

## Deloitte Banking Alert

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### EBA publishes final Guidelines on transferability

**At the end of last month, The European Banking Authority (EBA) published its final Guidelines on transferability to support the resolvability assessment for transfer strategies, covering key topics such as the definition of the transfer perimeter, separability, and the steps to operationalise the implementation of the transfer perimeter.** The resolvability assessment process is a key element of resolution planning, ensuring that the preferred resolution strategy can be effectively implemented.

Complementing the EBA resolvability Guidelines, which were published on 13 January 2022, **these Guidelines on transferability aim at assessing the feasibility and credibility of transfer strategies and encompass requirements relating to the implementation of transfer tools** when considered as the preferred or variant strategies for institutions.

**It is worthy to mention that institutions and resolution authorities (RAs) should comply with these Guidelines in full by 1<sup>st</sup> of January 2024.**

### Transferability tools in hand

**Transferability is defined as the requirement covering all the elements that will facilitate the transfer of an entity,** a business line or a portfolio of assets, rights and/or liabilities (defined as the “transfer perimeter”) to either an acquirer, a bridge institution (BI), or an asset management vehicle (AMV).

After an institution is declared as failing of likely to fail (FOLTF), resolution authorities and institutions have on hand the following transfer tools:

- **Sale of Business (SoB):** In case of resolution, an institution should sell part or all its business. **The SoB can be achieved either through an asset deal or a share deal,** whichever type of transaction is considered less intrusive and best achieves the resolution scope.

- **Bridge Institution (BI):** The tool allows for **the transfer of part or all the shares and assets, rights and liabilities of a troubled bank to a temporary entity**. Generally, this temporary entity, called a Bridge Institution, operates the bank under resolution until it becomes solvent again either through acquisition by another entity or through liquidation.
- **Asset Separation Tool (AST):** according to SRB's definition, **allows for the transfer of assets, rights, or liabilities from a failing bank or a Bridge Bank to an Asset Management Vehicle (AMV)**. These are managed by the AMV with the aim to maximise their value for an eventual sale, or an orderly wind-down. **It's important to mention that the asset separation tool should always be applied along with another resolution tool.**

## Roles and key steps in the transferability process

**Resolution authorities should specify the methodology for the definition of the transfer perimeter**, as it remains resolution authorities' responsibility at the point of resolution.

In the resolution planning phase, **institutions should analyse marketability and market capacity to absorb the sale of a portfolio, suggest improvement to the perimeter, anticipate perimeter shifts, highlight potential barriers, identify business, financial, legal, and operational interconnections** (separability) and assist RAs in dealing with cross-border aspects.

The guidelines are designed to provide assistance in everything from the definition and identification of the transfer perimeter based on the objectives of the transfer strategy, the degree of separability within the institution, and the obstacles to transferability of some elements. Then, the guidelines deal with the operational transfer by considering the preparation of the sale transaction, the arrangements to ensure a clean separation of the transfer perimeter from the rest of the institution, and the processes that should be in place to handle the transfer and its impacts. Finally, the guidelines consider management information systems ("MIS") aspects.

## Conclusion

**EBA's new Guidelines on transferability provide support in assessing the feasibility and credibility of transfer strategies** by including further requirements related to the implementation of transfer tools. The resolvability and transferability Guidelines will be updated and complemented as progress is achieved on relevant policy topics, both at international and EU level. In particular, the EBA is currently consulting on publication of the bail-in mechanics by resolution authorities and working on the topics of resolvability testing and transparency. **It's worth emphasizing that complying in full with these Guidelines is mandatory for institutions and resolution authorities by 1<sup>st</sup> of January 2024.**

## How can Deloitte help

At Deloitte, we aim at providing the highest quality risk and regulatory consulting services to our clients. We have experience in providing expertise to credit institutions in developing and implementing bail-in and transferability playbooks required by Resolution Authorities.

For further questions regarding the aspects mentioned in this alert, please don't hesitate to contact us.



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