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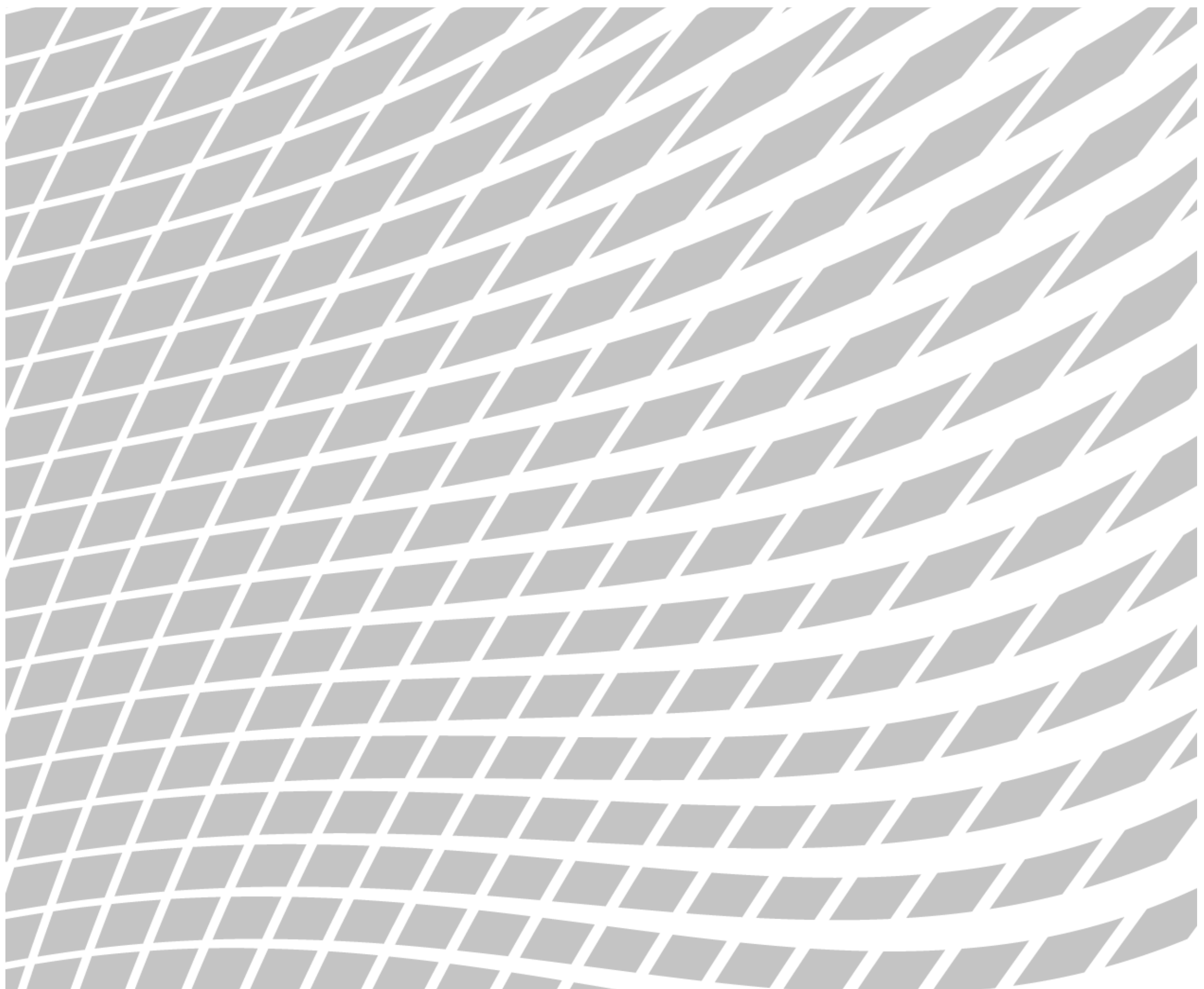
Resolution of global systemically important banks

FINMA position paper on Resolution of G-SIBs



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1 Executive summary

This position paper explains FINMA's resolution strategy for the global systemically important banks in Switzerland (G-SIBs). It outlines ways in which it can be implemented operationally in cooperation with foreign supervisory and resolution authorities.

Following the financial crisis of 2008 and in line with the Financial Stability Board's ("FSB") Key Attributes of Effective Resolution Regimes for Financial Institutions ("FSB Key Attributes") published in October 2011, FINMA has developed a resolution strategy for Switzerland's global systemically important banks. The work benefited greatly from the open and constructive consultation between all authorities that together form the Crisis Management College.[1] The aim is to create a favourable environment for the successful resolution of these banks in the event of a crisis. Such resolution must ensure the continuity or orderly wind-down of systemically important functions, prevent a negative impact on the global and national financial systems and the relevant economies and avoid recourse to state aid as far as possible.

FINMA's preferred resolution strategy for these financial groups consists of a resolution led centrally by the home supervisory and resolution authority and focused on the top-level group company. This is called the "single point of entry" ("SPE") approach. Creditors of the parent bank or top-level holding company bear a share of the losses, allowing the entire financial group to be recapitalised. This recapitalisation must be sufficient to meet the needs of all group companies in Switzerland and abroad. This buys time with regard to restructuring the affected banks so that they can return to viable operation. The fall-back option is a break-up of the group which may include a sale of entities and business lines or a wind-down of the non-viable parts of the group while the systemically important functions are preserved.

The recent entry into force of comprehensive legislation[2] to mitigate the "too big to fail" problem in Switzerland has been well-publicised. The new law provides the legal basis for the measures FINMA may have to take in resolution proceedings.

This position paper also addresses a variety of issues faced in implementing this strategy in the national and international context. FINMA will continue to work with the competent authorities and the banks concerned on resolution planning in order to improve the conditions for putting the strategy into practice effectively and without delay in the event of a crisis.

FINMA and other regulatory authorities are currently working on resolution strategies and resolution plans for the Swiss G-SIBs. This position paper sets forth the actual status of these efforts. For the sake of good order it deserves mentioning that this paper represents the preliminary results of the work and should not prejudice any further work and deviating actions. FINMA and the other authorities involved reserve therefore the right to make the changes necessary depending on new developments.

[1] Specifically, these are the authorities of the United Kingdom, the United States of America and Switzerland.

[2] The provisions in the Banking law became effective on September 1, 2011 and March 1, 2012 respectively, the Banking Insolvency Ordinance became effective on November 1, 2012 and the Banking Ordinance on January 1, 2013.

2 Purpose of the paper

This paper outlines how large banks with significant cross-border business can, in the event of a crisis, be resolved in such a way that the integrity of the group as a whole is preserved, avoiding a disorderly insolvency. Given the structure/nature of the largest Swiss banks, a bail-in at the parent bank is the most suitable strategy to achieve these goals. Following initial conceptual considerations, the aim here is to take the next step by outlining implementation options.

This paper therefore creates transparency concerning the preferred resolution strategy for the various stakeholder groups involved. The publication of the resolution strategy provides increased predictability for host supervisory and resolution authorities, the banks concerned, and their creditors and investors. At the same time, it allows FINMA to flexibly adapt the implementation of its strategy to the prevailing circumstances.

Last but not least, reference should be made to Switzerland's particular situation, which makes developing robust resolution concepts a matter of some urgency. Switzerland's financial system is particularly exposed to risk due to the two systemically important banks headquartered in the country, as the difficulties of a major Swiss bank in 2008/2009 made all too clear. The aggregate on and off-balance sheet assets of the two big banks, totalling some CHF 2.5 trillion as at the end of 2012, are still four times as high as Switzerland's gross domestic product (CHF 600 billion). The Swiss parliament has expressed strong political will to avoid any state support to banks in future ("bail-out") and implemented higher capital requirements for systemically important banks which go well beyond international standards.

In view of the facts described above, it is of particular importance to present a global resolution strategy for the two Swiss G-SIBs that takes account of this situation while at the same time serving as a basis for an internationally coordinated resolution of the two banks.

3 The "too big to fail" problem

The recent financial crisis showed that the market is not well-placed to withstand the exit of large and heavily interconnected financial institutions due to the negative impact this would have on the stability of national economies and the global financial system. Bankruptcy proceedings immediately interrupt business operations and destroy further value as a result of the transition to a "gone concern". An orderly wind-down of groups of this complexity in a short period of time has not proved feasible to date. Since such financial institutions are too big to fail given their systemic importance, the State is under pressure to rescue them. This exposes public finances to risk, infringes on parliament's budgetary sovereignty and can also lead to unforeseeable costs for the national budget affecting the country's economic progress. Such intervention by the state cannot be justified from a regulatory policy perspective. In a free market system, it must be possible for a failed business to exit the market in an orderly fashion. An implicit state guarantee weakens market forces, favours excessive risk-taking by market participants to the detriment of the wider population and distorts competition.

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4 Possible resolution approaches

Given the challenges outlined above, the FSB Key Attributes state that the objective of an effective resolution regime is to make the resolution of financial institutions feasible. This should be possible without severe disruption to the financial system and without exposing taxpayers to loss, while protecting vital economic functions through mechanisms which make it possible for shareholders and unsecured and uninsured creditors to absorb losses in a manner that respects the hierarchy of claims in liquidation.

For systemically important banks, prior planning is absolutely essential – both for stabilisation in a crisis and for resolution by the relevant authorities or central banks. Home and host supervisory authorities should coordinate within crisis management groups to prepare resolution measures. Since there is no prospect of global legislation on bank insolvency in the foreseeable future, mutual recognition of resolution plans for financial groups with cross-border activities should be ensured through co-operation agreements. Unilateral action should be avoided wherever possible.

The FSB is currently working on conceptual proposals[3] along two approaches that may also be used in combination with each other.

The SPE is led by a single resolution authority within the jurisdiction responsible for the consolidated supervision of the group and is applicable at the top holding or parent company level. This company is put into resolution while the competent resolution authority takes control. It recapitalises the subsidiaries within the group that have failed and ensures the access to liquidity for the group entities. The assets and operations of particular subsidiaries are preserved on a going-concern basis, without necessarily entering resolution. Host authorities may, however, need to exercise powers to support a resolution action taken by the home authorities. SPE resolutions would generally keep the critical functions of the company operating within the same group, at least in the initial resolution phase. Subsequent to a bail-in the business is likely to be subject to significant restructuring.

In contrast, the multiple point of entry approach (MPE) involves the application of resolution powers by two or more resolution authorities to multiple parts of the group, and is likely to result in a break up of the group into separate parts. The group could be split on a national or regional basis, along business lines, or a combination of the two. The powers applied to the separate parts need not be the same and could include different options being applied at different times across the group, such as bail-in within resolution, use of a bridge entity, transfer of business or orderly wind-down.

[3] Financial Stability Board, Recovery and Resolution Planning for Systemically Important Financial Institutions: Guidance on Developing Effective Resolution Strategies, 16 July 2013; http://www.financialstabilityboard.org/publications/r_130716b.pdf

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5 Single point of entry bail-in: the preferred resolution strategy

5.1 Overview

The preferred resolution strategy of FINMA for Swiss G-SIBs is an SPE bail-in. The resolution is centrally led by the home supervisory and resolution authority (in this instance FINMA itself) and focuses on the parent bank and, where appropriate, also the highest-level non-operating holding company. The strategy is in line with that set out in the joint paper published on this topic in 2012 by the Federal Deposit Insurance Corporation and the Bank of England.[4] It has been developed and will be carried out in close cooperation with host regulators – in particular those in the United Kingdom and the United States. The strategy provides for shareholders and creditors at the highest level of the group to bear the losses while business operations are maintained. The group is recapitalized so as to make thorough restructuring possible.

The aim is to preserve the banking group as a whole in recapitalised form. The group structure remains intact, business operations can continue without interruption, and the continuity of economically critical functions is assured. Recapitalising via a bail-in buys time to address the necessary adjustments to the business model[5] in a carefully considered manner.

If, however, when resolution proceedings are entered, it becomes clear that a bail-in will not be sufficiently effective or is not sufficiently likely to succeed, the break-up of the group comes into play as a less desirable fall-back strategy.

5.2 Legal basis

Switzerland has amended the existing special resolution regime for banks by implementing in primary and secondary legislation the resolution tools and other elements that are required by the FSB Key Attributes.

FINMA, as the insolvency authority, bears responsibility for the stabilisation, recovery and resolution of banks and securities dealers. It has the option to enter into cooperation agreements with other supervisory and resolution authorities. In the event of impending insolvency, FINMA is authorised to take immediate action including the implementation of so-called protective measures.

Corporate actions are a core feature of restructuring. Within the legal framework, FINMA can in particular mandate a bail-in or transfer assets and liabilities between legal entities in order to ensure the continuation of essential banking services. Executing a bail-in means issuing compulsory instructions to convert debt into equity capital, thereby turning creditors into shareholders. There is also the option to oblige creditors to bear a share of losses via writing down their principal, requiring

[4] Federal Deposit Insurance Corporation and the Bank of England, Resolving Globally Active, Systemically Important, Financial Institutions, 10 December 2012.

[5] For example, change of management, scaling down unprofitable activities, separating distressed positions, selling non-core business lines.

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them to waive some or all of their claims. Such "bail-in" measures complement contingent convertible capital ("CoCos"), of which the Swiss systemically important banks are obliged to hold a considerable amount.

A certain period of time is necessary to execute resolution measures. Therefore, contracts between the affected institution and its counterparties may not be terminated for a maximum of 48 hours. Once the deferral period has expired, counterparties are again entitled to make use of their contractual (termination) rights to the extent that there has been a subsequent default.[6]

In the context of restructuring and liquidating banks, the courts have an independent function in so far as creditors can challenge FINMA's decisions both in restructuring and liquidation proceedings. In the case of systemically important banks, this is limited to ensuring the ex-post balancing of interests, e.g. by means of compensation for a specific set of creditors; this means that FINMA's decisions cannot be reversed.

5.3 Business model, group and funding structures

The SPE is the best solution for the current group structure and the global business models of Switzerland's two systemically important banks. Both banks are currently globally active, highly integrated wholesale institutions with concentrated funding and risk management structures, a central booking policy and strong Swiss-based parent banks. Even where a non-operating holding company heads the group, the group structure still does not correspond to a U.S.-style holding concept. Instead, there is a parent bank structure below the holding company. Under the current structures, the group companies are predominantly owned by the parent bank and not directly by the non-operating holding company. The banks are characterised by a broad international network of subsidiaries and branches, particularly in the UK, the U.S. and the APAC states.[7]

The parent banks cover almost the entire internal financing needs of each group. Debt is mainly issued centrally, including via foreign branches, and, to a lesser extent via special-purpose vehicles. Within each group, funding is distributed to subsidiaries in Switzerland and abroad in the form of intra-group loans. Debt issuance and the appropriation of funding in countries other than Switzerland (for exclusive use outside Switzerland) serve to avoid the Swiss withholding tax on coupon payments for bonds and loans. The financing needs of the Swiss business areas are, for their part, fully funded by creditors and depositors of the Swiss parent banks. From a geographic point of view, therefore, there is a liability overhang in Switzerland, and large intra-group positions exist with foreign subsidiaries as counterparties. Both banks currently have subordinated and senior unsecured debt at the parent level equating to between 30% and 40% of their risk-weighted assets, on top of equity and contingent capital which together will amount to some 19% of risk-weighted assets once the Swiss capital regime for these banks is fully phased in by 2019.

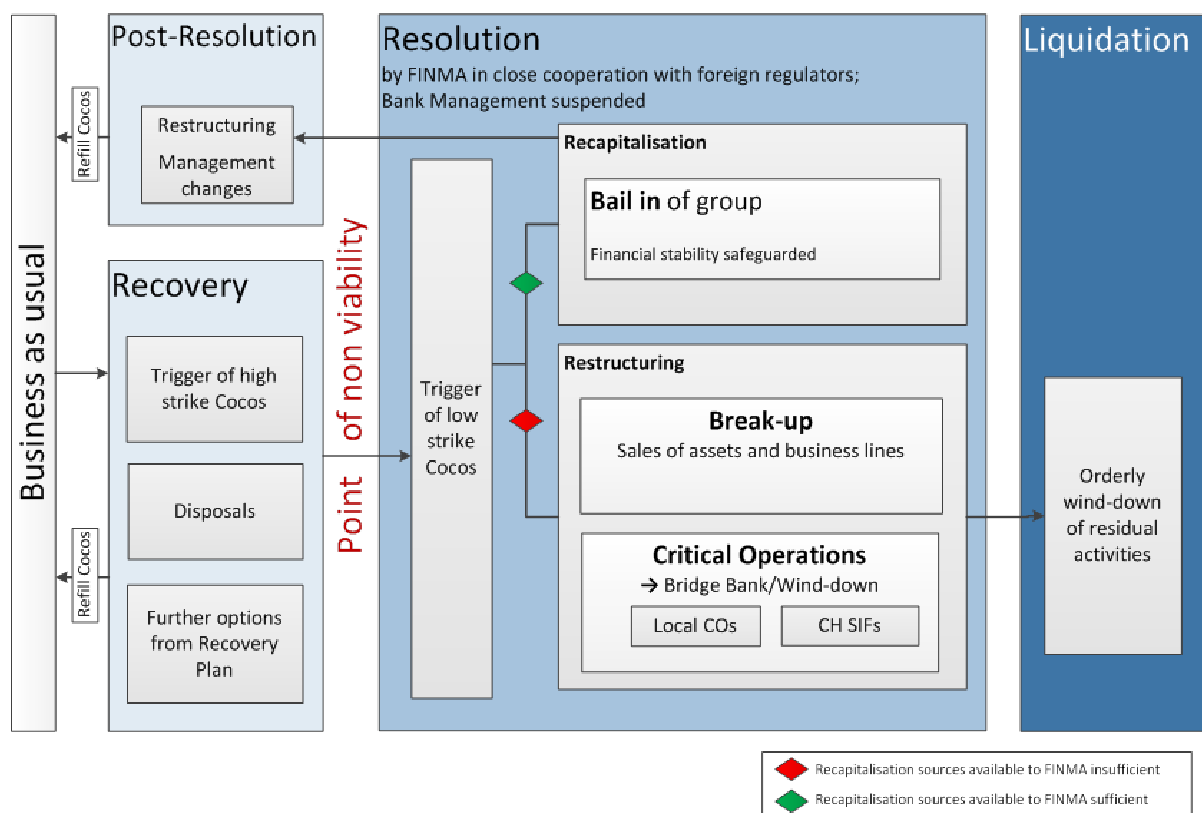
[6] It should be noted that there are currently no legal concepts available that would allow other jurisdictions to assist Switzerland in the enforceability of the stay.

[7] Asia-Pacific area, primarily Singapore, Hong Kong, Australia and Japan in this instance.

An MPE bail-in, on the other hand, would not be viable due to the lack of decentralised funding and the fact that the foreign subsidiaries do not have sufficient and appropriate liabilities outside the confines of the group to be used in the bail-in.

6 Use of resolution instruments during a financial crisis

The following diagram illustrates the stages of a crisis and the respective decisions and measures to be taken:



6.1 Failure to stabilise

In a crisis, the banks would initially put the recovery measures detailed in their recovery plans into place under their own responsibility, but with close involvement on FINMA's part. The recovery phase is significant for the subsequent resolution phase because, following the conversion of CoCos when the level of common equity tier 1 ("CET1") reaches or falls below 7% of risk-weighted assets, new equity capital will become available which may be sufficient to avert resolution. For the two Swiss G-SIFIs, this process would – once fully funded – provide fresh equity capital of around CHF 10 billion for

each bank. In addition, further measures to strengthen the capital and liquidity base would be implemented, including the sale of entire business lines.

6.2 Point of non-viability (PoNV) – the resolution trigger

The preferred resolution strategy is activated on a coordinated basis with host regulators if recovery does not successfully lead to a stabilisation of the group. Resolution is triggered when there are reasonable grounds for suspecting that a bank is over-indebted or experiencing serious liquidity problems or when it fails to meet its capital adequacy requirements within a deadline set by FINMA.[8] This is internationally referred to as the point-of-non-viability ("PoNV"). The capital trigger is met for the financial group on a consolidated basis or at the individual parent bank entities at the latest when total capital reaches 8% of the risk-weighted assets[9] or when the level of CET1 reaches or falls below 5% of the risk-weighted assets. FINMA has certain discretion in determining whether or not the trigger is hit.[10] International cooperation is crucial at this point. If host supervisors assess any of the group entities in their jurisdiction to reach the PoNV according to the respective national insolvency laws, they will give immediate notice to FINMA.

6.3 Early intervention and protective measures

At the PoNV, contingent instruments would generate approximately CHF 15 to 20 billion of fresh capital for each bank,[11] providing substantial loss-absorbing potential. At the same time, FINMA assumes control of the banking group. It will appoint an administrator and issue directives to the governing bodies of the bank to make preparations to implement the SPE strategy and withdraws the power of representation from the governing bodies. FINMA will forbid the bank from making or accepting payments on certain debt subject to bail-in, as far as this is considered necessary for the achievement of the resolution objectives.

There is no automatic mechanism between triggering convertible capital at the PoNV and launching local emergency plans to safeguard systemically important functions in Switzerland and abroad.

6.4 Resolution proceedings

FINMA will then institute official resolution proceedings,[12] approve a formal resolution plan and disclose it to the public in adequate manner. A major condition is that there is a reasonable prospect of the entire bank or financial group being successfully restructured.[13] In addition, the resolution will be

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[8] Article 25 para. 1 Banking Act.

[9] Article 42 para. 4 Capital Adequacy Ordinance.

[10] Article 21c para. 2 Banking Ordinance.

[11] Depending on the rebates for improvements of resolvability on the progressive capital component this figure may be reduced.

[12] Art. 28 para 1 Banking Act.

[13] Holding companies should in future be included in the scope of FINMA's resolution competenceby amending the Swiss Banking Act accordingly.

carried out in a way such that all creditors receive at least what they would have received in a bankruptcy case. Creditors that are worse off, under the restructuring, will be compensated.

The resolution plan sets out the basic elements involved, including the bank's future capital structure and business model after restructuring. In the case of systemically important banks, even the majority of the creditors do not have the power to reject the restructuring plan approved by FINMA, contrary to all other Swiss banks where a capital majority can block a bail-in. The resolution measures are applied to the specific issuers of the bail-in debt. These are the parent banks and their foreign branches, and – once FINMA is given responsibility for their resolution – the holding companies and their special purpose funding vehicles.

7 Decision taking in resolution

FINMA takes the decision whether or not the SPE approach can be applied in close cooperation with national and international stakeholders. The key factor in this decision is whether there is a clear prospect of a successful bail-in restoring market confidence and returning the restructured bank to a "business-as-usual" mode. Assuming that there is a window during which the bank group can be restructured primarily through capital measures,[14] the key question arises as to how much time the authorities have in which to decide whether to proceed with a bail-in. It is essential in any case to consider very carefully in the short time available – e.g. over a weekend – whether bail-inable resources are sufficient. This judgement must at least include the following considerations: the initial assessment of the available "bail-inable" debt, the likely scope of the bail-in, plus potential obstacles (e.g. the identification and evaluation of legal and operational risks).

7.1 Valuation

In assessing whether or not a bail-in is viable, FINMA must obtain a clear view of the bank's financial situation. The main aim of the valuation required for this purpose is to gauge and verify the extent of losses and the need for recapitalisation. Care must be taken to ensure that the bank's internal know-how and the necessary information are available at short notice. The valuation must be at least provisionally completed before the type of resolution is decided or the bail-in is carried out. The valuation should be prepared during the recovery phase and finalised no later than 10 days after the point of non-viability is reached. It must be both conservative and prudent.

The focus of the valuation is on the most important and most volatile assets of the units in which losses have arisen. A loss forecast for at least the following year must also be produced[15] as undertaking further recapitalisation at a later date will most probably not be feasible. A bail-in can only be carried out once. To clear up any remaining uncertainties, a deliberately cautious recapitalisation (or "over-

[14] This type of resolution strategy is generally referred to as "open bank resolution". In other words, the bank is deemed to be viable and retains its licence. In contrast, "closed bank resolution" entails restructuring measures and the withdrawal or amendment of the bank's licence.

[15] This time period is based on the loss history of the financial crisis from 2008 to 2009.

bail-in") could be expedient, with provision for compensation after the fact as soon as the actual extent of the losses is known. This would require a further and more detailed valuation exercise after the bail-in.[16]

7.2 Potential for covering losses

One decisive condition for an SPE bail-in is the quantity of liabilities available for bail-in. These liabilities must have been issued on the market to third parties preferably by the highest-level holding company. They must be sufficient to cover the anticipated recapitalisation needs of the consolidated group as well as those of all group companies. Fundamentally, according to the Swiss special resolution regime for banks, all claims vis-à-vis banks – with a few clearly defined exceptions – are subject to the regime of compulsory conversion of debt into equity or compulsory waiving of claims ("writedown"). However, all privileged claims under regular bankruptcy law (e.g. the claims of employees in particular) are excluded as well as client deposits up to the limit of the guarantee of 100,000 Swiss Francs per depositor. Secured claims and claims subject to offset are also neither convertible nor subject to a haircut.

Both banks currently have a high proportion of old-style capital, which will, over time, cease to be eligible as regulatory capital, but which are available as first-choice instruments for a bail-in on account of their subordination. Both banks currently hold between 30% and 40% of their risk-weighted assets in subordinated debt and senior unsecured debt including structured notes. A common feature of the Swiss G-SIB's bail-inable liabilities is that a significant amount is issued out of foreign branches of the Swiss parent (in the United Kingdom, Channel Islands and the United States) and is governed by the non-Swiss law, hence increasing execution risks of a bail-in. FINMA does have bail-in responsibility for these branches. However, local regulators may be authorized to take possession over the branches by statute.[17] This represents an impediment for which mitigants will have to be carefully explored. Structured products, short-term debt and trading positions fall into the scope of the bail-in, providing this does not prejudice resolution objectives, in particular safeguarding financial stability. Uninsured deposits of around 300 bn Swiss Francs per bank are also potentially subject to bail-in, but only if all other debt has already absorbed losses. In summary, it can be assumed that the combination of convertible capital and an SPE bail-in would be sufficient to cover very substantial losses.

7.3 Fundamental legal principles

FINMA is bound by three fundamental principles in connection with implementing a bail-in.

Firstly, the hierarchy of creditors should be observed. A bail-in requires the prior cancellation of existing shares and other regulatory capital, including that obtained through the conversion of contingent capital instruments. Subordinated claims follow, then all other claims, and only as a last resort

[16] In particular Article 31b Banking Act.

[17] In particular, certain state and Federal laws permit U.S. regulators to seize assets of U.S. branches and other assets in the United States of an insolvent foreign bank and to apply such assets first to satisfy creditors of the U.S. branches, before returning any excess to the home office of the bank. The result is to create a preference for creditors of the respective branches, such that their recovery is generally significantly higher than if they were left to pursue claims in liquidation proceedings.

uninsured and not privileged deposits are to be converted into new share capital. In the case of applying haircuts, FINMA has the option of deviating from this principle and sharing the losses between several categories of creditors.

Secondly, the general principle of equal treatment should be observed. Creditors in the same class should be held liable to the same extent. However, legal or economic reasons may make it impossible for a bail-in can be applied to the same extent to all claims in the same class.[18] The relevant legal framework itself draws a distinction in that non-privileged deposits can only be bailed in after the other unsecured senior claims. The principle of equal treatment is not absolute but instead allows for (limited) deviations. In the cases described above, the recently passed legislation on bank restructuring permits exceptions within narrow limits as long as they are clearly geared to system stability. This is supported by the new procedural restriction on creditors' rights to approve or appeal the restructuring plan of systemically important banks.[19] Although they would not be able to prevent the restructuring plan, disadvantaged creditors may be granted compensation after the fact.

Thirdly, in a restructuring, as an absolute limit, any creditor has to receive at least what he would receive in liquidation – based on the hypothetical recovery rate or liquidation dividend. If this "no creditor worse off" test does not lead to a positive result for each class of creditors, this does not mean that the restructuring procedure could not be pursued, but that creditors who are worse off would have to be compensated ex-post.

Deviation from one of the three principles will not cause the restructuring plan to fail. For systemically important banks, contrary to the general rules, not even a group of creditors representing the majority of third-class debt can reject the restructuring plan because restructuring focuses on protecting the financial system and the economy as a whole.[20] If an appeal by a creditor or an owner against the approval of the restructuring plan is upheld, the court can award ex-post compensation, but it cannot reverse the measures taken.[21]

7.4 Business continuation

The continuation of the financial group's business operations throughout the SPE bail-in and the availability of sufficient liquidity are crucial to the bail-in's success. It must be possible to continue offering the full range of banking services, and the staff and infrastructure must be able to function as normal. Temporary termination rights for certain contracts and contractual relationships will be suspended by order of the authorities and in coordination with host regulators, although amendments to international standard contracts are highly desirable in order to remove potentially disorderly impact of contracts being automatically terminated. Ideally, persuasive communication about the bail-in should build enough trust among the banks' contractual partners to ensure that they no longer have any incentive to make use of their termination and deferral rights.

[18] In addition to this, the banks' position is that a bail-in concerning a substantial quantity of liabilities that affect their banking operations would run counter to the "open bank" approach, so they draw a distinction between trading or transactional liabilities and financing liabilities.

[19] Article 24 para. 4 and Article 31a para. 3 Banking Act.

[20] Article 31a para. 3 Banking Act.

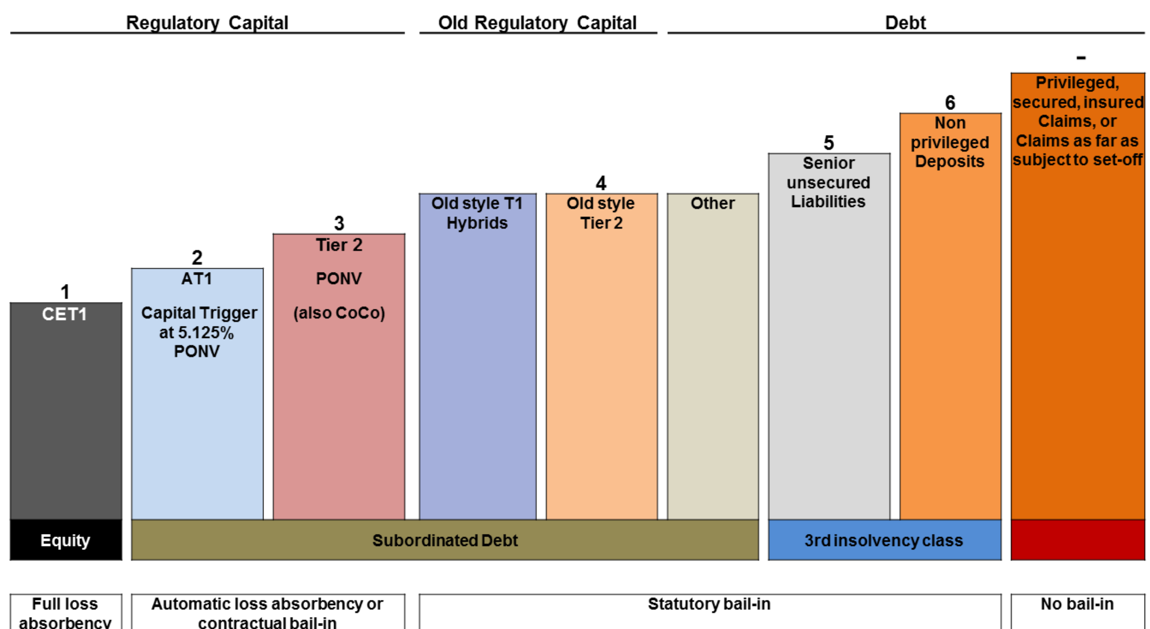
[21] Article 24 para. 4 Banking Act.

7.5 Execution of a bail-in

Ideally host authorities would be in a position to concretely support the FINMA-mandated bail-in over debt issued out of foreign branches by issuing a “complementary” order. This reduces the likelihood of the bail-in being successfully challenged in foreign courts. Further legal certainty may be achieved by incorporating “bail-in clauses”[22] as well as Swiss law and jurisdiction in the debt instruments’ terms and conditions. It is crucial that before markets open after a decision to resolve a G-SIB, the authorities and central banks involved issue a joint, public declaration to the effect that a bail-in is being implemented, and will lead to a successful recapitalisation of the group, along with preliminary information on the expected haircuts for each group of creditors, and a timeline for further steps.

A bail-in requires first the elimination of existing share capital and other regulatory capital, including that obtained through the conversion of contingent capital instruments. FINMA will then determine the ratio of equity the creditors of each rank receive for their claims and so who will own the bank and in which proportion. Partial or full writedowns are possible in addition to, or instead of, the conversion of debt capital into equity capital. When FINMA instructs creditors to waive their claims, it is not obliged – in contrast to the procedure for converting debt into equity – to completely wipe out the junior creditors before calling on the next senior category of creditors to share in the loss. This means that FINMA can distribute a loss across a range of creditor groups, which substantially boosts flexibility.

The chart below shows the sequence in which the bail-in is applied to the individual debt categories following the reduction in share capital:



[22] Creditors will explicitly recognize FINMA’s bail-in authority in the terms and conditions.

Foreign supervisory and resolution authorities have a major interest in fresh capital established by the bail-in at top group level being down-streamed to cover losses on subsidiary level, if any. There are no hurdles to the free flow of funds and liquidity in an SPE resolution scenario, and FINMA will ensure the downstreaming of capital and liquidity to where it is needed.

7.6 Fallback scenario: restructuring in the context of "closed bank resolution"

If, however, it is clear from the outset that a bail-in is not possible or if this becomes clear subsequently,[23] it is impossible that the entire bank can be rescued. Although in this situation significant capital would be available for each of the banks as a result of the low-trigger CoCos, the Swiss and any other local emergency plans would probably need to be executed. The appropriate (emergency) measures for protecting critical functions would be mandated. These functions will be maintained, sold off or wound down in an orderly manner. The remaining parts which are not systemically relevant will be wound down or subject to liquidation. The orderly restructuring or resolution of the bank's other activities would still be extremely wide-ranging and complex.

8 Conclusion and outlook

FINMA is convinced that the SPE bail-in as presented in this paper is the optimal strategy to achieve the resolution objectives. The Swiss G-SIBs have enough bail-inable debt to cover substantial losses, and these liabilities also stem from the right issuers (branches of the parent banks) and are of the right quality. The challenges lie in putting the bail-in into operation and accomplishing a high degree of legal certainty while avoiding conflicts with the principle of equal treatment as regards external creditors. The on-going resolution planning process is focussing on bail-in, whereas restructuring measures are prepared in parallel.

To improve the certainty in implementation of an SPE bail-in, cooperation agreements with host resolution authorities should be pursued, and a legal basis for cooperation and support should be created in the most important host countries. This should provide sufficient assurance that the SPE bail-in will be recognised in both home and host jurisdictions.

[23] However, only very rarely should a bail-in be announced but not implemented.