

## Q&A HETA ASSET RESOLUTION AG („HETA“) – Liquidation Participation and Liquidation Procedure

### LIQUIDATION PARTICIPATION

#### 1. What resolutions were passed by the company on 1 December 2021?

On 1 December 2021, the General Meeting of HETA approved an amendment to the Articles of Association which provides that distributable liquidation proceeds will be dedicated to the (former) creditors of the eligible non-subordinated liabilities and distributed to them at the end of the liquidation. In addition, HETA was required in the articles of association to create a "Liquidation Participation" for the benefit of the creditors of the eligible non-subordinated liabilities, by which HETA undertakes to examine each year during the liquidation procedure whether the conditions for a distribution of surplus liquidity is possible and if necessary, to distribute such surplus liquidity to them. The Liquidation Participation was also approved at the Annual General Meeting on December 1, 2021. The amendment to the Articles of Association thus regulates the distribution of the liquidation proceeds under Austrian Stock Corporation Law to the former creditors of the eligible non-subordinated liabilities. With the Liquidation Participation, the possibility is created to distribute liquidation proceeds to the former creditors under precisely defined conditions (see also Q&A questions 3 and 10) before the end of the liquidation procedure under Austrian Stock Corporation Law.

#### 2. Why are former creditors of the eligible non-subordinated liabilities entitled to liquidation proceeds? Is it not true that with the final distribution carried out in October 2021 and fulfilment of the quota of 86.32% all claims of the creditors of the eligible non-subordinated liabilities were paid in full?

It is correct that HETA has fully fulfilled its eligible non-subordinated liabilities (capital including interest as of 1 March 2015 or in accordance with any agreements subsequently concluded with HETA) by way of the interim distributions carried out in the years 2017 to 2020 and the final distribution carried out in October 2021 by the FMA up to the reduced amount of 86.32%. The (reduced) amount of HETA's eligible non-subordinated liabilities in excess of the fully satisfied ratio of 86.32% continues to exist as an imperfect obligation (*Naturalobligation – Imperfect Obligation*).

By the FMA decree of 2 May 2017, the right of the shareholder of HETA (Republic of Austria) to participate in the liquidation proceeds (§ 212 AktG) was deleted. From the overall consideration of the meaning and purpose of the Directive on the Recovery and Resolution of Credit Institutions (BRRD) and the Federal Act on the Recovery and Resolution of Banks (Restructuring and Resolution Act – "BaSAG"), it follows that the liquidation proceeds are to be distributed to the former creditors of the eligible non-subordinated liabilities. These creditors are holders of the Imperfect Obligations.

### 3. What is the Liquidation Participation?

With the approval of the Liquidation Participation, the legal basis for the distribution of HETA's further liquidity during the liquidation procedure to the holders of Imperfect Obligations based on the "List of Liabilities" maintained by HETA (see also Q&A No. 5) was created in accordance with the principle of equal treatment of creditors. This "List of Liabilities" has also been the basis for the interim distributions and the final distribution to the creditors of the eligible non-subordinated liabilities in the past. The Liquidation Participation provides for the possibility that annual "liquidation participation payments" (similar like the interim distributions carried out so far) can be carried out. In this way, the excess liquidity can be "skimmed off" annually and paid out to the holders of the Imperfect Obligations (starting with the audited annual financial statements 2022). If there is still a surplus at the end of the liquidation procedure, this is also due to the holders of Imperfect Obligations.

### 4. Who is entitled to the Liquidation Participation and in what amount?

The holders of the Imperfect Obligations in kind are entitled to the Liquidation Participation. The amount is limited to a maximum of 100% of the eligible, non-subordinated liabilities (capital including interest per 1 March 2015 or in accordance with an agreement made with HETA subsequently), after considering payments already received, in particular from previous distributions and payments as well as on the basis of settlements or other agreements made.

The creditors of the eligible subordinated liabilities are not recipients of the Liquidation Participation. Their claims have been reduced to zero by the FMA decisions. From HETA's point of view, it is economically impossible for the eligible non-subordinated liabilities to be fully satisfied.

### 5. What is the "List of Liabilities"?

The basis for the distribution is the List of Liabilities, which was updated based on the FMA decisions, most recently the FMA decree of 13 September 2019, FMA-AW00001/0004-AWV/2019, for the final distribution in October 2021 as of 30 September 2021 and confirmed by the auditor in accordance with agreed audit procedures. The List of Liabilities will be continued by HETA, updated at the time of the determination of payments to the holders of Imperfect Obligations and confirmed by the auditor in accordance with to be agreed upon audit procedures.

### 6. Is there any need for express acceptance or other actions in relation to this right?

No, since the holders of Imperfect Obligations only obtain benefits from the Liquidation Participation, no express acceptance or other declaration by the holders is required. As a result, there is no need for any holder to take any action. If the examination shows that a payment based on the Liquidation Participation to the holders of Imperfect Obligations is possible, this payment will be made by HETA in the same way as previous payments have been made (see Q&A No. 10).

## **7. What is the amount of the expected Liquidation Participation?**

Whether and, if so, to what extent payments will be made under the Liquidation Participation will only be determined in the course of HETA's liquidation procedure. On the one hand, the amount depends on the proceeds that can be achieved in the further liquidation of HETA in accordance with the Austrian Stock Corporation Act (AktG). On the other hand, it depends whether and to what extent known or unknown risks will be materialized. As in the past, HETA will also in the liquidation phase annually inform about current development of the possible fulfillment rate or the Liquidation Participation rate (see also Q&A No. 9).

## **8. Is the claim enforceable?**

Until the terms and conditions specified in the Liquidation Participation have taken effect, these are non-enforceable claims. HETA undertakes to pay only when the conditions have come into effect (see also point 1 of the Liquidation Participation).

## **9. As a beneficiary, will I be kept informed about further developments?**

Yes, in the Liquidation Participation, HETA has undertaken to publish certain information annually (see point 7 of the Liquidation Participation). All announcements by HETA to the holders of Imperfect Obligations are made via publication on HETA's website under <https://heta-asset-resolution.com/de/liquidation>.

## **10. When will a payment be made on the basis of the Liquidation Participation and when will the Liquidation Proceeds be distributed by HETA?**

The liquidator will check annually (starting after the audited annual financial statements 2022) whether the conditions for payments on the basis of the Liquidation Participation are met (see point 2.2 of the Liquidation Participation). Upon receipt of the liquidator's report, the performance of certain audit procedures by an auditor and approval at the Annual General Meeting, these payments will be recognized by HETA pro rata as a legally binding obligations and converted into an enforceable claim of the respective holder to receive the payment pro rata. The corresponding payments are then due within two weeks.

Any remaining assets pursuant to § 212 of the Austrian Stock Corporation Act (AktG) (liquidation proceeds) shall be distributed to the holders of Imperfect Obligations at the end of the liquidation procedure in accordance with the provisions of HETA's Articles of Association.

## **11. How is it ensured that I will receive the payments to which I am entitled?**

If you have already participated in HETA's distributions so far, you do not have to take any measures to protect your rights in this regard. Payments will be made in the same way as previous distributions: for holders of non-securitized liabilities by direct transfer and for holders of securitized liabilities through the clearing systems.

## 12. Can I assign this claim to someone else?

There is no prohibition regarding assignments. HETA cannot provide legal advice on questions regarding the implementation of an assignment. If necessary, please contact a legal advisor of your choice.

## LIQUIDATION OF HETA

### 1. When will the liquidation procedure in accordance with the Austrian Stock Corporation Act be opened regarding HETA?

In accordance with § 84 (11) BaSAG, a resolution on dissolution is to be passed as soon as the winddown unit has accomplished the portfolio winddown in accordance with § 84 (10) BaSAG. On 25 November 2021, HETA announced the completion of the portfolio winddown. The resolution to initiate the liquidation will be passed on 15 December 2021 with effect as of the end of 31 December 2021. This circumstance must be reported to the FMA in accordance with § 84 (11) BaSAG. Based on this notification and dissolution resolution, the FMA as the resolution authority pursuant to § 84 (12) BaSAG must determine the termination of the operation of the winddown unit by decision. Thus, with legal effect of the decision, HETA will no longer be a winddown unit within the meaning of BaSAG and the Act on the Creation of a Winddown Unit ("GSA") but will only be subject to Austrian Stock Corporation Law. The FMA's supervision ends as well at that point.

The administrative rights relating to the shares in HETA shall be transferred back to the previous shareholder, the Republic of Austria, upon adoption of the declaratory decision. It is envisaged that the shares in HETA will be subsequently transferred to the Abbaumanagementgesellschaft des Bundes GmbH (ABBAG), a 100% participation of the Republic of Austria.

### 2. Who is ABBAG?

ABBAG is the Abbaumanagementgesellschaft des Bundes GmbH. It was founded in 2014 to take over certain functions and tasks of the Republic in connection with state winddown units, in particular the former Hypo Alpe-Adria-Bank International AG.

### 3. Why is the liquidation procedure being opened with respect to HETA right now? Could it have waited?

No, it is legally not possible to postpone it. In accordance with both GSA and BaSAG, a resolution on the dissolution of the company must be passed upon completion of the portfolio wind down. This is expressly provided for by law and is therefore not within the discretion of the governing bodies of HETA.

### 4. Do the FMA's decisions continue to apply?

Notwithstanding the opening of the liquidation procedure, the legal effects of the FMA

decisions issued to date remain fully intact, only the exercise of the administrative rights in relation to the shares of HETA by the FMA as resolution authority will expire. For example, the decisions continue to have an impact on pending legal proceedings of HETA AG, which relate to facts prior to 1 March 2015. If HETA is held liable in such proceedings, such obligations may constitute a newly emerged, non-subordinated eligible liability to which the decisions continue to apply.

The shareholder's right to participate in the liquidation proceeds remains deleted even after completion of the resolution of HETA in accordance with BaSAG.

## **5. How long will the liquidation of HETA last? Why is it assumed that the liquidation procedure will take rather a long time?**

According to today's assessments, which are also used as the basis for the planning, it is assumed that the liquidation procedure will end in 2030. HETA will publish annually the expected liquidation period. Although HETA has completed the portfolio winddown within the meaning of BaSAG at the end of this year, there are still a variety of obstacles to the termination of the liquidation procedure, such as pending legal proceedings, obligations from concluded sales contracts, etc. that prevent the immediate deletion of HETA from the company register. In addition, HETA still holds stakes in around ten shareholdings, which also have to be liquidated or disposed by other means.

## **6. Is HETA still subject to supervision by the FMA as the resolution authority?**

No, the FMA's supervision ends with the legal force of the declaratory decision. Since HETA remains a federal participation, the Federal Public Corporate Governance Code continues to apply to it.

## **7. Will HETA continue to prepare annual and consolidated financial statements in the future, and will they be audited by an auditor?**

HETA AG will continue to prepare annual financial statements and have them voluntarily audited by an auditor. The annual accounts will continue to be published. With the opening of liquidation, the obligation to prepare consolidated financial statements ends and such statements will not be prepared voluntarily.

## **8. What will happen to HETA at the end of the liquidation?**

At the end of the liquidation procedure, HETA as a company will be deleted from the company register.