

# Single Rulebook Q&A

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| <b>Question ID</b>  | 2016_3040  |
| <b>Status</b>   | Final Q&A  |
| <b>Legal act</b>  | Directive 2014/59/EU (BRRD)  |
| <b>Topic</b>  | Resolution tools and powers  |
| <b>Article</b>  | 44   |
| <b>Paragraph</b>  | 2  |
| <b>Subparagraph</b>   | d  |
| <b>COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations</b> | Not applicable   |
| <b>Article/Paragraph</b>  | n.a.   |
| <b>Date of submission</b>   | 08/12/2016   |
| <b>Published as Final Q&amp;A</b>                                     | 21/01/2022   |
| <b>Disclose name of institution / entity</b>                          | No   |
| <b>Type of submitter</b>  | Competent authority  |
| <b>Subject matter</b>   | Fiduciary relationship   |
| <b>Question</b>   | What is a “fiduciary relationship” according to Directive 2014/59/EU (BRRD)?   |
| <b>Background on the question</b>                                     | We do not find any interpretation of the "fiduciary relationship" within the BRRD. In relation to the exclusion of the scope of the liabilities arising out of or deriving from a fiduciary relationship, creditors located in common law jurisdictions would be very often in a position to claim for the exclusion of their liabilities from the scope of the bail-in, much more than creditors located in non-common law jurisdictions.   |
| <b>Final answer</b>   | <p>Directive 2014/59/EU (BRRD) does not provide for a definition of a “fiduciary relationship”, nor can a uniform definition be found in EU law.</p> <p>This concept often arises from common law traditions, and in this context it can be understood as a relationship between a person, the fiduciary, that holds someone else’s (the beneficiary) assets by means of trust or confidence. The fiduciary is required to act solely in that person's benefit and may not use the assets entrusted to it for its own purpose.</p> |

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|             | <p>As clarified also in <a href="#">Q&amp;A 2016_3023</a>, since liabilities arising from fiduciary relationships are not generally owned by the fiduciary (i.e., the institution), they should not be understood as and included among the liabilities of the institution under resolution. As such, they should be excluded from bail-in, if the beneficiary is protected under the applicable insolvency or civil law.</p> <p><b>Disclaimer:</b></p> <p>The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.</p> |
| <b>Link</b> | <a href="https://www.eba.europa.eu/single-rule-book-qa/-/qna/view/publicId/2016_3040">https://www.eba.europa.eu/single-rule-book-qa/-/qna/view/publicId/2016_3040</a>  |

European Banking Authority, 22/05/2022  
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