



Banc Ceannais na hÉireann  
Central Bank of Ireland

Eurosystem

# Central Bank of Ireland's approach to the write-down and conversion of capital instruments and eligible liabilities and use of the bail-in tool

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# List of Abbreviations & References

AT1	Additional Tier 1
BRRD	Bank Recovery and Resolution Directive (Directive 2014/59/EU), as amended
BRR Regulations	European Union (Bank Recovery and Resolution Regulations) 2015 [S.I. No. 289 of 2015], as amended
Central Bank	Central Bank of Ireland
CET1	Common Equity Tier 1
Court	High Court of Ireland
Creditor Hierarchy	The priority of claims under normal insolvency proceedings
CSD	Central Securities Depository
EBA Guidelines	European Banking Authority's Final Report on the Guidelines to Resolution Authorities on the publication of the write-down and conversion and bail-in exchange mechanic, published 13 February 2023 (EBA/GL/2023/01)
ECB	European Central Bank
Exchange Mechanic	Approach regarding the operational steps necessary to execute the write-down and/or conversion of relevant capital instruments and eligible liabilities and the use of the bail-in tool
FOLTF	Failing or Likely to Fail
Institution	Credit institution or investment firm in scope of the BRRD and SRMR resolution framework
ISINs	International Security Identification Numbers
LSI	Less Significant Institution
MREL	Minimum requirement for own funds and eligible liabilities
NCWO	No Creditor Worse Off
NNA	National Numbering Agency
NRA	National Resolution Authority
Resolution Authority	SRB or NRA, depending on whether the resolution relates to an SI or LSI
Resolution Weekend	Commences upon the granting of a resolution order. While a weekend is referred to, this phase could start at any time and covers all processes needed for the adoption of the resolution order
SI	Significant Institution
SRB	Single Resolution Board
SRF	Single Resolution Fund
SRM	Single Resolution Mechanism
SRMR	Single Resolution Mechanism Regulation (Regulation 806/2014/EU)
SSMR	Single Supervisory Mechanism Regulation (Council Regulation (EU) No. 1024/2013)
T2	Tier 2
Valuation 1	Valuation for determining FOLTF
Valuation 2	Valuation for the purposes of resolution
Valuation 3	Valuation of difference in treatment
WDC Power	The power to write-down and/or convert relevant capital instruments and eligible liabilities into shares or other instruments of ownership

# 1. Introduction

## 1.1 Overview of Resolution Framework

A comprehensive European recovery and resolution framework was introduced in 2014 by virtue of the Bank Recovery and Resolution Directive<sup>1</sup> (BRRD) and Single Resolution Mechanism Regulation<sup>2</sup> (SRMR). The framework provides designated authorities with a toolkit to effectively address and manage, at a national and cross-border level, the resolution of credit institutions and certain investment firms (together “institutions”) that are determined to be failing or likely to fail (FOLTF).

Key features of this resolution toolkit are the power to write-down and/or convert relevant capital instruments<sup>3</sup> and eligible liabilities<sup>4</sup> into shares or other instruments of ownership (“WDC power”) and the bail-in tool. The successful application of the WDC power and bail-in tool ensure:

- (i) The absorption of losses and recapitalisation of the institution, which is thereby restored to viability with minimal cost to the taxpayer and the real economy;
- (ii) The continuity of the institution’s critical functions;
- (iii) The preservation of financial stability within the market, particularly with regard to maintaining market discipline and confidence and limiting the risk of contagion; and
- (iv) The protection of public funds, depositors, investors, and clients.

In terms of designated authorities under the resolution framework, the SRMR established the Single Resolution Mechanism (SRM) in which the Single Resolution Board (SRB) is the central Banking Union Resolution Authority, and the Banking Union Member States<sup>5</sup> operate as the National Resolution Authorities (NRAs).

In Ireland, the designated NRA is the Central Bank of Ireland (the “Central Bank”), and the BRRD was transposed into Irish law via the European Union (Bank Recovery and Resolution) Regulations 2015, as amended<sup>6</sup> (the “BRR Regulations”).

## 1.2 Purpose & Aim of Paper

In this paper, the Central Bank provides a high-level description of the approach regarding the operational steps necessary to implement the WDC power and bail-in tool (the “Exchange Mechanic”), from the preliminary steps to the final execution, including possible *ex-post* actions. The aim of the Central Bank in this regard is to increase the predictability and credibility of its

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<sup>1</sup> Directive 2014/59/EU.

<sup>2</sup> Regulation 806/2014/EU.

<sup>3</sup> Relevant capital instruments include Additional Tier 1 (AT1) instruments and Tier 2 (T2) instruments.

<sup>4</sup> Eligible liabilities are bail-inable liabilities and capital instruments that do not qualify as Common Equity Tier 1 (CET1), AT1 instruments or T2 instruments.

<sup>5</sup> The Banking Union consists of the Eurozone countries and Bulgaria.

<sup>6</sup> S.I. No. 289 of 2015.

approach in respect of the Exchange Mechanic, and to share information and foster transparency with key stakeholders and other relevant market participants on this topic.

This paper endeavours to comply with the European Banking Authority’s [‘Final Report on the Guidelines to Resolution Authorities on the Publication of the Write-down and Conversion and Bail-in Exchange Mechanic’](#)<sup>7</sup> (the “EBA Guidelines”), published in February 2023. This paper is a living document, and the Central Bank will update same as the approach to the Exchange Mechanic develops and/or changes. It is important to note that the Central Bank has not, to date, taken a resolution action under the BRRD and SRMR resolution framework and, as a consequence, the actual execution of the Exchange Mechanic will depend on the case at hand and may potentially differ from the steps detailed herein which offer high-level guidance only.

In terms of the scope of the paper, the approach set out is applicable to both Significant Institutions (SIs) and Less Significant Institutions (LSIs)<sup>8</sup> that are authorised in Ireland and covered by the BRRD and SRMR resolution framework, and whose resolution processes are managed by the SRB<sup>9</sup> and Central Bank, as the designated NRA, respectively. It should also be noted that while high-level information is provided on wider aspects of the resolution framework, the focus of this paper is the description of the Exchange Mechanic. The paper should, as a result, be read in combination with other Central Bank publications on resolution<sup>10</sup> as well as the key legislative texts underpinning the resolution framework.

The structure of the paper is as follows:

- Section 2 provides high-level information on the WDC Power and bail-in tool, and an overview of the key stages and associated timelines of the resolution process;
- Section 3 sets out details on the application on the Exchange Mechanic, including, among other things, the key stakeholders involved, the process of writing-down and converting instruments, instructions to and action taken by trading venues, and the issuance of new instruments;
- Section 4 provides details on the resolution objectives, conditions and principles. High-level information on the resolution toolkit is also set out;
- Section 5 provides an overview of the different valuation assessments that are completed during the resolution process; and
- Section 6 sets out details related to the application to the High Court of Ireland (“Court”) to obtain a capital instruments order and resolution order.

<sup>7</sup> EBA/GL/2023/01. In this paper, the Central Bank has followed the preferred policy option as set out in the EBA Guidelines (i.e. Option 2: High-level description of the approach of the exchange mechanic published 1 January 2024).

<sup>8</sup> The Single Supervisory Mechanism Regulation (SSMR) (Council Regulation (EU) No. 1024/2013) denotes the criteria relating to classification as significant or less significant, namely in terms of an institution’s: size (most LSIs are smaller banks whose assets do not exceed €30 billion), economic importance, cross-border activities, level of direct public financial assistance, and significance within its particular jurisdiction.

<sup>9</sup> The SRB is also responsible for the resolution of institutions where: the European Central Bank (ECB) has decided to direct all relevant supervisory powers, there are cross-border activities, and/or the use of the Single Resolution Fund (SRF) is required to support the resolution action.

<sup>10</sup> Such as the Central Bank’s [Approach to Resolution for Banks and Investment Firms](#) (Second Edition) and the Central Bank’s [Approach to MREL](#), both published in October 2021.

## 2. Resolution

### 2.1 WDC Power & Bail-in Tool

The WDC power and bail-in tool are key features of the toolkit provided under the BRRD and SRMR resolution framework. The bail-in tool can be used on a standalone basis or in combination with one or more of the other resolution tools and powers, subject to certain conditions being met.

The purpose, in both cases, is to ensure adequate loss absorption and recapitalisation in respect of a failing institution. By doing so, the WDC power and bail-in tool facilitate burden-sharing as the losses and recapitalisation costs are borne first and foremost by the shareholders and creditors of the institution, thereby protecting public funds and financial stability whilst enabling the continuation of the institution's critical functions.

In order to successfully execute the WDC power and/or bail-in tool, the institution must have sufficient own funds and bail-inable liabilities that can be written down and/or converted at the point of failure. The building up and maintenance of a loss absorbing capacity is, as a result, a key part of determining an institution's resolvability and readiness for resolution.

The key features of the WDC power and bail-in tool are set out in more detail in Tables 1 and 2.

Table 1: WDC Power - Key Features

<u>WDC Power: Key Features</u>
<ul style="list-style-type: none"> <li>• Can be used <b>independently</b> of, or in <b>combination</b> with, a resolution action. When used on a sole basis, it does not constitute a resolution action.</li> </ul>
<ul style="list-style-type: none"> <li>• Can be applied independently of a resolution action when required to <b>maintain the viability</b><sup>11</sup> of an institution, and/or where its sole use is sufficient to <b>prevent a resolution or winding-up action</b>.</li> </ul>
<ul style="list-style-type: none"> <li>• Enables the write-down and/or conversion of <b>relevant capital instruments and certain eligible liabilities</b> into shares and other instruments of ownership in accordance with the order of priority of claims under normal insolvency proceedings (the "creditor hierarchy") so as to <b>absorb losses and recapitalise</b> the institution.</li> </ul>
<ul style="list-style-type: none"> <li>• Following the application of the WDC power, there is <b>no regulatory requirement</b> for the institution to prepare a <b>business reorganisation plan</b> or to set out by other means, and to implement thereafter, restructuring measures.</li> </ul>
<ul style="list-style-type: none"> <li>• Discretion to <b>exclude</b> certain liabilities from the power's scope of application is <b>not available</b>.</li> </ul>
<ul style="list-style-type: none"> <li>• When used independently of a resolution action, a <b>capital instruments order</b> must be obtained by the Central Bank on an <i>ex-ante</i> basis from the Court.<sup>12</sup></li> </ul>

<sup>11</sup> An institution's viability may be assessed with regard to, among other things, performance, solvency and profitability indicators, and the ability of the institution to perform its critical functions and core business lines.

<sup>12</sup> Appendix 3 contains further details on the Court application process.

Table 2: Bail-in Tool - Key Features

<b><u>Bail-in Tool: Key Features</u></b>
<ul style="list-style-type: none"> <li>• <b>Resolution tool</b> that can be applied on a standalone basis, or in combination with, one or more of the other resolution tools and powers. Its use on a sole or combined basis constitutes a resolution action.</li> </ul>
<ul style="list-style-type: none"> <li>• Can be utilised where the three <b>conditions for resolution</b> are deemed to be met, and must be applied in such a way that meets one or more of the <b>resolution objectives</b> and respects the <b>resolution principles</b>.<sup>13</sup></li> </ul>
<ul style="list-style-type: none"> <li>• Enables the:             <ol style="list-style-type: none"> <li>Write-down and/or conversion of <b>relevant capital instruments and eligible liabilities</b> into shares and other instruments of ownership in accordance with the creditor hierarchy so as to <b>absorb losses and recapitalise</b> the institution;<sup>14</sup> or</li> <li><b>Reduction of the principal amount of claims or debt instruments</b> that are transferred to a bridge institution or under the sale of business or asset separation tools.</li> </ol> </li> </ul>
<ul style="list-style-type: none"> <li>• When used for loss absorption and recapitalisation purposes, the institution is required to submit a <b>business reorganisation plan</b> to the Resolution Authority<sup>15</sup> within one month of the application of the tool, which details, among other things, the restructuring measures that will restore its long-term viability.</li> </ul>
<ul style="list-style-type: none"> <li>• Discretion to <b>exclude</b> (on a full or partial basis) certain liabilities from the tool's scope of application is <b>available</b>, where certain conditions are met.<sup>16</sup></li> </ul>
<ul style="list-style-type: none"> <li>• In order to apply the tool as part of a resolution action, a <b>resolution order</b> must be obtained by the Central Bank on an <i>ex-ante</i> basis from the Court.</li> </ul>

## 2.2 Timeline & Key Stages

### 2.2.1 Overview

When applying the Exchange Mechanic, the timeline will be determined by the specific circumstances and complexity of the case. There are, however, a number of key stages that an institution will transition through as part of the resolution process. As illustrated in Figure 1, and in more detail thereafter, the four key stages are: (i) resolution planning; (ii) heading for resolution; (iii) execution of the resolution action; and (iv) post-resolution.

It is important to note that some of the steps within the four key stages may be implemented in tandem, rather than in a linear fashion. The steps also relate to the application of the Exchange Mechanic as part of a resolution action (i.e. where the WDC power is applied in combination with the bail-in tool). Where the WDC power is applied independently of a resolution action, some of the steps detailed in Figure 1 will not be applicable or relevant.

<sup>13</sup> Appendix 1 contains further details on the resolution objectives, conditions, principles and toolkit.

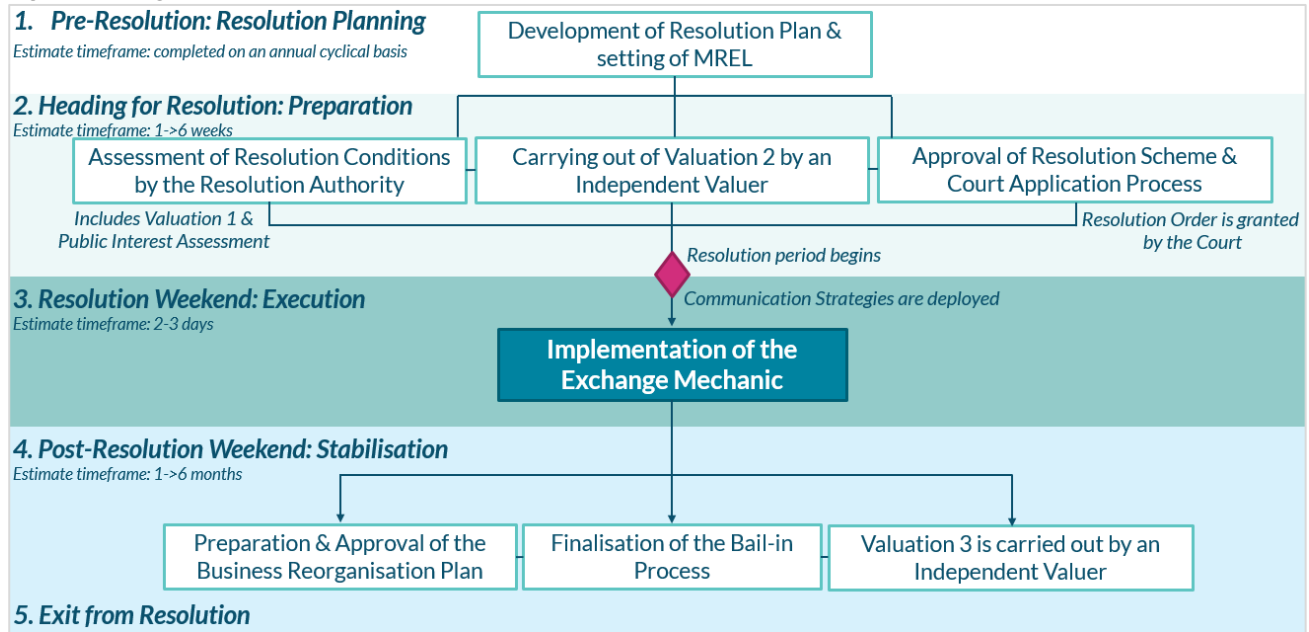
<sup>14</sup> When the bail-in tool is used for loss absorption and recapitalisation purposes, this is referred to as open bank bail-in.

<sup>15</sup> Throughout this paper, the term 'Resolution Authority' is used and, unless otherwise specified, refers to either the SRB or NRA in terms of their responsibilities for managing and implementing the resolutions of SIs and LSIs respectively.

<sup>16</sup> Mandatory exclusions to the scope of the WDC power and bail-in tool include, among other things, covered deposits and secured liabilities. In exceptional circumstances, the full or partial exclusion of certain liabilities from the application of the bail-in tool may be sought by the Resolution Authority where certain conditions are met.



Figure 1: Stages of Resolution



## 2.2.2 Pre-Resolution Stage

### Resolution Planning

During the resolution planning stage, significant preparatory steps are undertaken to ensure that the Resolution Authority and institution are able to address and manage a financial stress and/or failure event, and where relevant, to execute a resolution action thereafter, in an effective and orderly manner.

The Resolution Authority prepares a resolution plan<sup>17</sup> for each institution under its remit, and where bail-in is the preferred resolution strategy, a sufficient amount of capital and debt instruments to absorb losses, known as the minimum requirement for own funds and eligible liabilities (MREL), is set for each institution.<sup>18</sup> Institutions, that have a preferred resolution strategy of bail-in, are required to develop internal bail-in playbooks to ensure that a bail-in resolution strategy can be implemented effectively.

## 2.2.3 Entering Resolution Stage

### Assessment of Resolution Conditions

In order to take a resolution action, the Resolution Authority assesses whether, in its opinion, all of the following conditions for resolution are met:

1. The institution is **FOLTF**;
2. There are **no alternative private sector measures or supervisory actions** that can restore the institution to viability within a short timeframe; and
3. The resolution action is **necessary in the public interest**.

<sup>17</sup> A resolution plan sets out, among other things, the preferred resolution strategy in the event of failure, and the proposed implementation of same.

<sup>18</sup> MREL operates as a subset of the loss absorption capacity of an institution, and ensures that an institution maintains, at all times, sufficient eligible instruments to facilitate the implementation the WDC power and/or bail-in tool.

Appendix 1 provides more details on the resolution conditions.

### **Valuation for the Purposes of Resolution**

In advance of taking a resolution action, a “*fair, prudent and realistic valuation*”<sup>19</sup> of the assets and liabilities of the institution is required to be carried out by an independent valuer. The valuation for the purposes of resolution (commonly referred to as “Valuation 2”) is a complex assessment that requires granular information and can take a number of weeks to finalise.

Where it is not possible to complete a definitive Valuation 2 in advance of resolution and/or due to the urgency of the circumstances of the case the valuation cannot be supplemented with certain information, a provisional Valuation 2<sup>20</sup> may be relied upon.

For the Exchange Mechanic, Valuation 2 informs, among other things, the following:

- The extent of the cancellation, transfer, or dilution of shares;
- The extent of write-down and/or conversion of relevant capital instruments and liabilities required to ensure adequate loss absorption and recapitalisation;
- The volume of eligible liabilities available;
- The conversion percentages and rates; and
- Possible restructuring measures to be implemented post-resolution.

An overview of the valuation assessments completed during the resolution process are set out in more detail in Appendix 2.

### **Development & Approval of Resolution Scheme**

Where the conditions for resolution are deemed to be met, a Resolution Scheme is developed by the Resolution Authority and sets out, among other things, the selected resolution strategy (i.e. the resolution tools and powers) and the proposed implementation of same.

The Resolution Scheme is informed by a number of factors including the institution’s resolution plan (which are prepared by the Resolution Authority during the resolution planning stage), and also by the outcomes of the public interest assessment and Valuation 2.

It should be noted that for LSIs, the Resolution Scheme is prepared by the Central Bank. For SIs, and other institutions that are under the remit of the SRB for resolution purposes, the Resolution Scheme is prepared by the SRB, in co-operation with the Central Bank within the forum of the Internal Resolution Team, and endorsed by the European Commission and in some circumstances by the Council also.

### **Court Application Process**

In Ireland, *ex-ante* Court approval is required in order to implement a resolution action in respect of an institution. This involves the Central Bank making an *ex parte* application to the Court. Where the Court is satisfied on the basis of the evidence submitted that the decision of the Central Bank

<sup>19</sup> Regulation 65(1) of the BRR Regulations, Article 20(1) of the SRMR.

<sup>20</sup> Where a definitive valuation is not possible, a provisional valuation of the assets and liabilities of the institution can be carried out by the Resolution Authority. A provisional Valuation 2 is a valuation that does not comply with the requirements set out in Regulation 65 of the BRR Regulations and shall be considered provisional until an independent valuer has carried out a definitive Valuation 2 that is fully compliant with all requirements set out in Regulations 65 and 66 of the BRR Regulations.

was reasonable, it will make a resolution order and the resolution period begins immediately thereafter. Appendix 3 contains further details on the Court application process.

## 2.2.4 Resolution Weekend Stage

### **Implementation of the Exchange Mechanic**

Upon the granting of a resolution order by the Court, the Resolution Authority executes the resolution action over the “resolution weekend”.<sup>21</sup>

Where the Exchange Mechanic is applied as part of a bail-in resolution action, the following actions may be taken:

- The discontinuance or suspension of trading for certain instruments;
- The delisting or removal of certain instruments from trading;
- The issuance of interim instruments;
- The write-down and cancellation of certain instruments;
- The conversion of certain instruments to shares/equity;
- The resumption of trading for certain instruments; and/or
- The issuance of new instruments.

It should be noted that some of the actions set out above, and thus the bail-in process as a whole, may be initiated over the “resolution weekend” period but finalised in the days/weeks thereafter.

## 2.2.5 Post-Resolution Weekend Stage

### **Business Reorganisation Plan**

When the bail-in tool is used for loss absorption and recapitalisation purposes (i.e. open bank bail-in), the institution under resolution is required to submit for approval a business reorganisation plan to the Resolution Authority within one month of the application of the tool.

The business reorganisation plan should detail, among other things, the restructuring measures that will restore the institution to financial soundness and long-term viability, and an indicative timeline regarding the implementation of same (which may be a period of up to 3-5 years post-resolution).

The restructuring measures set out in the business reorganisation plan may include, by way of example, the following:

- The reorganisation of activities;
- Changes to the operational processes, systems and infrastructure;
- The withdrawal from loss-making activities;
- The restructuring of existing competitive activities; and/or
- The sale of assets and business lines.

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<sup>21</sup> For the purpose of this paper, the resolution weekend can be interpreted as commencing upon the granting of a resolution order. While a weekend is preferable in terms of executing a resolution action, this phase could start at any time and covers all processes needed for the adoption of the resolution order.

**Valuations 2 & 3**

Where a provisional Valuation 2 is relied upon in order to implement a resolution action, a definitive Valuation 2 should be carried out by an independent valuer as soon as practicable.

Another *ex-post* valuation, a valuation of difference in treatment (commonly referred to as “Valuation 3”), should also be initiated as soon as possible after the completion of a resolution action.

An overview of the valuation assessments completed as part of the resolution process are set out in more detail in Appendix 2.

## 3. Application of the Exchange Mechanic

### 3.1 Overview

Once granted, a resolution order becomes immediately effective, save to any extent that the order provides otherwise,<sup>22</sup> and the Resolution Authority will issue instructions and take appropriate action to ensure that the bail-in resolution action is executed in accordance with the terms of the resolution order.

To assist in this regard, the Resolution Authority is granted the power to “*complete, or direct other parties to complete and where directed those other parties shall complete, all the administrative and procedural tasks necessary to give effect to the exercise...*”<sup>23</sup> of the bail-in tool.

During the resolution period, the Resolution Authority also has the power to “*require the relevant authority to discontinue or suspend the admission to trading on a regulated market or the official listing of financial instruments*”<sup>24</sup> where it is necessary to ensure that the bail-in resolution action is effective or to achieve one or more of the resolution objectives.

The administrative and procedural tasks referred to above include:

- The amendment of all relevant registers;
- The delisting or removal from trading of shares or other instruments of ownership or debt instruments;
- The listing or admission to trading of new shares or other instruments of ownership; and/or
- The relisting or readmission of any debt instruments which have been written down, without the requirement for the issuing of a prospectus.

In order to conduct a resolution action that involves the application of the Exchange Mechanic, the Resolution Authority and institution are also required to identify and determine the instruments and liabilities that may be cancelled, transferred, diluted, written down and/or converted into equity and the key stakeholders who can give effect to same. Such actions are considered during the resolution planning stage, and reassessed in the run up to resolution.

### 3.2 Key Stakeholders

The successful application of the Exchange Mechanic requires the involvement of a number of stakeholders to give effect to specific actions as set out in the terms of the resolution order. The key stakeholders envisaged in this regard are set out in Table 3.<sup>25</sup>

<sup>22</sup> Appendix 3 contains further details on the resolution order procedure.

<sup>23</sup> Regulation 92(2) of the BRR Regulations.

<sup>24</sup> Regulation 123(1)(a) of the BRR Regulations.

<sup>25</sup> Table 3 is not an exhaustive list of all stakeholders that may be involved in the application of the Exchange Mechanic.

Table 3: Key Stakeholders

Stakeholder	Role
<b>Resolution Authority</b>	In order to implement the Exchange Mechanic, the Resolution Authority can issue instructions and requests to relevant parties/authorities, including, by way of example, the Special Manager (where appointed to the institution under resolution), the regulated market or other trading venues, and the central securities depository (CSD), so as to give effect to the terms of the resolution order.
<b>Institution under Resolution &amp; Special Manager (where appointed)</b>	Upon the granting of the resolution order by the Court, the institution under resolution is required, among other things, to implement all relevant internal actions and steps necessary in the application of the Exchange Mechanic. A Special Manager <sup>26</sup> may be appointed, under the terms of the resolution order, and will assist in this process.
<b>Euronext Dublin</b>	The Irish Stock Exchange was acquired by Euronext in 2018 and operates under the trading name Euronext Dublin. It functions as the National Numbering Agency (NNA) for International Security Identification Numbers (ISINs) in respect of Irish domiciled entities, and is the competent authority for listing securities in Ireland. <sup>27</sup>
<b>Euroclear Bank Belgium</b>	Since 2018, the settlement of trades in Irish equities and other exchange traded instruments has been completed by Euroclear Bank Belgium, a specialist financial institution that performs the role of CSD in that it holds securities and facilitates trading between financial market operators.

### 3.3 Discontinuation or Suspension of Trading & Delisting or Removal of Instruments

The resolution order will detail the financial instruments that are to be discontinued or suspended from trading on, or delisted or removed from, Euronext Dublin where required to ensure the effective application of the bail-in tool.

The Resolution Authority, or the institution under resolution (specifically the Special Manager, where appointed) can issue such a request to Euronext Dublin, and any other parties or authorities as considered necessary in the circumstances, to take the actions required to give effect to the

<sup>26</sup>A Special Manager replaces the management body of the institution under resolution and facilitates the implementation of the resolution action in accordance with the terms of the resolution order.

<sup>27</sup>As designated under Regulation 6 of the European Communities (Admission to Listing and Miscellaneous Provisions) Regulations 2007, as amended.

terms of the resolution order. Any such request should set out, among other things, the: name of the issuer; ISIN of the affected financial instruments; background and reasons for the request; and date and time at which the request is to take effect.

### 3.4 Write-down, Conversion & Cancellation of Instruments

The resolution order will detail the capital instruments and eligible liabilities that are to be written-down and/or converted in order to absorb losses and recapitalise the institution under resolution, in a manner that respects the creditor hierarchy.

The Resolution Authority, or institution under resolution (specifically the Special Manager, where appointed), will notify the CSD of the resolution order and the relevant write-down, conversion and/or cancellation of capital instruments and eligible liabilities to be reflected in their books.

It is also anticipated that at the point of resolution:

- a) Settlement of bailed-in securities (which have not been cancelled in their entirety) may be suspended and the relevant instruments will be frozen within the relevant CSD accounts during the bail-in period; and
- b) Transactions that have been initiated but not yet settled (i.e. in-flight transactions) at the point of entry into resolution will be allowed to complete, however this will be determined pending the circumstances of each individual case.

### 3.5 Issuing of New Instruments

Regulation 124 of the BRR Regulations provides the Resolution Authority with “*the power to create temporary instruments representing an interest in the institution under resolution and issue those instruments to affected shareholders or creditors*”.<sup>28</sup> The resolution order may, as a result, include terms regarding the creation of such instruments by the Resolution Authority and the conditions applicable to same. It should be noted, however, that the creation of new shares or other financial instruments, and the potential use of interim or temporary instruments, will be decided on a case-by-case basis.

It is envisaged that the creation of temporary or interim instruments would represent the potential right of bailed-in creditors to equity shares in the resolved institution. Where AT1 and T2 instruments are converted to CET1 instruments, interim instruments will be issued to entitled creditors, which may ultimately be exchanged for share capital of the resolved institution. The terms of the interim instrument, or class thereof, may vary depending on what is required to compensate bailed-in creditors in line with their position in the creditor hierarchy.

Where use of interim instruments is considered necessary, it is anticipated that the Resolution Authority would engage with a number of external parties to ensure that such instruments are issued and operated effectively and efficiently. The Resolution Authority may require the services of a depositary bank for the holding and administration of the interim instruments and/or shares in the resolved institution during the bail-in period. The Resolution Authority may additionally

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<sup>28</sup> Regulation 124(2)(f) of the BRR Regulations.

seek the assistance of other advisory or consultancy services as required to support the execution of the bail-in strategy.

Where valuations are completed post the resolution weekend, the Resolution Authority would announce the terms of the interim instruments, which would then allow for the exchange, by creditors, of the interim instruments for shares in the resolved institution. An overview of the valuation assessments required as part of the resolution process are set out in more detail in Appendix 2.



## 4. Appendix 1: Resolution Objectives, Conditions, Principles & Toolkit

### 4.1 Resolution Objectives

When developing a resolution strategy, the Resolution Authority is required to have regard to the resolution objectives, and to choose the resolution strategy that best achieves the objectives that are relevant in the circumstances of the case.

Table 4 below sets out the resolution objectives under the BRRD and SRMR resolution framework.

Table 4: Resolution Objectives

Resolution Objectives <sup>29</sup> <i>Required to meet at least one</i>
<ul style="list-style-type: none"> <li>To ensure the <b>continuity of critical functions</b>.<sup>30</sup></li> </ul>
<ul style="list-style-type: none"> <li>To <b>avoid a significant adverse effect on the financial system</b>, including to market infrastructures, in particular by preventing contagion and maintaining market discipline.</li> </ul>
<ul style="list-style-type: none"> <li>To <b>protect public funds</b> by minimising reliance on extraordinary public financial support.</li> </ul>
<ul style="list-style-type: none"> <li>To <b>protect depositors and investors</b> covered by the Deposit Guarantee Scheme and Investor Compensation Scheme respectively.</li> </ul>
<ul style="list-style-type: none"> <li>To <b>protect client funds and assets</b>.</li> </ul>

The resolution objectives are of equal significance and the Resolution Authority is required to balance them as appropriate to the nature and circumstances of the case.

When pursuing the objectives, the Resolution Authority is obliged to seek to minimise the cost of resolution and avoid destruction of value, unless necessary to achieve the resolution objectives.

<sup>29</sup> Regulation 61 of the BRR Regulations, Article 14 SRMR.

<sup>30</sup> A critical function is an activity, service or operation, the discontinuance of which is likely to lead to the disruption of services that are essential to the real economy or to disrupt financial stability. This may occur due to the size, market share, external and internal interconnectedness, complexity or cross-border activities of an institution, with particular regard to the substitutability, or otherwise, of the critical function.

## 4.2 Resolution Conditions

In order to implement a resolution action, the Resolution Authority must be of the opinion that all of the conditions set out in Table 5 below are met.

Table 5: Resolution Conditions

<b>Resolution Conditions<sup>31</sup></b> <i>Required to satisfy all</i>
1. The institution is determined to be <b>FOLTF</b> .
2. There is no reasonable prospect that any <b>alternative private sector measures or supervisory action<sup>32</sup></b> taken in respect of the institution would prevent its failure within a reasonable timeframe.
3. A resolution action is necessary in the <b>public interest</b> .

With regard to the first condition, Table 6 below sets out in more detail the circumstances in which an institution will be considered FOLTF.

Table 6: FOLTF

<b>Circumstances in which an institution will be considered FOLTF<sup>33</sup></b>
The institution <b>infringes</b> , or in the near future will infringe, the <b>requirements for continuing authorisation</b> in a way that would justify the withdrawal of authorisation, including because the institution has incurred, or is likely to incur, losses that will deplete all or a significant amount of its own funds;
The <b>value of assets</b> of the institution are, or in the near future will be, <b>less than the value of its liabilities</b> ;
The institution is, or in the near future will be, <b>unable to pay its debts or other liabilities as they fall due</b> ; and/or
<b>Extraordinary public support</b> is required in order to remedy a serious disturbance in the economy of the State and preserve financial stability.

In terms of the third resolution condition, a resolution action will be considered to be in the public interest where it is necessary for the achievement of, and is proportionate to, one or more of the resolution objectives, and where winding-up the institution under normal insolvency proceedings would not meet those resolution objectives to the same extent.

<sup>31</sup> Regulation 62 of the BRR Regulations, Article 18(1) of the SRMR.

<sup>32</sup> Including, for instance, early intervention measures.

<sup>33</sup> Regulation 62(3) of the BRR Regulations, Article 18(4) of the SRMR.

It is important to note that where the first and second resolution conditions are considered to be met, but the third resolution condition is not (i.e. a resolution action is deemed not to be in the public interest), the institution will be wound-up in an orderly manner under normal insolvency proceedings.<sup>34</sup>

### 4.3 Resolution Principles

The Resolution Authority, when applying resolution tools and exercising resolution powers, is required to take all appropriate measures to ensure that they are applied or exercised in accordance with the general principles set out in Table 7 below.

Table 7: Resolution Principles

General Principles Governing Resolution <sup>35</sup>
<ul style="list-style-type: none"> <li>• <b>Shareholders</b> of the institution under resolution <b>bear first losses</b>.</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Creditors</b> of the institution under resolution <b>bear losses after the shareholders</b> in accordance with the creditor hierarchy.</li> </ul>
<ul style="list-style-type: none"> <li>• The <b>management body and senior management</b> of the institution under resolution are <b>replaced</b>, other than where the retention of same, in whole or in part, is considered to be necessary by the Resolution Authority for the achievement of the resolution objectives.</li> </ul>
<ul style="list-style-type: none"> <li>• The <b>management body and senior management</b> of the institution under resolution shall <b>provide all necessary assistance</b> for the achievement of the resolution objectives.</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Persons are made liable</b>, in accordance with the relevant provisions of civil or criminal law, for their responsibility for the failure of the institution.</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Creditors of the same class</b> are treated in an equitable manner.</li> </ul>
<ul style="list-style-type: none"> <li>• No creditor shall incur greater losses than would have been incurred if the institution had been wound-up under normal insolvency proceedings (the “<b>NCWO Principle</b>”).</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Deposits</b> covered by the <b>Deposit Guarantee Scheme</b> are fully protected.</li> </ul>
<ul style="list-style-type: none"> <li>• Resolution action is taken in accordance with the <b>safeguards</b><sup>36</sup> set out in the BRR Regulations.</li> </ul>

When applying the resolution tools and exercising the resolution powers, the Resolution Authority is also obliged to ensure compliance with the Union State Aid framework, where applicable.

<sup>34</sup> The grounds available to the Central Bank to petition for the winding-up of a credit institution are set out in the Central Bank and Credit Institutions (Resolution) Act 2011.

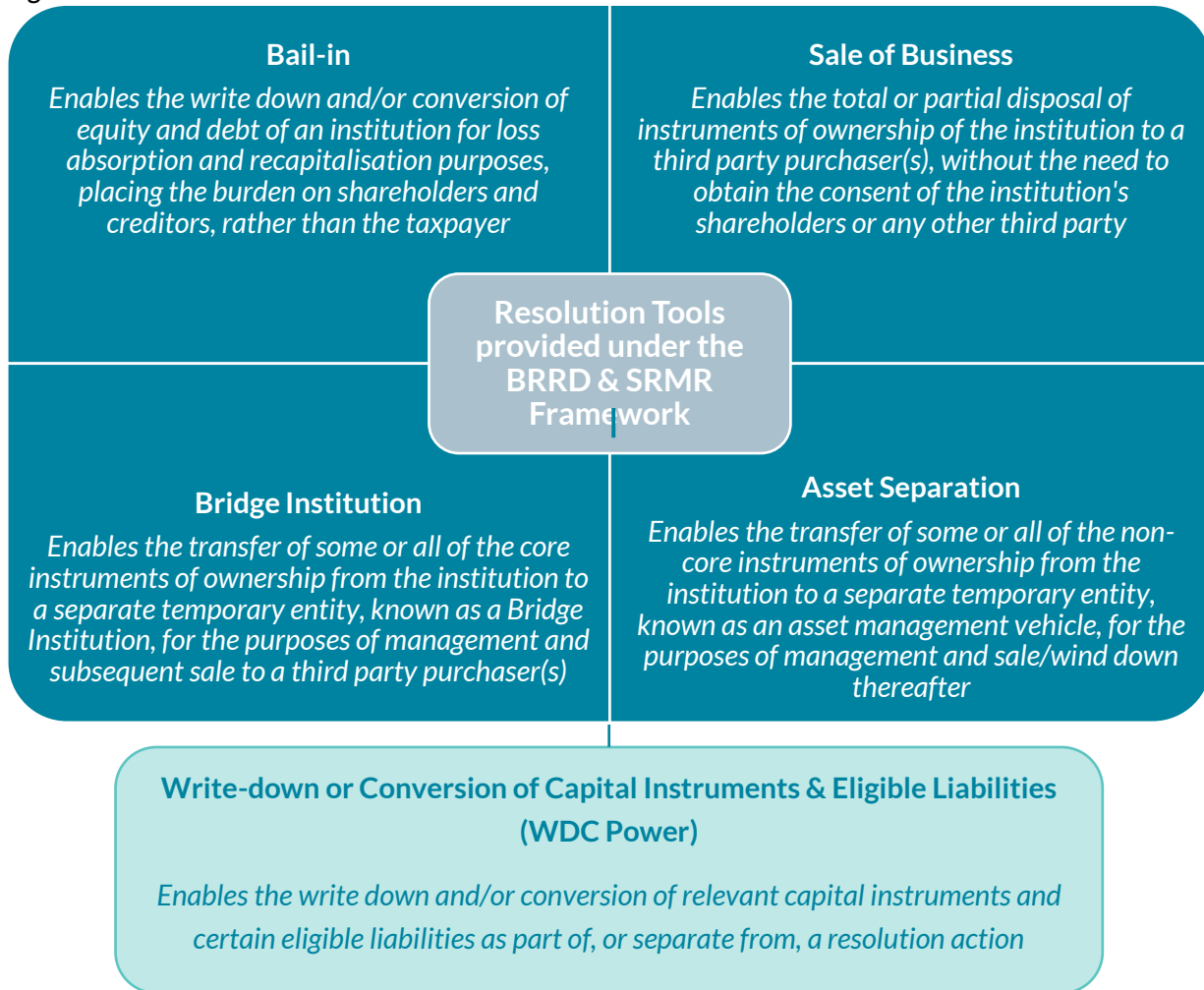
<sup>35</sup> Regulation 64 of the BRR Regulations, Article 15 of the SRMR.

<sup>36</sup> The resolution safeguards are set out in Regulations 132-142 of the BRR Regulations.

## 4.4 Resolution Toolkit

Under the BRRD and SRMR framework, four key resolution tools are provided to Resolution Authorities to manage a failure event. The resolution tools can be applied on an individual or combined basis,<sup>37</sup> and in conjunction with one or more of the resolution powers.<sup>38</sup> As already discussed, a WDC power is also provided as part of the resolution toolkit, which can be used in combination with, or independently of, a resolution action. Figure 2 below provides a high-level overview of the resolution toolkit.

Figure 2: Resolution Toolkit



It should be noted that in order to use the resolution tools, the Resolution Authority must ensure that all of the conditions for resolution are met, and the resolution tools should be applied in such a way that meets one or more of the resolution objectives.

<sup>37</sup> The asset separation tool cannot be applied on an individual basis, it must be applied in combination with one or more of the other resolution tools.

<sup>38</sup> A significant number of resolution powers are provided under the BRRD and SRMR framework including, among other things, the power to suspend payment or delivery obligations and/or termination rights, and the power to appoint a special manager to the institution under resolution.

## 5. Appendix 2: Valuations

### 5.1 Overview

Valuation is a key part of resolution process. As set out in Table 8 below and in more detail thereafter, there are three distinct valuations that are completed for specific purposes at different stages of the resolution cycle.

Table 8: Valuations

Valuation 1	Valuation 2	Valuation 3
Valuation for determining FOLTF.	Valuation for the purposes of resolution.	Valuation of difference in treatment.
Informs the decision of whether the conditions for resolution or the conditions to use the WDC power are met.	Informs the choice of resolution action to be adopted, the extent of write-down and conversion required, and/or other decisions related to the implementation of the resolution action.	Assesses whether shareholders or creditors would have received better treatment under normal insolvency proceedings.
Carried out pre-resolution on a going concern basis, and is based on accounting and prudential rules.	Carried out pre-resolution by an independent valuer, and assesses the economic value of the assets and liabilities of the institution to ensure that losses are fully recognised.	Carried out post-resolution by an independent valuer on a gone concern basis.

### 5.2 Valuation 1

In advance of making a FOLTF decision and applying the WDC power or exercising the bail-in tool, a valuation, referred to as Valuation 1, is completed. This valuation assists the Resolution Authority when undertaking its assessment of whether the conditions for resolution or the conditions to use the WDC power are met (i.e. by confirming, for instance, that the institution is failing or non-viable as the aggregate accounting value of its liabilities exceeds that of its assets).

## 5.3 Valuation 2

Before exercising the WDC power or taking a resolution action, a “*fair, prudent and realistic valuation*” of the institution’s assets and liabilities must be carried out by an independent valuer.<sup>39</sup> This valuation is referred to as Valuation 2, and should be completed on a definitive basis. For the WDC power and bail-in tool, the purpose of Valuation 2 is, among other things, to inform:

- (i) The amount by which bail-inable liabilities must be written down for loss absorption purposes and to thereby ensure that the net asset value of the institution is equal to zero;
- (ii) The amount by which bail-inable liabilities must be converted into shares or other capital instruments for recapitalisation purposes (i.e. to restore the CET1 capital ratio of the institution) and thereby to sustain sufficient market confidence in the institution and enable it to continue to meet its conditions for authorisation and carry out its authorised activities.

Valuation 2 can, in certain circumstances, be completed on a provisional basis.<sup>40</sup> However, when this occurs, a definitive Valuation 2 should be completed as soon as practicable, which may in effect occur after the Exchange Mechanic has been implemented over the resolution weekend period.

### **Write-Up Mechanism**

In circumstances where the WDC power is utilised in combination with the bail-in tool and the level of write-down and conversion applied is determined on the basis of a provisional Valuation 2, but upon the completion of a definitive Valuation 2 this level is subsequently found to be in excess of the necessary level, the Central Bank can petition the Court<sup>41</sup> to vary the resolution order to apply a write-up mechanism.

The write-up mechanism will ensure either:

- (i) An increase of the principal amount of claims or debt instruments in order to fully or partially offset the reduction in the principal amount which has already been applied; or
- (ii) An increase of the amount of shares or other capital instruments which the holder of bail-inable liabilities or relevant capital instruments receives as part of the conversion of their claims.<sup>42</sup>

In line with the application of the WDC power and bail-in tool, the write-up mechanism should be applied in a manner that respects the order of priority under national law.

<sup>39</sup> Regulations 65 and 66 of the BRR Regulations, and Article 20 of the SRMR, govern valuations for the purpose of resolution.

<sup>40</sup> A provisional valuation can be carried out where (i) an independent valuation is not possible, or (ii) due to the urgency of the circumstances of the case, the independent valuation cannot be supplemented with certain information and analysis.

<sup>41</sup> Appendix 3 contains further details on the Court application process.

<sup>42</sup> Regulation 85 of the BRR Regulations.

## 5.4 Valuation 3

As soon as possible after the application of the WDC power and/or bail in tool, another valuation, known as Valuation 3, is required to be completed by an independent valuer.<sup>43</sup> Valuation 3 is distinct from the other valuations, as it is carried out *ex-post* and operates as a key safeguard. The purpose of Valuation 3 is to assess whether shareholders and creditors incurred greater losses than would have been incurred if the institution had been wound-up under normal insolvency proceedings (i.e. whether there has been compliance with the NCWO Principle).

Where the independent valuer determines that there has been a breach of the NCWO Principle, affected shareholders or creditors are entitled to the payment of the difference from the relevant resolution fund<sup>44</sup> in compensation.

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<sup>43</sup> Regulation 133 of the BRR Regulations governs the Valuation 3.

<sup>44</sup> The relevant resolution fund will be either the national resolution fund (the Bank and Investment Firm Resolution Fund) or the Banking Union resolution fund (the SRF), which are funded via annual contributions from industry.

## 6. Appendix 3: Court Application Process

### 6.1 Ex-ante Court Application

The Central Bank, in its role as the designated NRA, is required to obtain *ex-ante* approval from the Court in order to exercise the WDC power or apply the bail-in tool. This involves the Central Bank presenting an *ex parte* application to the Court, and where satisfied with same, the Court grants the relevant order, which the Central Bank executes thereafter. This Court application process must be complied with in all cases, irrespective of whether the resolution relates to an LSI or SI.

### 6.2 Capital Instruments Order

When seeking to exercise the WDC power independently of a resolution action, the Central Bank is required to apply *ex parte* to the Court for a capital instruments order.<sup>45</sup>

Where the Court is satisfied that the procedural requirements relating to the proposed capital instruments order<sup>46</sup> have been complied with and that the determination of the Central Bank to exercise the WDC power was reasonable and not vitiated by any error of law, the Court will grant the capital instruments order in the terms of the proposed capital instruments order. The capital instruments order will have immediate effect, save to any extent that the order provides otherwise.

It should be noted that when hearing the Central Bank's *ex parte* application for a capital instruments order, the Court can vary or amend the terms from those in the proposed capital instruments order, where it is satisfied that:

- (i) There has been non-compliance with the procedural requirements relating to the proposed capital instruments order, or that the determination of the Central Bank to exercise the WDC power was unreasonable or vitiated by an error of law; and
- (ii) (ii) To do so is necessary for the purpose specified in the proposed capital instruments order.

Furthermore, within 14 days of the publication of the capital instruments order, certain impacted parties<sup>47</sup> may apply to the Court by motion on notice to set aside the capital instruments order, and upon such an application the Court may set aside,<sup>48</sup> affirm or vary the capital instruments order, or issue any directions as it considers appropriate in the circumstances.

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<sup>45</sup> The capital instruments order procedure is governed by Regulations 99-103 of the BRR Regulations.

<sup>46</sup> The proposed capital instruments order is prepared by the Central Bank and submitted to the Court as part of the application process. Other documents, such as the Valuation Report prepared by the independent valuer, are also admissible in evidence at the hearing.

<sup>47</sup> Such parties include: the institution in question, a shareholder of the institution, or a holder of a relevant capital instrument or liability affected by the capital instruments order.

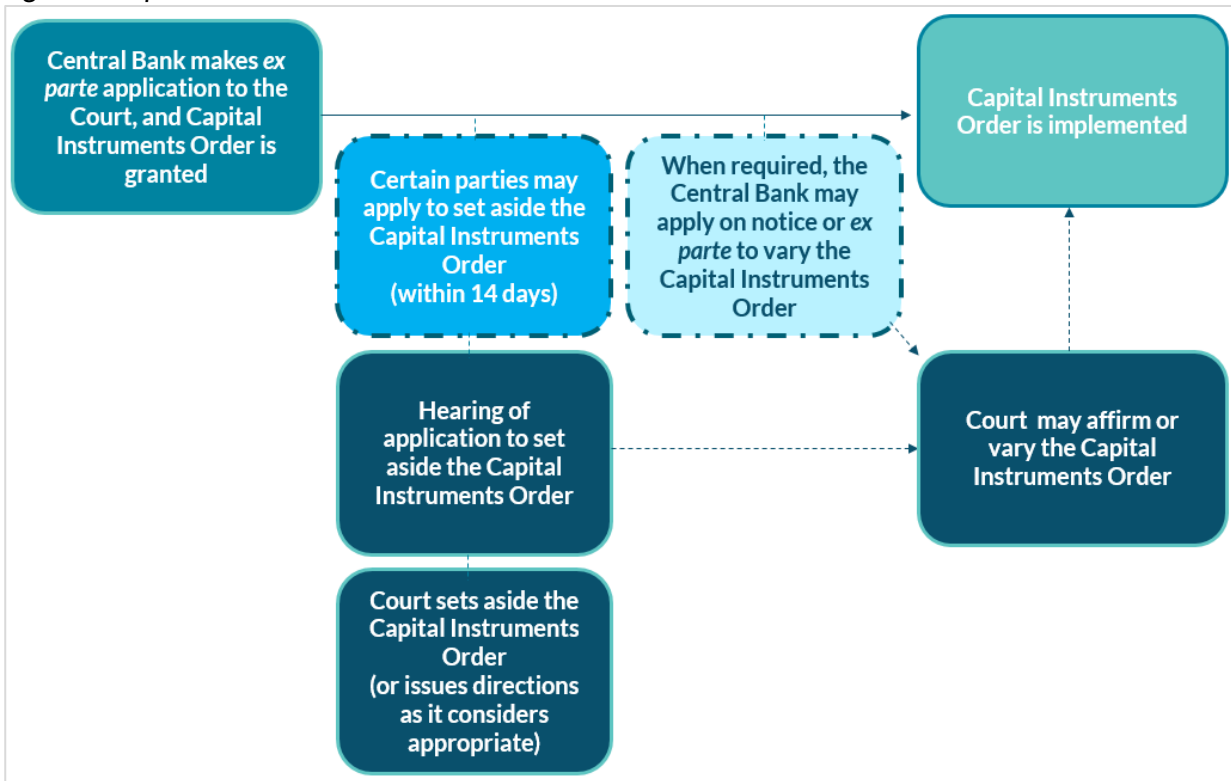
<sup>48</sup> The Court may set aside the capital instruments order where it is satisfied that (i) there has been non-compliance with the procedural requirements relating to the proposed capital instruments order, or that the determination of the Central Bank to exercise the WDC power was unreasonable or vitiated by an error of law; and (ii) it would be appropriate to do so, having regard to the reasons for making the proposed capital instruments order.



The Central Bank may also apply on notice, or *ex parte* in urgent circumstances, to the Court to vary the capital instruments order, when considered necessary to do so.

Figure 3 below illustrates the key steps in the capital instruments order procedure.

Figure 3: Capital Instruments Order Procedure



### 6.3 Resolution Order

When seeking to apply the bail-in tool, on an individual basis or in combination with one or more of the other resolution tools and powers provided under the BRRD and SRMR framework, the Central Bank is required to apply *ex parte* to the Court for a resolution order.<sup>49</sup>

Upon hearing such an application, the Court will grant the resolution order in the terms of the proposed resolution order<sup>50</sup> where it is satisfied that the decision of the Central Bank is reasonable and not vitiated by any error of law. Once the resolution order is granted, the resolution period begins and the resolution order has immediate effect, except to any extent that the resolution order provides otherwise.

It should be noted that within 48 hours of the granting of the resolution order, certain impacted parties<sup>51</sup> may apply to the Court by motion on notice to set aside the resolution order, and upon

<sup>49</sup> The resolution order procedure is governed by Regulations 104-114 of the BRR Regulations.

<sup>50</sup> The proposed resolution order is prepared by the Central Bank and submitted to the Court as part of the application process. Other documents, such as the Valuation Report prepared by the independent valuer, are also admissible in evidence at the hearing.

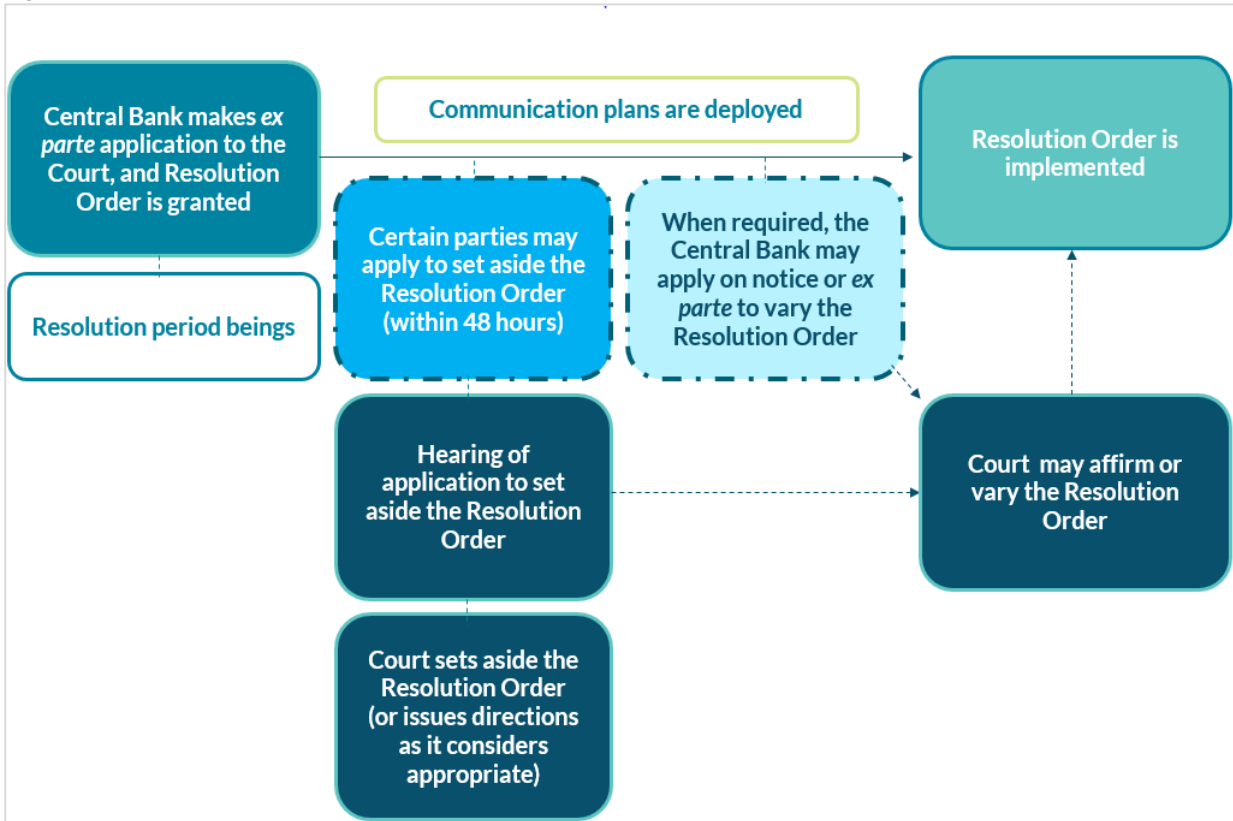
<sup>51</sup> Such parties include: the institution under resolution, a shareholder of the institution, or a holder of a relevant capital instrument or liability affected by the resolution order.

such an application the Court may set aside,<sup>52</sup> affirm or vary the resolution order, or issue any directions as it considers appropriate.

The Central Bank may also apply on notice, or *ex parte* in urgent circumstances, to the Court to vary the resolution order, when considered necessary to do so. As discussed in section 5.3, such may arise when the application of the write-up mechanism is required in order to rectify the level of write-down and conversion following the completion of a definitive Valuation 2.

Figure 4 below illustrates the key steps in the resolution order procedure.

Figure 4: Resolution Order Procedure



<sup>52</sup> The Court may set aside the resolution order where it is satisfied that the decision of the Central Bank was unreasonable and vitiated by an error of law.

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