franchise (alliance) bids from 3 lead bidders		Received 9 bids from 4 asset buyers		
2 Whole Bank Bid	9 Basic P&A with Loan Pools	3 Loan Pool bids	1 Owned Real Estate bid	5 Bids for the Doral Money, Inc. Subsidiary

Selection of transfer transaction and winning bidder

The FDIC does not have a preference for bid types. By law, the winning bid must be the least costly to the Deposit Insurance Fund and be less costly than the FDIC’s cost to liquidate assets and pay insured depositors. If the most competitive bid costs more than liquidation or if the FDIC receives no bids, the FDIC liquidates the assets and pays insured deposits.

Doral Bank was closed by the Commissioner of Financial Institutions of Puerto Rico on February 27, 2015, and the FDIC was appointed Receiver. The winning bid was an all-deposits Basic P&A Transaction with Banco Popular de Puerto Rico (“Banco Popular”), backed by three alliance agreements. Of Doral Bank’s 26 branches, Banco Popular acquired eight branches in Puerto Rico, assumed \$1 billion in deposits, and acquired \$848 million in performing residential and commercial loans in Puerto Rico.

The alliance agreements were with: (1) FirstBank Puerto Rico, which acquired Doral Bank’s 10 other Puerto Rico branches, assumed approximately \$625 million in deposits, and acquired approximately \$325 million in mortgage loans; (2) Banco Popular’s affiliate, Banco Popular North

the purchase and assumption agreement, but only to the extent of the indemnification provided under purchase and assumption agreement.

³⁴ The OCC charters, regulates, and supervises federally chartered commercial and savings banks.

³⁵ The FRB is the primary regulator of state banks that are members of the Federal Reserve System. In addition, the FRB supervises all parent companies that own banks, called bank-holding companies, regardless of which regulator supervises the bank subsidiary.

America, which acquired Doral Bank's three branches in New York, assumed approximately \$1,277 million in deposits, and acquired approximately \$931 million in performing commercial loans, primarily in the New York metropolitan area; and (3) Centennial Bank of Arkansas which acquired Doral Bank's five Florida branches, assumed approximately \$466 million in deposits, and acquired approximately \$42 million in loans.

TPG Opportunity Partners purchased \$1.3 billion of Doral Bank's assets. Two bids were submitted for Doral Money, Inc. that were close and a Best and Final (BAFO) round was established to provide the opportunity to enhance bidder efforts and fine tune bids. The BAFO bids included three bids from two bidders from which the successful bid was chosen. Table [8 provides an overview over the pricing of the winning Loan Pool bids.

Table 8: Winning Loan Pool Bids

Bidder	% of Book Value								
	Performing SFR ³⁶	Perf. SFR	Perf. CRE ³⁷ & C&I ³⁸	Government Guaranteed Loans	SFR	Perf. ADC & Land ³⁹	CRE	CRE Other	C&I
Banco Popular PR	98.5%	91%	84.75%	85.6%	100.97%	102.95%	98.85%	99.19%	93.46%
Bidder	% of Book Value								
	Perf. SFR-Modified	Non-perf. SFR	Perf & Non-Perf Res ⁴⁰	Perf & Non-Perf CRE					
TPG Opportunity Partners	57.61%	35.02%	39.93%	23.01%					

Operational continuity

Operational continuity with third parties is maintained under the FDIC's statutory powers under the FDI Act which allow it to: (1) enforce most contracts with so-called "ipso facto" clauses purporting to terminate the contract upon the bank's insolvency or receivership, (2) stay most counterparties for 90-days from exercising any right to terminate or declare a default under any contract to which the failed bank is a party, and (3) transfer receivership assets without any approval, assignment, or consent that might otherwise be required.

Under the FDIC form purchase and assumption agreements, the assuming institution has a 90-day option to assume service contracts of the failed bank. The assuming institution is required to comply with the terms of the service contracts beginning on the day after the bank closing

³⁶ Single Family Residential Loans.

³⁷ Commercial Real Loans.

³⁸ Commercial and Industrial Loans.

³⁹ Acquisition, Development, and Construction Loans and Land Acquisition Loans.

⁴⁰ Residential Loans.

date and ending on: (1) if the failed bank is providing services under the contract, the date that is 90 days after the bank closing date, and (2) if the failed bank is receiving services under the contract, the date that is 30 days after the assuming institution has provided notice of its election not to assume the contract. If the assuming institution does not reject a contract within the 90 day option period, it will be deemed to have assumed the contract. The assuming institution will usually reject intra-group services contracts between the failed bank and its holding company and non-acquired subsidiaries, which will then be repudiated by the FDIC Receiver.

Loss absorption

The asset pools included in the bids were transferred to the winning bidders while the remaining segments of the failed bank remained in the residual entity to be liquidated. In an estate claims process, proceeds were distributed to the shareholders and creditors according to the creditor hierarchy. Payments on these claims are called dividends. As of March 31, 2015, dividends have only been paid on deposit liability claims.

6.3. Case study: MBf Finance Berhad

6.3.1. Circumstances of the case

While the case of MBf Finance predates the 2008 Global Financial Crisis and current resolution frameworks based on the FSB Key Attributes, it remains a relevant example. These contemporary frameworks equip authorities with powerful tools, such as the ability to execute transfer transactions without the consent of shareholders and impose losses on creditors and shareholders. These measures are designed to ensure the continuity of critical functions while protecting taxpayers from losses. While implemented within a legal framework that is substantially different from modern resolution regimes, the MBf Finance case provides an interesting example that demonstrates how authorities at that time dealt with matters that remain highly relevant to the operationalisation of transfer tools in the context of contemporary resolution frameworks. Notably, several fundamental aspects of operationalisation of transfer tools, such as loss absorption by shareholders, temporary public ownership structures, restructuring, marketing efforts and the application of innovative incentive structures to address bidder concerns, were already evident.

MBf Finance Berhad (MBf Finance) was originally incorporated as Malaysia Borneo Finance Corporation (M) Bhd in Kuala Lumpur in 1969 as a finance company. A finance company, while similar to a bank in many ways, operated differently, often complementing the activities of larger commercial banks in the Malaysian market. Unlike commercial banks, finance companies could only receive time and savings deposits and provide credit facilities such as hire-purchase, leasing, property financing and SME loans. They could not hold current accounts or offer full banking services, including dealing in foreign currency.

Like many other finance companies in Malaysia, as returns from the traditional lending tapered off, MBf Finance shifted into higher-risk property financing and margin/leverage trading. Riding

the early 1990s economic boom in Malaysia, MBf Finance emerged as the country's largest finance company and also the largest MasterCard card issuer.⁴¹

During the Asian Financial Crisis (AFC), triggered by the rapid devaluation of Asian currencies which resulted in a sudden loss of investor confidence, Malaysia experienced sharp capital outflows, leading to a steep depreciation of the ringgit currency, and a spike in interest rates. These conditions triggered widespread loan defaults, especially in the real estate sector. MBf Finance, with significant exposures to property-related lending, came under significant financial stress with non-performing loans surging to over 30% of its total portfolio, which amounted to between RM4 billion to RM5 billion (equivalent to US\$1.05 to 1.32 billion).^{42, 43}

In 1997, MBf Finance, as the country's largest finance company, faced bank runs across its extensive network of 120 branches. These runs manifested as a dramatic loss of public confidence, leading to approximate total withdrawals amounting to RM17 billion (equivalent to US\$4.47 billion).^{44, 45} The scale of these withdrawals threatened to destabilise the entire finance company sector and potentially trigger a wider collapse of confidence across the broader banking system.

To safeguard depositor interests and ensure MBf Finance's viability as a going concern, Bank Negara Malaysia (BNM), the Malaysian central bank and supervisor, appointed an Appointed Person in January 1999 under then-existing BNM's Banking and Financial Institutions Act 1989 (BAFIA) to assume control and manage the property, business and affairs of MBf Finance.^{46, 47} The appointment was made pursuant to BNM's powers, which allowed BNM to intervene if a licensed institution was exhibiting signs of financial distress. At that time, Perbadanan Insurans Deposit Malaysia (PIDM) was not yet established as the resolution authority. BNM in a statement clarified that MBf Finance was a "solvent concern" but stated its critical need for "recapitalisation to improve its financial health and to restore its risk weighted capital ratio to 8%". This statement was a crucial distinction, indicating that while the MBf Finance's assets might still have technically covered its liabilities (solvency), its capital base had eroded below regulatory thresholds, rendering it unable to absorb further potential losses or meet future obligations prudently. The intervention was triggered by this capital deficiency, even though a preceding liquidity crisis, marked by bank runs had already occurred. This highlights a pre-emptive regulatory response, where BNM acted to address a capital shortfall that, if left unaddressed, would inevitably lead to full insolvency and systemic collapse.

The diagram below provides a summary timeline of key events of the management of the crisis of MBf Finance.

⁴¹ Bloomberg News (2001), *MBf Capital plunges on debt*, 13 August..

⁴² Reuters (1999), *MBf gains breathing space*, 7 January.

⁴³ USD equivalent is based on an assumed exchange rate of RM3.80 per USD, consistent with the official peg adopted by Bank Negara Malaysia in September 1998.

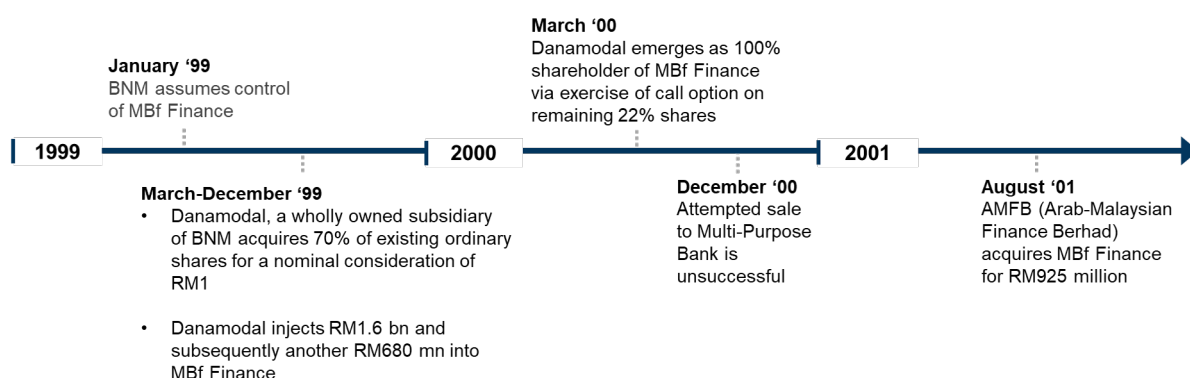
⁴⁴ International Herald Tribune (1999), *'Pre-emptive Action' Puts Central Bank in Control: Malaysia Takes Over MBf Finance*, 5 January.

⁴⁵ MBf Finance Berhad; *BNM Publication*; September 24 1997, MBf Finance Berhad - Bank Negara Malaysia.

⁴⁶ BNM News (1999), *Assumption of control of MBf Finance Berhad*, 4 January.

⁴⁷ An Appointed Person is an individual appointed by the Malaysian regulators to serve as a Receiver for a failed financial institution. This role is comparable to that of the FDIC in the U.S., which acts as a receiver by taking control of a failed institution's affairs to manage its assets, liabilities, and operations.

Graph 8: Timeline MBf Finance



6.3.2. *Transfer transaction and loss absorption*

In August 1998, Danamodal Nasional Berhad (Danamodal), a wholly owned subsidiary of BNM, was established, to recapitalise several distressed banking institutions in Malaysia. The shares of MBf Finance were transferred to Danamodal for a symbolic price, which enabled the absorption of losses by shareholders.

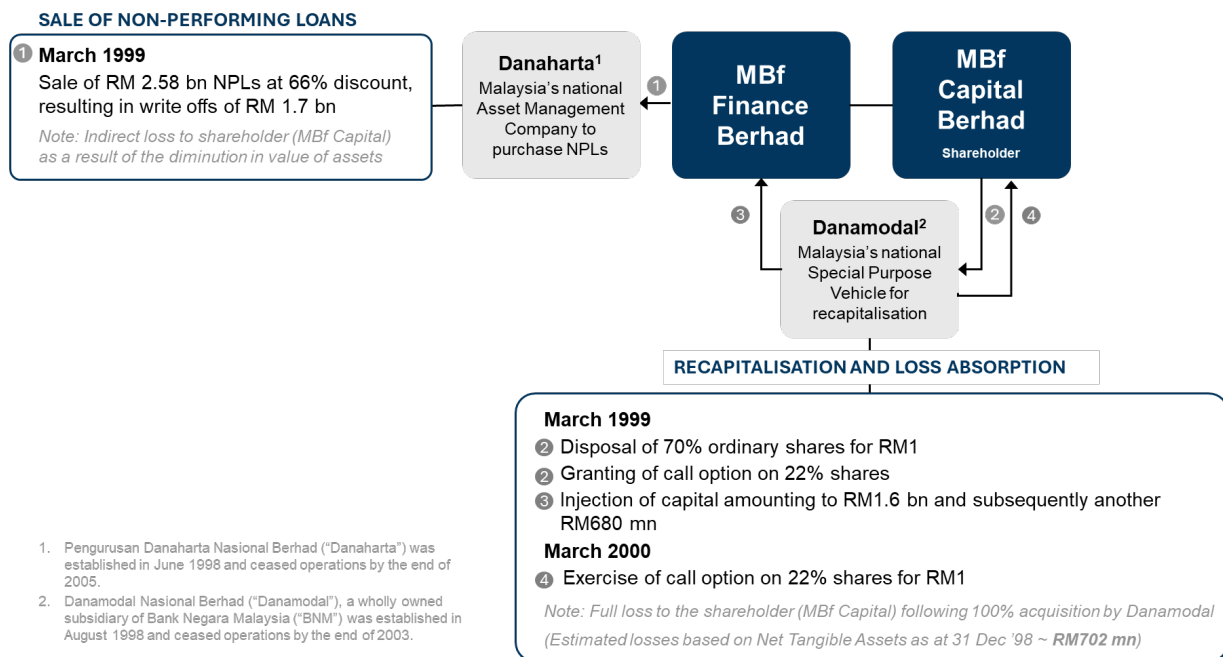
In March 1999, Danamodal executed a substantial recapitalisation of MBf Finance in the course of which a part of the shares in MBf Finance were transferred to Danamodal. This investment was structured through two key agreements with the shareholders of MBf Finance:

- Under the Sales and Purchase Agreement, Danamodal acquired 70% of existing ordinary shares from MBf Finance's existing shareholder, MBf Capital, for a nominal consideration of RM1. The transaction took place prior to the establishment of the FSB Key Attributes and ensuing resolution frameworks which provide authorities with the power to execute a transfer without shareholder(s)' consent. Therefore, shareholders' agreement was a prerequisite in this case.
- Under the following/complementary Definitive Agreement, Danamodal subscribed to newly issued ordinary shares and 8% Irredeemable Non-cumulative Convertible Exchangeable Preference Shares (INCEPS) totalling an amount of RM1.6 billion (equivalent to US\$421 million).

As a direct consequence, Danamodal became the majority shareholder, holding an effective 78% shareholding in MBf Finance, with the potential to increase to 89% upon full conversion of the INCEPS.⁴⁸ Crucially, the agreements included a specific clause granting Danamodal the right to acquire the *remaining shares* held by MBf Capital if there was a further deterioration of MBF Finance's net book value. This provision effectively safeguarded Danamodal's investment and ensured its ability to take full control should MBf Finance's financial health worsen beyond the initial recapitalisation.

⁴⁸ BNM Press Release (1999), *Danamodal injects RM1.6 billion into MBf Finance Berhad*, 3 December.

Graph 9: MBf Finance loss absorption and recapitalisation



In September 2000, MBf Finance exercised its call option for the remaining 22% shares for a nominal consideration of RM1, making MBf Finance a wholly owned subsidiary of Danamodal.⁴⁹ This cemented the absorption of losses by MBf Capital, the shareholder of MBf Finance, through the complete dilution of its stake. The series of transfer transactions represents an early, albeit informal application of loss absorption by shareholders from a time that preceded modern resolution frameworks, which now provide powers and capacity to execute the absorption of losses by shareholders and creditors alike.

The assumption of control of MBf Finance, the transfer of its shares to Danamodal, and the additional funding and recapitalisation measures had multifaceted objectives: to immediately stabilise MBf Finance, restore its capital adequacy, and ensure continued banking operations amidst the broader financial crisis. The immediate outcomes were demonstrably successful. The severe bank runs ceased, and public confidence in the institution was gradually restored. A blanket deposit guarantee by the Government and the massive capital injection which raised MBf Finance's risk-weighted capital ratio to 15%⁵, exceeding the regulatory minimum of 8%, prevented a financial stability crisis and crucially enabled MBf Finance to immediately recommence its lending activities.

6.3.3. Governance, marketing and bidder concerns

Management and supervisory bodies

To ensure direct influence over governance and operational reforms, Danamodal as the new shareholder of MBf Finance appointed 7 directors, including the Chairman and Executive

⁴⁹ Kuala Lumpur Stock Exchange (2000), *Disposal of 22% equity interest in MBf Finance Berhad*, 6 October.

Director, to the enlarged Board of MBf Finance. Towards the end of 1999, Danamodal injected a further RM680 million (equivalent to US\$179 million) into MBf Finance to further strengthen its capital base.

Restructuring

During the AFC, BNM established a national asset management vehicle (AMV), Pengurusan Danaharta Nasional Berhad (Danaharta) in 1998 to remove NPLs from the financial system and maximise their recovery value. As part of the restructuring of MBf Finance, in March 1999, NPLs amounting to RM2.578 billion (equivalent to US\$0.68 billion) were sold to Danaharta at a substantial discount of 66%.⁵⁰ Danaharta complemented Danamodal's role to recapitalise distressed financial institutions during the crisis. To be eligible for capital injections by Danamodal, financial institutions were required to transfer their NPLs to Danaharta. The sale of these NPLs at a discount would have resulted in immediate losses, leading to an immediate adjustment of the institution's balance sheet and a corresponding reduction in its regulatory capital. To both incentivise financial institutions to sell their NPLs and to mitigate the immediate financial impact of these losses, selling institutions were allowed to amortise these losses over a five-year period. This procedure, which effectively delayed the full recognition of losses, would not be permissible under contemporary accounting standards. The carve out of NPLs also allowed MBf Finance to refocus on its core business of lending, rather than being bogged down by the recovery efforts of NPLs. With the NPLs carved out, MBf Finance's clean balance sheets paved the way for the sale to a private sector purchase at a later stage.

Marketing and bidder concerns

In a first attempt to transfer MBf Finance to a private sector purchaser, Danamodal undertook a sale process to dispose of its stake in MBf Finance. In August 1999, a local bank, Multi-Purpose Bank signed a Memorandum of Understanding (MOU) with Danamodal to buy its 60% stake for RM480 million (equivalent to US\$126 million). However, its shareholders opted not to proceed with the transaction in December 2000.^{51,52}

In August 2001, Danamodal formally entered into an agreement to sell its 100% equity interest in MBf Finance to Arab-Malaysian Finance Berhad (AMFB) for a consideration of RM925 million (equivalent to US\$243 million). The deal was structured in two parts.

- The first part involved a sum of RM475 million payable (equivalent to US\$125 million) in cash.
- The second part, on the other hand, was a contingent sum of up to RM450 million payable (equivalent to US\$118 million) if and only to the extent of any recoveries net of costs made by MBf Finance in excess of the net book value of: (1) the NPLs written off or provided for including NPLs sold to Danaharta, and (2) all security, other assets, liabilities or contingent items that have been written down or provided for. This structure

⁵⁰ Danaharta Final Report 1998 - 2005 – Appendix 2.

⁵¹ Bloomberg News (2000), *Malaysian Plantation reviews MBf Finance Acquisition*, 14 December.

⁵² Danamodal sells MBf Finance to Multi-Purpose Bank for \$126 Million, *Bloomberg News*, 30 August 2000.

addressed AMFB's concerns as a bidder by mitigating their upfront risk by linking the purchase price to actual asset recoveries.

AMFB completed the acquisition of MBf Finance in December 2001.⁵³ The sale recouped funds from the RM1.6 billion injection, although it resulted in a RM675 million (equivalent to US\$178 million) loss to Danamodal.

6.4. Case Study: Banco Popular Español

6.4.1. *Circumstances of the case*

Banco Popular Español (BPE), once Spain's sixth-largest banking group, collapsed in June 2017, becoming the first major European financial institution to be resolved under the Bank Recovery and Resolution Directive (BRRD), the European legal framework that implemented the FSB Key Attributes.

The roots of BPE's failure lay in the bank's exposure to the Spanish property boom and its subsequent collapse. Between 2008 and 2012, BPE accumulated a large stock of non-performing loans (NPLs) from overleveraged property developers and individual borrowers. By 2016, NPLs still comprised over 15% of the bank's loan book, among the highest in Europe. This left BPE highly vulnerable to shifts in market confidence and reliant on sustained access to liquidity to remain viable. While it attempted to clean its balance sheet and rebuild capital, raising €2.5 billion in a capital increase in May 2016, the deterioration of its asset quality and increasing provisioning demands eroded profitability and confidence.

By early 2017, BPE's profitability and capital position were under severe pressure. The bank issued multiple profit warnings, and its stock price plunged. In February 2017, significant further provisions of € 5.7bn were announced to cover €3.5bn of real estate losses. The move intended to prepare the bank for potential sale or merger, but it inadvertently confirmed market suspicions that BPE's capital shortfall was worse than previously disclosed. As confidence eroded further, fuelled by rating downgrades, the bank experienced large-scale deposit outflows, especially from institutional and corporate clients. This bank run accelerated in late May and early June 2017, with daily outflows reaching hundreds of millions of euros.

Throughout this period, BPE attempted to secure a private-sector solution. Talks with other Spanish and European banks were underway. However, none advanced far enough, in part due to the bank's deteriorating liquidity position and the difficulty in valuing its toxic real estate exposures. By letter of 16 May 2017, Banco Santander, one of the potential bidders, informed BPE that it could not make a concrete bid in the context of the private sale process. The European Central Bank (ECB), acting as prudential supervisor under the Single Supervisory Mechanism (SSM), monitored BPE's condition closely. On 7 June 2017, the ECB determined

⁵³ Kuala Lumpur Stock Exchange (2001), *Proposed Acquisition of 100% of MBf Finance Berhad*, 3 August.

that BPE was “failing or likely to fail” due to its inability, in the near future, to pay its debts or other liabilities as they fell due⁵⁴.

On the same day, the Single Resolution Board (SRB), after determining that there was no reasonable prospect that any alternative private sector measures or supervisory action would prevent the failure of BPE within a reasonable timeframe and that resolution was in the public interest, prepared a resolution scheme under the BRRD and the SRM Regulation. The European Commission approved the resolution scheme later the same evening. Spain’s national executive resolution authority (Autoridad de Resolución Ejecutiva, FROB), was designated to execute the SRB’s resolution scheme at national level.

6.4.2. Transfer transaction and loss-absorption

The type of transfer transaction chosen for the transfer tool applied to resolve BPE was a share transfer to a private sector purchaser. Loss absorption by shareholders and subordinated creditors was attained through the exercise of powers to write-down and convert prior to the transfer.

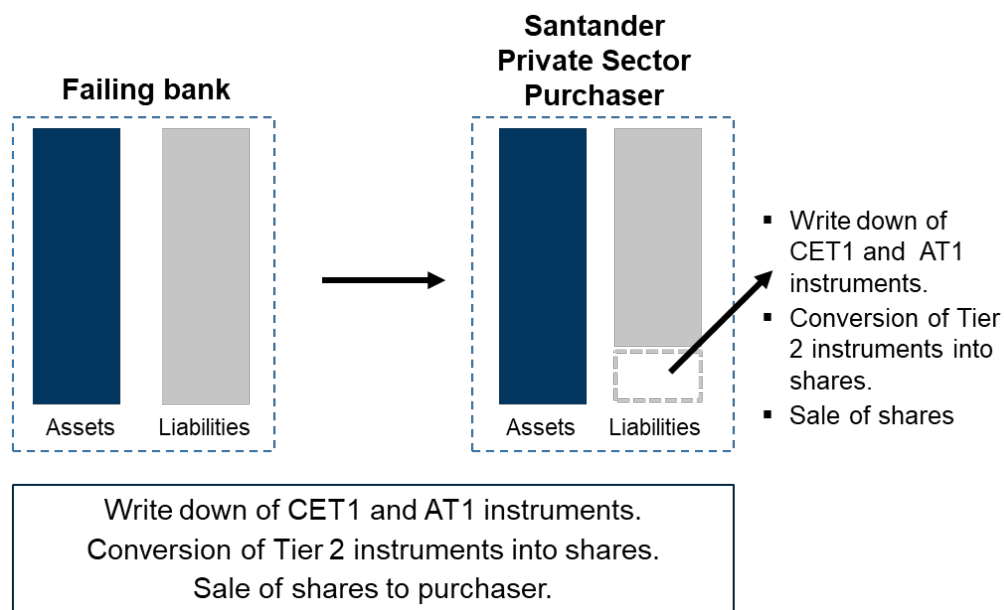
A core element of the resolution process was the valuation of BPE’s assets and liabilities. To prepare the resolution scheme, the SRB appointed an independent valuer to conduct a rapid valuation under Article 20 of the Single Resolution Mechanism Regulation (SRMR)⁵⁵. Given the time constraints the valuation was necessarily provisional and based on estimates. The valuation, inter alia, estimated the economic value of BPE at EUR 1.3 billion in the best-case scenario, at minus EUR 8.2 billion in the worst-case scenario and at minus EUR 2 billion for the best estimate.

The valuation supported the SRB’s conclusion that the bank’s equity and subordinated instruments had no residual value and could be fully written down. This conclusion was corroborated by the purchase price offered. The resolution involved the complete write-down of all common equity Tier 1 (CET1) and Additional Tier 1 (AT1) instruments. The remaining Tier 2 capital was converted into equity shares, which were then transferred to Banco Santander for the price of €1. Santander also injected €7 billion in capital into Banco Popular to stabilise it and absorb legacy losses. This process wiped out shareholders and subordinated bondholders but left senior creditors and all depositors untouched, allowing the bank to be sold without the need for state aid. This process was guided by Article 24 of the SRMR, which allows the SRB to transfer a failed bank without the consent of its shareholders (sale of business resolution tool).

⁵⁴ On 5 June 2017 BPE submitted a request for emergency liquidity assistance (‘ELA’) to Banco de España (Bank of Spain). However, the amount of ELA provided to BPE (around €3.6bn) was not sufficient to ensure that it was able to meet its liabilities due within the course of 7th of June.

⁵⁵ The valuation was requested by the SRB on 23 May 2017, and it was submitted by the independent valuer on 6 June 2017.

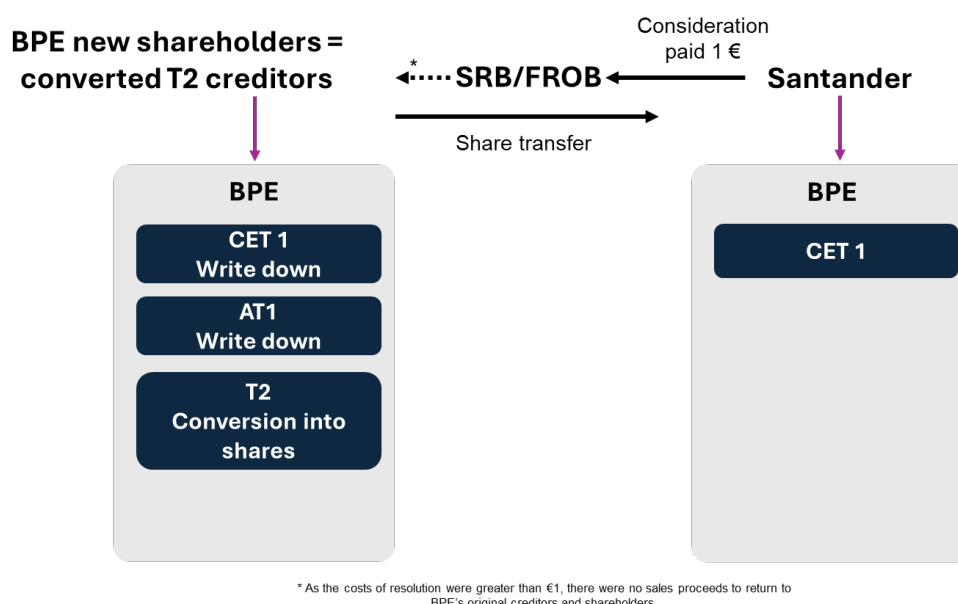
Graph 10: BPE loss absorption through write down, conversion and share transfer



A critical component of the resolution process was the application of the "No Creditor Worse Off" (NCWO) principle, which requires that creditors do not incur greater losses under resolution than they would have in insolvency liquidation. The SRB commissioned a detailed ex-post valuation (the "Valuation 3") to assess compliance with this principle to support the assessment whether affected creditors or shareholders were entitled to compensation because they would have received no better treatment under ordinary insolvency proceedings. Based on Valuation 3, the SRB concluded that this was not the case. This decision was later supported by the General Court of Justice of the European Union.

The run-up to resolution showed the relevance of management information systems in resolution. Institutions must have the capabilities to provide to resolution authorities with updated and high-quality information in a very short time frame. This can be key to enable liquidity provision, by ensuring adequate collateral is ready, and is also key to facilitate valuation and to ensure the effectiveness of a sale of business tool, as a VDR will have to be created by the institution and the more information available, the higher the chances of receiving more bids and maximising the purchase price.

Graph 11: BPE: structure of transfer

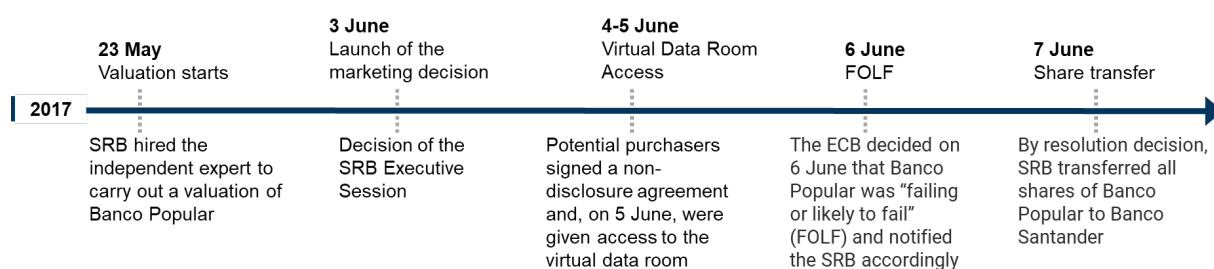


6.4.3. Marketing process

Given the deteriorating liquidity position and the urgent need to preserve financial stability, in the days leading up to BPE's resolution, a rapid marketing process was launched under significant time pressure. The SRB, in cooperation with the Spanish executive resolution authority FROB and the ECB, initiated the sale of the bank to potential private-sector purchasers. On 3 June 2017, the SRB approved the immediate launching of the marketing of BPE by FROB and informed the latter of the requirements concerning the sale. In particular, the SRB instructed FROB to contact the five potential purchasers which had been invited to present non-binding offers in the context of the private sale process after a sounding of the international and domestic market carried out by BPE's advisor at the time. The decision to leverage on the previously selected candidates was based on a number of reasons including time constraints, low likelihood of getting new actors involved in the bidding in the new SRB-led marketing process, minimisation of leakage risks and financial stability concerns. The objective was to find a purchaser financially capable of supplying own funds to recapitalise BPE to avoid the need for the use of public funds.

Of the five potential purchasers initially contacted, two decided not to participate in the marketing process and one was excluded by the ECB for prudential reasons. The two potential purchasers which had decided to participate in the marketing process, signed a non-disclosure agreement and were initially given access to a virtual data room and a short time window of some days, based on the first estimates of survival time for due diligence to conduct a high-level review of BPE's financial position. The timetable for the submission of bids was accelerated due to the ECB's determination of failure on the night of 6 June and the need to resolve the bank before markets opened on 7 June. Only Banco Santander submitted a concrete and unconditional bid at the early hours of the morning of 7 June. The bid included the commitment to restore the bank's solvency and liquidity ratios through the injection of Santander's own funds. The recapitalisation of BPE was therefore financed entirely from Santander's own resources and did not involve any support from public or industry-funded resources.

Graph 12: Timeline Banco Popular Español



The marketing process highlighted the importance of establishing structured and pre-planned marketing frameworks well before a crisis emerges. In the Banco Popular case, SRB and FROB leveraged on the private sale process that the Bank had launched before resolution. All the preparatory work carried out helped the execution of the resolution, as for instance, the list of potential purchasers was already elaborated and the VDR was set. Had it not been the case, the emergency sale process would have been extremely challenging, given the fact that no formal resolution-driven marketing process was launched until 3 days before the bank being deemed "failing or likely to fail" by the ECB on 6 June 2017. This underscores the need for resolution planning to include detailed and executable marketing strategies in advance, including identification of potential acquirers, access to data rooms, legal documentation, and sale timelines. Pre-arranged marketing frameworks embedded in resolution plans and ensuring entities develop the necessary capabilities in BAU can contribute to a better operationalisation of transfer tools in future crisis situations.

6.4.4. Structuring the transfer and operational continuity

Throughout this process, the SRB's key objective was to ensure continuity of critical functions and avoid systemic disruption.

By opting for a share deal, the authorities chose the least disruptive strategy for the activities of BPE, as overall solvency remained stable. Time was too limited to execute a more complex transaction, and the authorities had to primarily address the liquidity outflow driven by reputational issues and the need to quickly restore confidence. This strategy enabled BPE to remain open for business the same day of its resolution and customers to access their deposits and services without interruption. Most service providers were domestic, and related contracts were governed by European law. The provisions of BRRD, the applicable resolution framework in Europe, provides for resolution-resilience notably in the context of the exercise of powers by the resolution authority.

However, service continuity could be jeopardised should the bank become unable to withstand its contractual obligations. For depositors, ensuring sufficient liquidity for payment systems was crucial for a successful resolution. While there were no major problems regarding access to market infrastructures, there was an issue with one CCP because its internal rules only allowed membership of one entity per group and both Popular and Santander had access at the time of the crisis. The situation was addressed by allowing temporary access (15 days) to both entities and only keeping it for Santander afterwards.

In addition to payment systems, BPE was a member of Iberclear. FROB had already engaged with the Spanish CSD and other FMIs to assess potential actions during resolution planning. They sent a questionnaire and, along with Banco de España and CNMV, met Iberclear to discuss FMI processes months before BPE's resolution. This facilitated smooth contact on the run-up to its resolution to identify counterparties and securities affected by write-down and conversion powers. Ongoing clearing operations of BPE were identified and completed before the write-down was executed.

Under the SRB steering, an FMI workstream was assembled and fostered a network with effective communication. Confidentiality between authorities and FMIs was decisive for the BPE resolution's success. Coordination with CNMV ensured timely disclosure of price sensitive information. As a result, the Spanish banking sector remained stable. The resolution avoided the kind of systemic fallout witnessed during the 2008–2010 financial crisis.

6.4.5. Coordination among authorities

The successful execution of the overnight sale relied on robust legal frameworks and high-level institutional coordination. The SRB, FROB, ECB, and European Commission worked in synchrony, leveraging the provisions of the SRMR and Spanish law to carry out the resolution and sale of BPE without recourse to public funds. The legal tools allowed for the write-down and conversion of capital instruments, the creation of new equity, and the transfer of shares to Banco Santander. But the speed and success of this process depended on clear internal mandates, legal clarity, and prior agreement among institutions. The case demonstrated that strong coordination and real-time legal readiness are key to ensure success under time pressure.

6.5. Case study: Silicon Valley Bank UK

6.5.1. Circumstances of the case

Silicon Valley Bank UK (SVB UK) was established as a subsidiary of the US parent, Silicon Valley Bank (SVB), from July 2022, having previously operated as a branch since 2012. SVB UK was focused on commercial banking in the innovation sector, primarily technology, life sciences and healthcare. With total assets under £15 billion and fewer than 3,500 depositors, its preferred resolution strategy was Bank Insolvency Procedure (BIP).

In March 2023, a rapid and very large increase in depositor withdrawals in the US, exacerbated by instant electronic access to funds and social media speculation, led to the failure of the US parent and subsequently triggered the failure of SVB UK.

Although the UK subsidiary was able to meet all withdrawal requests on 10 March 2023, it was not clear it would be able to continue doing so if the outflows persisted. The outflows on 10 March 2023 were approximately 30% of SVB UK's deposit base. Moreover, the firm was unlikely to remain viable on its own, as it depended on its US parent for technology and systems, including payment infrastructure.

Given the limited time to prepare, the Bank of England (BoE) on Friday 10 March 2023 announced that, absent meaningful further information, it intended to apply for a Bank Insolvency

on Monday 13 March 2023.⁵⁶ Over the course of the weekend a sale process was undertaken, resulting in the BoE determining that a sale of SVB UK would better support the achievement of the special resolution objectives including the protection of depositors, ensuring continuity of banking services, and in particular protecting and enhancing public confidence in the stability of the UK financial system. As such, at 7am on 13 March 2023 the BoE executed a 'Private Sector Purchaser' resolution, including the write down of regulatory capital, transferring the shares of SVB UK to HSBC UK Bank plc (HSBC).⁵⁷

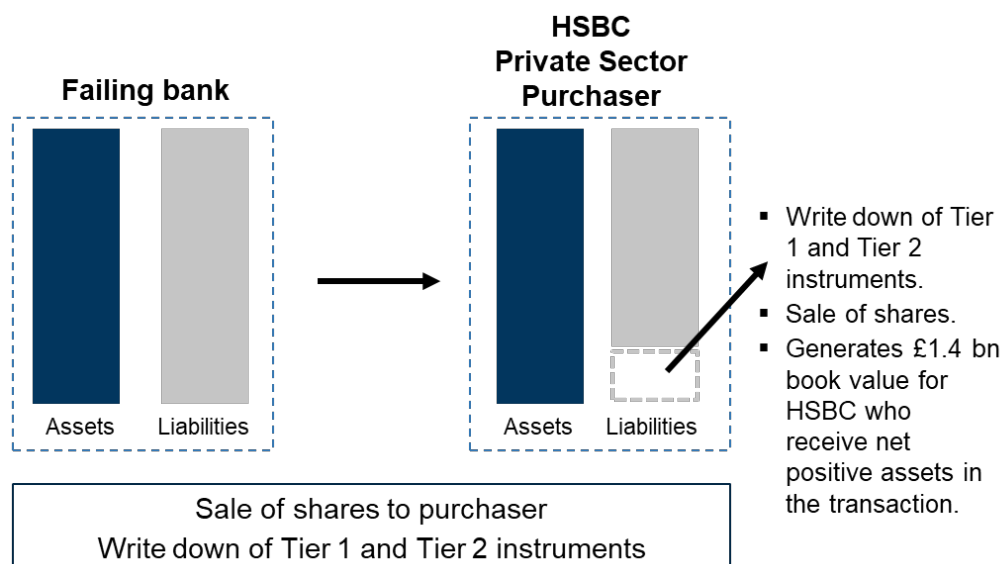
6.5.2. Transfer transaction and loss absorption

The transfer of shares of SVB UK to HSBC was achieved by the Silicon Valley Bank UK Limited Mandatory Reduction and Share Transfer Instrument (the Instrument).⁵⁸

Type of transaction and loss absorbing mechanism

SVB UK's Additional Tier 1 and Tier 2 regulatory capital instruments, of £322 million and £33 million respectively, were mandatorily written down as required by section 6 of the Banking Act 2008 (the Act).⁵⁹ Then, the whole of SVB UK's £1 billion equity was transferred in a share transaction to a private sector purchaser, HSBC, at 7am on 13 March, generating a total book value of equity of £1.4 billion. The consideration paid by HSBC for SVB UK was £1. As such, for SVB, the sole shareholder and the sole holder of SVB UK's regulatory capital instruments, its interests in SVB UK were extinguished following the execution of the resolution.⁶⁰

Graph 13: SVB UK loss absorption through write down and share transfer



⁵⁶ Bank of England (2023), *Bank of England statement: Silicon Valley Bank UK*, 10 March.

⁵⁷ Ibid.

⁵⁸ Bank of England (2023), *Silicon Valley Bank UK limited mandatory reduction and share transfer instrument*, 13 March.

⁵⁹ See *Banking Act 2009*.

⁶⁰ For further information on the actions undertaken by the Bank, please refer to the report published on the resolution actions undertaken, available [here](#).

NCWO

Given the urgency of the case, the Act allowed the BoE to carry out a provisional valuation of the failing firm to inform its decisions before a resolution. This included estimating the necessary write-down of the firm's Additional Tier 1 and Tier 2 to return the firm to regulatory capital requirements in the event of a transfer and analysing the extent to which the firm's creditors would have incurred losses in the event that SVB UK had entered insolvency (NCWO principle).

The provisional valuation estimated that no creditor affected by the resolution action was likely to be made worse off than they would have been in a counterfactual insolvency of the firm across the range of outcomes considered. The analysis estimated that Additional Tier 1 and Tier 2 holders would have received no recoveries in an insolvency on account of the material discounts required to facilitate a liquidation of the firm's assets.

As required by the Act, the BoE subsequently organised an independent 'replacement' valuation. This confirmed the finding of the BoE's provisional valuation that Shareholders, Additional Tier 1 and Tier 2 holders would have received no recoveries in insolvency. Estimated outcomes for general creditors in an insolvency were assessed to be worse in the replacement valuation than under provisional estimates. As a result, no compensation payments were necessary.

Funding and cost of resolution

SVB UK did not require public funding, as HSBC had sufficient financial resources of its own to facilitate the transaction, which was supported by the £1.4 billion book value generated following the write-down of AT1, Tier 2, and the transfer of the equity for nominal (i.e. £1) consideration. However, the Government used its powers under the Act to make changes to regulatory requirements to facilitate HSBC providing liquidity support to SVB UK on a non-arm's-length basis.

HSBC paid the consideration of £1 to the BoE. As the BoE had incurred costs of £411,000 in professional fees (including sales process advice, legal advice, and the independent replacement valuation), no sales proceeds were passed on to the original creditors and shareholders of SVB UK. However, had the consideration paid been greater than £411,000, the BoE would have returned the excess proceeds to the original creditors and shareholders of SVB UK according to the creditor hierarchy, as required under the Act.

Regulatory approvals for bidder (ring-fencing)

These powers were also used to extend a specific exemption from the UK's ring-fencing regime. Ring-fencing legislation is designed to protect retail banking operations by separating them from riskier financial activities such as investment banking. Under existing rules, a ring-fenced bank acquiring another business via a transfer under the Act is subject to a four-year carve-out from the core deposit threshold, essentially a limit on the volume of retail deposits it can hold. In HSBC's acquisition of SVB UK, the Government extended this carve-out indefinitely through a section 75 order.⁶¹ However, it included safeguards to preserve the integrity of the ring-fencing

⁶¹ Section 75 of the Banking Act enables the Treasury to amend the law, see [Banking Act 2009](#).

framework. These ensured that SVB UK would not be able to hold core deposits above the existing thresholds in the ring-fencing regime, that HSBC did not transfer part of its existing business to SVB UK, and that SVB UK would itself not acquire or undertake ownership of any new businesses.

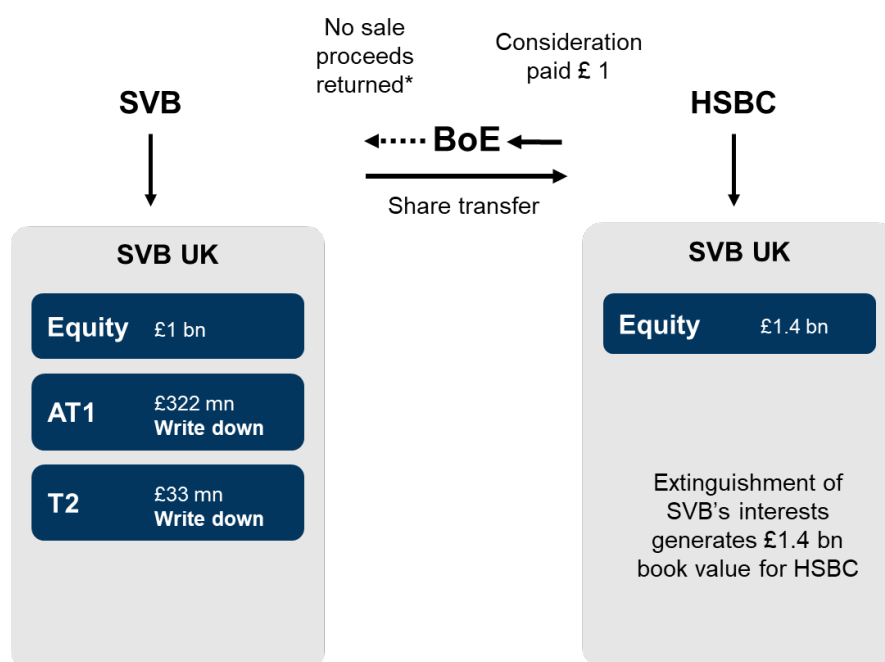
The exemption was judged to be in the public interest because it was a necessary condition of HSBC's offer to buy SVB UK, ensuring that SVB UK, whose business model includes activity both within and outside the UK ring-fence, could be a commercially viable and stand-alone business as part of the HSBC group (as opposed to otherwise having required a separation of SVB UK's business into different legal entities within the HSBC group).

6.5.3. Structuring the transfer and operational continuity

Transfer perimeter

The BoE's preference is to execute a whole firm sale, as its experience shows that it could be difficult to reliably identify in advance which portfolios, assets, or liabilities should be transferred. Additionally, offering a wide range of sub-portfolios for consideration by a potential acquirer can introduce operational risks. Taking this into account, and given the circumstances of the SVB UK case, the whole of SVB UK's equity was transferred to HSBC, eliminating the need to define a transfer perimeter.

Graph 14: SVB UK: Structure of the transfer



* If the consideration paid had been higher than the costs of resolution, sale proceeds would have been returned to SVB UK's original creditors and shareholders in line with the creditor hierarchy.

Operational continuity

The continuity of banking services was maintained following the transfer based on continuity provisions included in the UK legal framework that, for example, exclude termination rights based on resolution action. Provisions making reference to the relevant legal framework provisions were included in the legal share transfer instrument that effected the sale. Additionally, the BoE as Resolution Authority and the Prudential Regulatory Authority (PRA) as prudential supervisor engaged in continued supervisory work with SVB UK, HSBC and other market participants. This ensured that liquidity could be provided to SVB UK and that SVB UK was itself able to process payments and meet its wider obligations to customers and counterparties. The BoE was also in close co-ordination with the FDIC, as receiver of SVB, throughout this period to ensure that the firm would have access to the systems and operations of SVB necessary to ensure continuity to customers.

6.5.4. Marketing

The failure of SVB UK was rapid, leaving the BoE with very limited time to execute a sale over the weekend. On Friday evening, the BoE published communications that signalled to the market that an acquisition of SVB UK over the weekend was a possibility. SVB UK engaged a third party to conduct a going-concern sale process, which proved highly beneficial, allowing the BoE to leverage those efforts to execute the marketing process under significant time constraints.

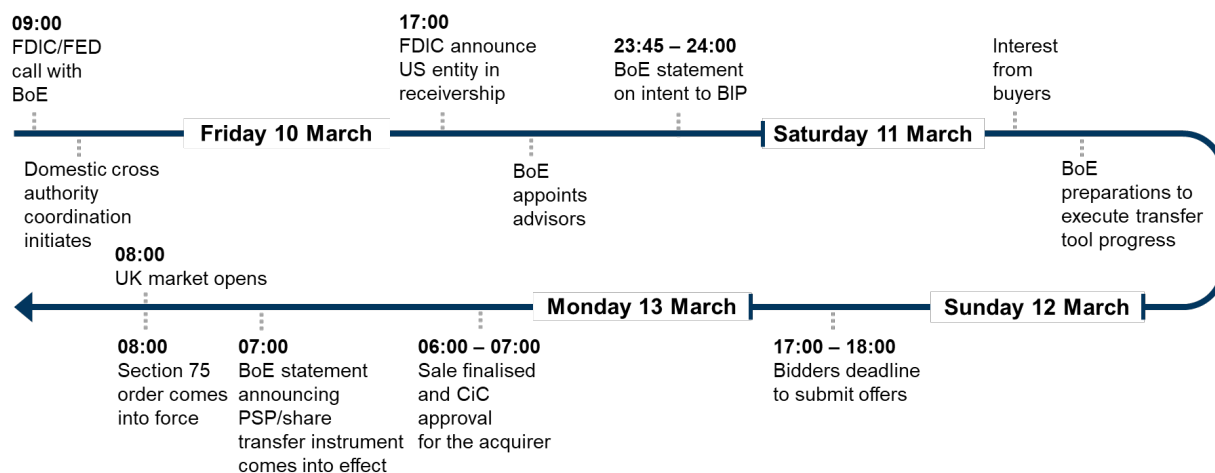
Bidding process

All credible interested parties were asked to submit offers by early Sunday evening. A number of parties expressed a potential interest in purchasing all or part of the failed UK bank. The BoE judged that it was important for any potential sale to be executed urgently before SVB UK's opening time on Monday 13 March in order to further the special resolution objectives. Additionally, the acquirer needed to have credible arrangements for the continuity of banking services and capacity to provide any necessary liquidity.

Selection of winning bidder

Among a small number of expressions of interest, HSBC emerged as the only credible bidder as it was able to implement the transfer in time while providing the necessary liquidity and arrangements for the continuity of banking services. Moreover, HSBC's proposal was the only one that did not require financial support or guarantees from public authorities, and their level of capital and liquidity resources greatly reduced the risks to public funds, stability, and confidence, as no capital injection was required at the point of transfer, with HSBC able to absorb the additional risk-weighted assets of SVB UK's business without falling below regulatory requirements or buffers.

Graph 15: Timeline Silicon Valley Bank UK



Required approvals (change of control)

The selection of HSBC as the preferred bidder followed consultation with the PRA, Financial Conduct Authority (FCA) and HM Treasury (HMT), as required by the Act. Additionally, the SVB case was an opportunity to test the BoE's expedited Change in Control process, which involves requesting only the minimum information needed from the acquirer to enable swift approval. The BoE benefitted from the close links between supervision, authorisation and resolution colleagues to complete the governance steps required to approve HSBC's acquisition of SVB UK.

Documentation and planning

The compressed timeframes reiterated the need for (i) receipt of regular, accurate data for firms of all sizes, (ii) availability of pre-existing runbooks and templates for process steps, and (iii) collaborative relationships with external advisors and firm directors (both for the failing firm and the potential acquirer).

For this case, the BoE used the Private Sector Purchaser (PSP) runbook, which forms part of a master runbook that covers all resolution strategies and enables the BoE to flexibly adapt its approach when the resolution tool differs from what was planned, as was the case here with the shift from BIP to PSP. This tool helps to eliminate duplication in preparatory work by covering all strategies, includes links to previous cases that provide a useful starting point, and ensures that all necessary governance and decision-making steps are completed and properly documented.

Resolution was achieved under fast paced circumstances thanks to extensive ex-ante work on contingency planning and regular exercising. The BoE had produced step-by-step execution materials that were crucial in onboarding staff rapidly, supporting procedural completeness alongside ensuring that templates and existing documentation was available readily. Regular participation in testing exercises across various levels of seniority also supported effective coordination. Preparing multiple resolution strategies simultaneously and at speed to keep all options executable required both dedicated personnel and deep expertise.

6.5.5. *Cross-border implications*

During the SVB UK resolution, there was close coordination at all levels between the UK and the US authorities, including the FDIC, throughout Friday and the weekend. This reflected the importance of strong working relationships between the BoE and their counterparts in the US that were maintained and developed over many years through extensive engagement on cross-border financial stability, supervision and resolution issues. This included the development of resolution plans for the largest cross-border banks, high level crisis management scenario-based exercises, and collaboration via forums such as the Financial Stability Board.

The BoE was accordingly well-placed to cooperate and collaborate at such pace with its US counterparts to secure a successful, coordinated and cooperative resolution of SVB's UK operations. In practice, this enabled effective cooperation in real time, including on the decision to pursue a separate resolution strategy for SVB UK, which was deemed to better meet the resolution objectives and serve the public interest. The FDIC was kept informed of the BoE's decisions regarding the resolution strategy and remained closely engaged throughout the process via regular calls and updates.

7. Going forward

Resolution authorities and banks will continue to prepare for the loss absorption and the structuring and marketing of a transfer as part of resolution planning and make the necessary arrangements for the use of a bridge entity where variants of transfer tools have been chosen as the applicable resolution tool.

The cross-border dimensions of the topics discussed in this report will continue to require attention from resolution authorities and discussion within CMGs or other relevant cooperation forums among home and host authorities. These include cross-border issues relating to:

- application of transfer tools across borders, including both the transfer transaction and the loss-absorbing mechanism, and their legal recognition across borders,
- application of other resolution powers, such as stays on termination and enforcement rights, to contracts governed by foreign law, and their legal recognition across borders,
- documentation of and access to contracts with foreign third-party service providers, including the contractual recognition of resolution powers,
- timeliness of regulatory approvals for foreign purchasers,
- clarification and understanding of differences in sales process expectations, documentation requirements and legal frameworks across jurisdictions, and
- where write-down and conversion are chosen as the loss-absorbing mechanism of a transfer tool, compliance with foreign laws regarding securities governed by foreign law, traded or deposited in foreign jurisdictions or held by foreign investors.

The FSB will continue to facilitate the sharing of information on practices amongst authorities and efforts to address these cross-border issues as part of the work of its Resolution Steering Group and the Bank Cross-Border Crisis Management Working Group.

Abbreviations

AMV	Asset Management Vehicle
AFC	Asian Financial Crisis
BAFO	Best and Final (bids)
BANIF	Banco Internacional do Funchal
BAU	Business as usual
BES	Banco Espírito Santo
BIC	Business Identifier Code
BIP	Bank Insolvency Procedure
BNM	Bank Negara Malaysia (Central Bank of Malaysia)
BoE	Bank of England
BPE	Banco Popular Español
BRRD	Bank Recovery and Resolution Directive
CCA	Contingent Capital Agreement
CCP	Central Counterparty
CMG	Crisis Management Group
CNMV	Comisión Nacional del Mercado de Valores
CoAgs	Cooperation Agreements
CCA	Contingent Capital Agreement
DFC	Doral Financial Corporation
EU	European Union
ECB	European Central Bank
ECJ	European Court of Justice
FCA	Financial Conduct Authority
FDI Act	Federal Deposit Insurance Act
FDIC	Federal Deposit Insurance Corporation
FMI	Financial Market Infrastructures
FROB	Autoridad de Resolución Ejecutiva (Spain's national executive resolution authority)
GSIBs	Globally Systemically Important Banks
HKMA	Hong Kong Monetary Authority
IDI	Insured Depository Institution
IMF	International Monetary Fund

KA	FSB's Key Attributes of Effective Resolution Regimes
M&A	Mergers and Acquisitions
MIS	Management Information System
MREL	Minimum Requirement for Own Funds and Eligible Liabilities
NCWOL/NCWO	No Creditor Worse Off than in Liquidation Principle
NDA	Non-Disclosure Agreement
NPL	Non-Performing Loans
P&A	Purchase and Assumption
PRA	Prudential Regulation Authority
QFC	Qualified Financial Contract
SLA	Service Level Agreement
SRMR	Single Resolution Mechanism Regulation
SSM	Single Supervisory Mechanism
SoB	Sale of Business Tool
SRB	Single Resolution Board
SPA	Sales and Purchase Agreements
SVB	Silicon Valley Bank
SVB UK	Silicon Valley Bank UK
TLAC	Total Loss-Absorbing Capacity
TSA	Transitional Service Agreement
VDR	Virtual Data Room

Glossary⁶²

Alliance bidding	A collaborative approach where two or more bidders join forces to submit a joint bid for a failed bank or parts of it to leverage the combined strengths, resources, expertise, or geographic presence, thereby increasing their chances of winning the bid.
Asset Management Vehicle (AMV)	A legal entity established to manage, hold, or dispose of assets, created to isolate and manage problematic or non-performing assets (such as bad loans or distressed securities) from the balance sheet of the bank. AMVs may be publicly or privately funded, depending on context and objectives. Examples include the Troubled Asset Relief Program (TARP) in the United States or the creation of bad banks in Europe.
Asset transaction	Transfer of assets, liabilities, and rights of the failed bank (e.g. loans, mortgages and securities, rights, ownership rights/ investments/ shares in subsidiaries) to a private sector purchaser or a bridge bank. This can constitute the transfer of portfolios, business segments, or other parts of the failed bank.
Bail-in	An informal term that refers to the practice of making shareholders and certain creditors, rather than taxpayers, absorb losses of a failed bank.
Bail-in tool	A resolution tool that mandates the write-down of shares and write-down and/or conversion of liabilities into shares to stabilise the bank that continues providing the critical functions.
Bail-out	An informal term that refers to the practice of a party (often an official sector entity) providing capital to a failing firm to cover past losses and keep the company running.
Bank	Term 'bank' in this note is used generally. Depending on context, it refers to the financial group where a bank is the parent entity, or a bank entity within a financial group.
Banking Union	The Banking Union is the European Union's policy for the integration of the banking sector of the euro area member states. It consists in a framework of rules, procedures and tools designed to ensure that banks within the euro area are more resilient, better supervised, and able to withstand financial crises. Non-euro area countries can also join. Following the accession of Bulgaria and Croatia, the Banking Union is currently made up of 21 countries.

⁶² The definitions below are illustrative, not exhaustive, and apply only in the context in which the terms are used within this document.

Best and final offer (bidding round)	A stage in a bidding process where shortlisted bidders are invited to submit their final, most competitive proposal. This typically occurs after an initial evaluation of bids, during which the resolution authority identifies the most promising candidates but seeks further clarification, improved terms, or the addressing of specific requirements. To incentivise bidders to provide the best possible terms, the expectation is that no further negotiation will take place.
Bridge entity	An entity set up and controlled by a resolution or other public authority to which the failed bank or its portfolios are transferred and temporarily administered until they are further transferred to a purchaser. It acquires a failed bank's critical functions temporarily, until an onward sale can be completed or if that is not possible, its assets wound down and liabilities discharged. It can be a licenced bank (bridge bank) or a holding company (bridge holding company).
Conversion of securities	An exchange of securities, in a bail-in situation usually debt instruments (bonds), into another form of securities, in a bail-in situation usually equity instruments (shares or other instruments of ownership), at a given ratio.
Closed bank bail-in	An approach to resolution in which the failed entity is legally closed and all or some of its assets are transferred to a private sector purchaser or to a bridge entity that continues providing the critical functions. Shareholders and creditors absorb losses through an estate claims process. Additionally or alternatively, losses may be absorbed by write down and conversion before the transfer.
Cooperation Agreements (CoAgS)	Documents designed to facilitate bank-specific information sharing and cooperation among authorities, such as Crisis Management Group members.
Crisis Management Groups (CMGs)	Official sector groups that bring together home and key host authorities of specific G-SIBs to enhance cooperation regarding resolution planning and implementation.
Critical functions	Activities performed by a bank for third parties where failure would lead to the disruption of services that are vital for the functioning of the real economy and for financial stability.
Estate claims process	Court supervised process or receivership procedure which facilitates an orderly liquidation of the estate (residual entity) and distributes the proceeds from liquidation to creditors in line with the creditor hierarchy.
Domestic systemically important banks (D-SIBs)	Banks whose failure has been identified as likely to have a significant impact on domestic financial system and economy.
Failing or likely to fail	An assessment made as part of the trigger for resolution by the relevant authority of a given jurisdiction about a bank. This

	includes whether the bank is failing or likely to fail to meet its minimum requirements to be authorised.
Financial Market Infrastructures (FMIs)	Companies that perform a variety of functions in the market, including the clearance and settlement of cash, securities, and derivatives transactions. Many FMIs are central counterparties and are responsible for clearing a large majority of trades in their respective markets. Examples are payment systems, securities settlement systems and central counterparties.
First offeror advantages	Strategic benefits that a bidder may gain by being the first to present an offer during a bidding process. Authorities may give the initial bidder a first refusal option to match any more favourable bids received later. This may incentivise bidders to prioritise undertaking due diligence rapidly.
Globally systemically important banks (G-SIBs)	Banking groups included on the Financial Stability Board's annual list of G-SIBs. This list is based on an assessment methodology designed by the Basel Committee on Banking Supervision. FSB member authorities apply additional supervisory expectations and regulatory requirements to G-SIBs. Each has a Crisis Management Group (CMG).
Home authority	A resolution authority that co-ordinates the resolution of a cross-border group, which would usually be the resolution authority in which the bank is headquartered.
Host authority	A resolution authority in a jurisdiction in which the bank provides services through one or more subsidiaries or branches.
Least cost test	Assessment comparing the relative costs of resolution funding options by resolution or deposit insurance fund, as applicable, against the cost of liquidation, to support the selection that is least costly to the fund.
No creditor worse off principle (NCWO)	A legal safeguard that requires that no shareholder or creditor is left worse off from the use of certain resolution tools and powers than they would have been had the whole bank been placed into an insolvency process.
Open bank bail-in	An approach to resolution in which shares, debt and other liabilities of a failing bank are written down and/or converted to absorb losses and recapitalise the bank which continues to operate and provide critical functions.
Purchase and Assumption (P&A)	A transfer transaction in which a healthy bank purchases some or all of the assets and assumes some or all of the liabilities including deposits, of a failed bank.
Receiver	A person or entity, which could include a government agency, appointed to manage and liquidate the assets and liabilities of a failed bank. A Receiver succeeds to all of the interests and property owned by the failed bank.

Residual entity	The residual estate of a failed company against which former shareholders and creditors may have claims. In the U.S. referred to as receivership.
Resolution entity	An entity within a group to which tools and powers would be applied under the group resolution plan.
Resolution powers	Resolution authorities' general resolution powers (KA 3.2).
Resolution tool	A resolution power that ensures that shareholders and creditors absorb losses in a manner that respects the hierarchy of claims in liquidation while maintaining continuity of critical functions.
Securities-for-claims exchange	The use of equity securities of the successor company (or companies) of a bridge bank or bridge holding company to satisfy the claims against the residual entity in accordance with the statutory creditor hierarchy. The claimants become the new owners of the successor company or companies.
Share transaction	The transfer of shares in the failed bank to a private sector purchaser or to a bridge holding company, constituting the transfer of the failed bank as a whole.
Total Loss-Absorbing Capacity (TLAC)	An international standard developed by the Financial Stability Board for adequate loss absorbing capacity for GSIBs in resolution. External TLAC includes equity and long-term debt instruments issued by the resolution entity to the market that will be available to absorb losses in resolution, in accordance with the applicable statutory creditor hierarchy. Internal TLAC includes instruments issued internally within a corporate group to facilitate the shift of losses from (operating) subsidiaries to the parent company (holding or operating) and to support the recapitalisation of those subsidiaries so they can stay open and operating during resolution of the parent company.
Transfer perimeter	Parts of the failed bank that are transferred to the private sector purchaser or the bridge bank. This may cover the failed bank as a whole or certain portfolios, business segments, or other parts of the failed bank.
Transfer tool	A resolution tool that transfers part or all of a failed bank to a purchaser or, temporarily, to a bridge entity/bank, and achieves loss absorption by the shareholders and creditors through the closure of the residual entity by an estate claims process or by write down and conversion before the transfer.
Transfer transaction	The movement of the shares in the failed bank or of all or parts of its business to a private sector purchaser or a bridge entity, mandated by the resolution authority.

Write-down of shares and liabilities and conversion of liabilities into shares.

Reduction of the value of the principal of a security (write-down of equity and debt instruments) and exchanging debt instruments for equity (conversion of liabilities into shares).