

Chapter 1

Commission Delegated Regulation (EU) 2016/1075

Liabilities to which the exclusion from the
obligation to include the contractual term
referred to in Chapter 2 of the Contractual
Recognition of Bail-In Part of the PRA
Rulebook or rule IFPRU 11.6 of the
Recovery and Resolution Part of the FCA
Handbook applies

(1) For the purposes of the Contractual Recognition of Bail-In Part of the PRA Rulebook or rule IFPRU 11.6 of the Recovery and Resolution Part of the FCA Handbook, a secured liability shall not be considered as an excluded liability where, at the time at which it is created, it is:

(a) not fully secured;

(b) fully secured but governed by contractual terms that do not oblige the debtor to maintain the liability fully collateralised on a continuous basis in compliance with regulatory requirements of the law of the United Kingdom law or of a third country law achieving effects that can be deemed equivalent to United Kingdom law.

(2) For purposes of rule 2.3 of the Contractual Recognition of Bail-In Part of the PRA Rulebook or rule IFPRU 11.6.3 R of the Recovery and Resolution Part of the FCA Handbook, recognition of bail-in applies to:

(a) liabilities created after the relevant date, regardless of whether they are created under relevant agreements entered into before that date, including under master or framework agreements between the contracting parties governing multiple liabilities;

(b) liabilities created before or after the relevant date under relevant agreements entered into before that date and which are subject to a material amendment;

(c) liabilities under debt instruments issued after the relevant date.

(d) liabilities under debt instruments issued before or after that date under relevant agreements entered into before that date and which are subject to a material amendment.

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

(3) The requirement to include a contractual term in a relevant agreement pursuant to Chapter 2 of Contractual Recognition of Bail-In Part of the PRA Rulebook or rule IFPRU 11.6.3R (2)(e) of the Recovery and Resolution Part of the FCA Handbook shall not apply where the resolution authority is satisfied that the law of the third country concerned or a binding agreement concluded with that third country provides for an administrative or judicial procedure which:

(a) at the request of the resolution authority, or at the initiative of the third country administrative or judicial authority whose law governs the liability or instrument, enables such duly empowered third country administrative or judicial authority, within a period which the resolution authority determines will not compromise the effective application of the write-down and conversion powers by that authority to do either of the following:

(i) recognise and give effect to the exercise of the write-down and conversion powers by the resolution authority;

(ii) support through the application of relevant powers the exercise of the write-down and conversion powers by the resolution authority;

(b) provides that the grounds on which a third country administrative or judicial authority may refuse to recognise or support the exercise of the write-down and conversion powers pursuant to point (a) are clearly stated and are limited to one or more of the following exceptional cases:

(i) the recognition or support of the exercise of the write-down and conversion powers by the resolution authority would have adverse effects on financial stability in the third country concerned;

(ii) the recognition or support of the exercise of the write-down and conversion powers by the resolution authority would result in third country creditors, in particular depositors located and payable in that third country, being treated less favourably than creditors, and depositors located or payable in the United Kingdom, with similar rights under applicable United Kingdom law;

(iii) recognition or support would have material financial implications for the third country concerned;

(iv) recognition or support of the exercise of write-down and conversion powers by the resolution authority would have effects contrary to the public order of the third country concerned.

(4) The resolution authority shall assess that the grounds referred to in paragraph 3(b) would not prevent the recognition or support of the exercise of the write-down and conversion powers in all circumstances where such powers are applied.