



Article 55 Bank Recovery and Resolution Directive

Chris Bates

10 May 2015

C L I F F O R D
C H A N C E

Article 55 BRRD

Purpose

- Ensure that resolution authorities have power to bail-in all liabilities of in-scope entity, including those governed by a non-EU law

Requirement

- Applies to all contracts entered into by in-scope entities creating any liability:
 - If governed by the law of a non-EU state
 - Unless the liability is an excluded liability
- Contract must contain a term recognising that liability is subject to bail-in powers and agreeing to be bound by any resulting reduction/cancellation/conversion of the claim
- Except if resolution authority determines that bail-in can be given effect under the foreign law or a binding agreement with non-EU state
- Resolution authority may require legal opinion
- MREL eligible liabilities require effective term

Entity scope

- EU banks and qualifying investment firms
- EU holding companies of those banks/firms
- EU financial institution subsidiaries of the above
- (May be affected by national implementation)

Timing:

BRRD: EU Member States must bring rules into force on 1 January 2015 but can delay application of Art. 55 till 1 January 2016

UK: From 19 February 2015, PRA rules apply Art. 55 to unsecured debt instruments issued by UK in-scope entities

From 1 January 2016, PRA/FCA rules apply Art. 55 to all relevant contracts of UK in-scope entities

Grandfathering: liabilities issued/entered into before Member State applies its implementing requirements

Excluded liabilities

- EU insured deposits (up to level of cover)
- Deposits by individuals and SMEs with EU or non-EU branches of EU banks
- Secured liabilities, including covered bonds (to the extent of the security)
- Liabilities from holding client assets or client money (if protected under insolvency law)
- Liabilities arising as a fiduciary (if protected under insolvency law)
- Liabilities to “institutions” (non-group) with original maturity < 7 days
- EU systems designated under Settlement Finality Directive: liabilities to operator and participants with remaining maturity < 7 days
- Liabilities to:
 - Employees: accrued salary, pension benefits (but not variable remuneration)
 - Commercial or trade creditor for goods or services critical to daily functioning of its operations, incl. IT, real estate
 - Tax and social security authorities (if preferred under local law)
 - Contributions due to EU deposit guarantee schemes

Note: EBA draft RTS specifying the content of the required contractual term and the extent of exclusions

Worldwide contact information

36* offices in 26 countries

Abu Dhabi

Clifford Chance
9th Floor, Al Sila Tower
Abu Dhabi Global Market Square
PO Box 26492
Abu Dhabi
United Arab Emirates
Tel +971 (0)2 613 2300
Fax +971 (0)2 613 2400

Bucharest

Clifford Chance Badea
Excelsior Center
28-30 Academiei Street
12th Floor, Sector 1
Bucharest, 010016
Romania
Tel +40 21 66 66 100
Fax +40 21 66 66 111

Hong Kong

Clifford Chance
27th Floor
Jardine House
One Connaught Place
Hong Kong
Tel +852 2825 8888
Fax +852 2825 8800

Madrid

Clifford Chance
Paseo de la Castellana 110
28046 Madrid
Spain
Tel +34 91 590 75 00
Fax +34 91 590 75 75

Perth

Clifford Chance
Level 7, 190 St Georges Terrace
Perth, WA 6000
Australia
Tel +618 9262 5555
Fax +618 9262 5522

Shanghai

Clifford Chance
40th Floor
Bund Centre
222 Yan An East Road
Shanghai 200002
China
Tel +86 21 2320 7288
Fax +86 21 2320 7256

Amsterdam

Clifford Chance
Droogbak 1A
1013 GE Amsterdam
PO Box 251
1000 AG Amsterdam
The Netherlands
Tel +31 20 7119 000
Fax +31 20 7119 999

Casablanca

Clifford Chance
169, boulevard Hassan 1er
Casablanca 20000
Morocco
Tel +212 520 132 080
Fax +212 520 132 079

Istanbul

Clifford Chance
Kanyon Ofis Binasi Kat 10
Büyükdere Cad. No. 185
34394 Levent
Istanbul
Turkey
Tel +90 212 339 0001
Fax +90 212 339 0098

Milan

Clifford Chance
Piazzetta M.Bossi, 3
20121 Milan
Italy
Tel +39 02 806 341
Fax +39 02 806 34200

Prague

Clifford Chance
Jungmannova Plaza
Jungmannova 24
110 00 Prague 1
Czech Republic
Tel +420 222 555 222
Fax +420 222 555 000

Singapore

Clifford Chance
12 Marina Boulevard
25th Floor Tower 3
Marina Bay Financial Centre
Singapore 018982
Tel +65 6410 2200
Fax +65 6410 2288

Bangkok

Clifford Chance
Sindhorn Building Tower 3
21st Floor
130-132 Wireless Road
Pathumwan
Bangkok 10330
Thailand
Tel +66 2 401 8800
Fax +66 2 401 8801

Doha

Clifford Chance
QFC Branch
Suite B, 30th floor
Tornado Tower
Al Funduq Street
West Bay PO Box 32110
Doha
State of Qatar
Tel +974 4491 7040
Fax +974 4491 7050

Jakarta**

LWP
DBS Bank Tower
Ciputra World One 28th Floor
Jl. Prof. Dr. Satrio Kav 3-5
Jakarta 12940
Indonesia
Tel +62 21 2988 8300
Fax +62 21 2988 8310

Moscow

Clifford Chance
Ul. Gasheka 6
125047 Moscow
Russian Federation
Tel +7 495 258 5050
Fax +7 495 258 5051

Riyadh

Clifford Chance
Building 15, The Business Gate
King Khaled International Airport Road
Cordoba District, Riyadh
P.O. Box: 90239, Riyadh 11613,
Kingdom of Saudi Arabia
Tel +966 11 481 9700
Fax +966 11 481 9701

Sydney

Clifford Chance
Level 16
No. 1 O'Connell Street
Sydney NSW 2000
Australia
Tel +612 8922 8000
Fax +612 8922 8088

Barcelona

Clifford Chance
Av. Diagonal 682
08034 Barcelona
Spain
Tel +34 93 344 22 00
Fax +34 93 344 22 22

Dubai

Clifford Chance
Building 6, Level 2
The Gate Precinct
Dubai International Financial Centre
PO Box 9380
Dubai
United Arab Emirates
Tel +971 4 362 0444
Fax +971 4 362 0445

Kyiv

Clifford Chance
75 Zhylyanska Street
01032 Kyiv
Ukraine
Tel +380 44 390 5885
Fax +380 44 390 5886

Munich

Clifford Chance
Theresienstraße 4-6
80333 Munich
Germany
Tel +49 89 216 32-0
Fax +49 89 216 32-8600

Rome

Clifford Chance
Via Di Villa Sacchetti, 11
00197 Rome
Italy
Tel +39 06 422 9111
Fax +39 06 422 91200

Tokyo

Clifford Chance
Akasaka Tameike Tower, 7th Floor
17-7 Akasaka 2-Chome
Minato-ku, Tokyo 107-0052
Japan
Tel +81 3 5561 6600
Fax +81 3 5561 6699

Beijing

Clifford Chance
33/F, China World Office 1
No. 1 Jianguomenwai Dajie
Chaoyang District
Beijing 100004
China
Tel +86 10 6535 2288
Fax +86 10 6505 9028

Düsseldorf

Clifford Chance
Königsallee 59
40215 Düsseldorf
Germany
Tel +49 211 43 55-0
Fax +49 211 43 55-5600

London

Clifford Chance
10 Upper Bank Street
London, E14 5JJ
United Kingdom
Tel +44 20 7006 1000
Fax +44 20 7006 5555

New York

Clifford Chance
31 West 52nd Street
New York, NY 10019-6131
USA
Tel +1 212 878 8000
Fax +1 212 878 8375

São Paulo

Clifford Chance
Rua Funchal 418 15th Floor
04551-060 São Paulo SP
Brazil
Tel +55 11 3019 6000
Fax +55 11 3019 6001

Warsaw

Clifford Chance
Norway House
ul. Lwowska 19
00-660 Warszawa
Poland
Tel +48 22 627 11 77
Fax +48 22 627 14 66

Brussels

Clifford Chance
Avenue Louise 65 Box 2
1050 Brussels
Belgium
Tel +32 2 533 5911
Fax +32 2 533 5959

Frankfurt

Clifford Chance
Mainzer Landstraße 46
60325 Frankfurt am Main
Germany
Tel +49 69 71 99-01
Fax +49 69 71 99-4000

Luxembourg

Clifford Chance
10 boulevard G.D. Charlotte
B.P. 1147
L-1011 Luxembourg
Grand-Duché de Luxembourg
Tel +352 48 50 50 1
Fax +352 48 13 85

Paris

Clifford Chance
1 rue d'Astorg
CS 60058
75377 Paris Cedex 08
France
Tel +33 1 44 05 52 52
Fax +33 1 44 05 52 00

Seoul

Clifford Chance
21st Floor, Ferrum Tower
19, Eulji-ro 5-gil
Jung-gu, Seoul 100-210
Korea
Tel +82 2 6353 8100
Fax +82 2 6353 8101

Washington, D.C.

Clifford Chance
2001 K Street NW
Washington, DC 20006 - 1001
USA
Tel +1 202 912 5000
Fax +1 202 912 6000

* Clifford Chance's offices include a second office in London at 4 Coleman Street, London EC2R 5JJ.

** Linda Widyati & Partners in association with Clifford Chance.

Clifford Chance, 10 Upper Bank Street, London, E14 5JJ

© Clifford Chance 2015

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street, London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications