

HETA ASSET RESOLUTION

Question & Answers

Interim distribution

Klagenfurt am Wörthersee, 30.06.2017

Q&A

1. Why is HETA implementing an interim distribution now?

The administrative decision issued by the Financial Market Authority (FMA) on 10 April 2016 (replaced by the administrative decision concerning the challenge procedure (“Vorstellungsbescheid II”) of 2 May 2017) notes that the claims of creditors may be serviced before the payment date with a partial distribution of the disposal proceeds, subject to the liquidity planning and the need to maintain sufficient liquidity for HETA’s business operations.

The amendment of the Articles of Association and the by-laws of HETA AG during the second half of 2016 also created the conditions for distributions to creditors of eligible liabilities at an earlier date if the required criteria are met. The Articles of Association stipulate that a review of whether an earlier distribution can take place must be made annually, but for the first time after the 2016 annual financial statements are available.

An interim distribution may only occur if the Management Board, according to its best judgement and taking into account the wind-down objectives and the requirements for an orderly wind-down process, concludes that an interim distribution of the existing assets for the purposes of servicing the claims of creditors may be implemented before the maturity date.

On the basis of a comprehensive review, the Management Board reached the conclusion that sufficient assets are available for an interim distribution. The distribution resolution required the approval of the Supervisory Board and the General Meeting of Shareholders, and was adopted at the Extraordinary Meeting of Shareholders held on 30 June 2017.

Measures must be taken to warrant that sufficient provision has been made for all (also future) liabilities and costs associated with the portfolio wind-down that must be paid, which could lead to (un)expected potential outflows.

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2. Will interim distributions be implemented every year henceforth?

The Articles of Association of HETA AG stipulate that every year, the Management Board must conduct a review regarding the possibility of an earlier distribution within four weeks of the adoption of the annual financial statements. The Management Board must report to the Financial Market Authority (FMA) on this matter. Based on the current situation, it is impossible to assess whether additional interim distributions will be made in 2018 or on an annual basis.

3. What does the interim distribution actually mean?

With administrative decision II (replaced by the administrative decision concerning the challenge procedure (“Vorstellungsbescheid II”)), the payment date of all eligible non-subordinated liabilities has been changed to the effect that it applies upon the liquidation resolution pursuant to § 84 (9) of the Austrian Federal Act on the Recovery and Resolution of Banks (BaSAG), but at the latest on 31.12.2023. This means that in principle, legally binding payments for these liabilities must only be made as of that date. At the same time, the change in the payment date ordered in the FMA’s decision does not oppose the earlier distribution of disposal proceeds.

The interim distribution means that **creditor claims are serviced sooner before the payment date through the partial distribution of HETA's disposal proceeds.**

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4. Do all creditors of eligible non-subordinated liabilities participate in the interim distribution?

In principle yes, as long as their claims are undisputed/certain.

Further on this issue: The interim distribution is based on the list of liabilities (which includes all those liabilities that individually participate in the interim distribution, whether through payment or a guarantee) that is attached to the proposed resolution of the General Meeting of Shareholders. The use of a list of liabilities prepared by the company itself, as opposed to a register of claims based on the Austrian Insolvency Act (IO), is due to the fact that in contrast to the Insolvency Act, the Austrian Federal Act on the Recovery and Resolution of Banks (BaSAG) does not provide for the formal registration of claims by the creditors.

The list of liabilities contains undisputed eligible liabilities that are recognised in the company's annual financial statements as at 31 December 2016 as a liability, and disputed and uncertain eligible liabilities for which provisions were made in the company's annual financial statements as at 31 December 2016. The list of liabilities is based on – starting with the interim financial statements as at 1 March 2015 – the audited 2016 annual financial statements and subsequently considered changes up to 31 May 2017 (which has now been set as the reference date), adjusted to the administrative decision concerning the challenge procedure (“Vorstellungsbescheid II”).

The guarantee of disputed and uncertain eligible liabilities is a special component that must be observed during the interim distribution. In this respect, the company based its actions on the procedure identified in the Austrian Insolvency Act. Amounts that are initially not paid out for this reason are invested at Oesterreichische Nationalbank (OeNB), separately from the other liquidity holdings.

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5. How was the amount of the interim distribution calculated?

The possibility of an interim distribution was reviewed on the basis of a catalogue of criteria developed by the company, which depicts the content-related criteria of the administrative decision concerning the challenge procedure (“Vorstellungsbescheid II”), the company's Articles of Association and the by-laws of the Management Board. Accordingly, an interim distribution can occur if the following criteria are met:

- (1) The interim distribution is consistent with the company's liquidity planning.
- (2) There remains sufficient liquidity for the company's business operations over the entire wind-down period.
- (3) Taking into account the expenses for the wind-down process, the company has surplus cash funds.
- (4) The interim distribution can be made according to the best judgement of the company's Management Board.
- (5) The interim distribution does not put the wind-down objectives and the orderly wind-down of the company at risk.

When creating the liquidity provision, the interests of the creditors to achieve the highest possible interim distribution in view of the negative interest situation, and HETA's need to make adequate provision for all (also future) liabilities and costs associated with the portfolio wind-down that must be serviced and which may lead to (un)expected potential outflows, must be carefully weighed.

With regard to the cash reserves, the date of 31 May 2017 was used as a basis for calculating the amount of the interim distribution.

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6. When will the payment be made?

The distribution resolution was adopted at the Extraordinary Meeting of Shareholders held on 30 June 2017.

Payments to creditors will be made in the second half of July.

7. When will the guaranteed amounts be paid?

The guaranteed amounts will be paid as soon as the criteria for the guarantee no longer apply (i.e. in the case of disputed liabilities, if they are no longer deemed disputed due to a legally binding court decision).

8. Who can I contact for questions regarding the interim distribution?

Questions in connection with the interim distribution may be directed to the following email address: verteilung@heta-asset-resolution.com.