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Consultation on Total Loss Absorbing Capacity (TLAC)

Barclays welcomes the opportunity to comment on the FSB's proposals for Total Loss Absorbing Capacity (TLAC), and is supportive of the FSB's guiding principle of ensuring sufficient loss absorbing and recapitalisation capacity is available for G-SIBs in resolution. Please find our overall comments and concerns outlined below, followed by our specific responses to the 17 consultation questions (Appendix 1), a list of technical clarifications we would welcome (Appendix 2) and some obervations on UK banks' loss rates to support the FSB's historical loss analysis (Appendix 3).

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Overall comments

1 We endorse the linkage of TLAC requirements to resolution strategies, including the principle of 'resolution entities' versus 'material subsidiaries'. We agree with the linkage of TLAC to existing capital requirements and understand the rationale for a TLAC assessment based on both RWAs and leverage exposure (where we believe the leverage-based constraint should be a back-stop rather than a front-stop, and should apply solely at the consolidated group level). We believe a 16% Pillar 1 requirement would be a sufficient and appropriate level for all G-SIBs.

2 We fully endorse international regulatory co-operation and co-ordination, and note that a Minimum Requirement for own funds and Eligible Liabilities (MREL) is expected to be introduced for EU banks in 2016, including European G-SIBs subject to TLAC. We encourage the FSB to maintain an open dialogue with the EBA to ensure that, as far as possible, MREL requirements for European G-SIBs are set to be numerically consistent with the international TLAC framework.

3 The proposed phasing of TLAC requirements for G-SIBs headquartered in emerging markets seems legitimate, given the development of TLAC markets in those economies. Even for developed markets, the expected quantum of required TLAC issuance is very significant – whether as Tier 2 or a new class of 'Tier 3 senior subordinated' debt. We believe a key determinant of the potential market impact will be the extent to which existing external senior unsecured debt at bank operating companies is permitted to count towards TLAC (eg under grandfathering), as this will drive TLAC issuance requirements and the cost and ease of transition to a HoldCo / SPE issuance model. In the context of subordination requirements going forward, we ask the FSB to ensure that there is no prejudice to individual jurisdictions on the form of subordination, and to encourage consistency in the timing and application of the TLAC requirements.

4 Indeed, given the significance of international regulatory reform initiatives, including TLAC, MREL and structural reform, it is difficult for banks to assess the scale of the TLAC requirements under the structural reforms required in some jurisdictions (and the TLAC QIS will reflect current structures and regulatory capital calculations), which will not be bedded down for some time. Together with the implied volume of new issuance across the market, and current uncertainties about the bail-in hierarchy and process, we would request that the timeline for conformance is extended beyond 2019. We would also propose a sufficient transition period and grandfathering of legacy instruments. We assume that going-concern capital buffers will all count towards TLAC for the purposes of the leverage requirement (as market participants expect), and that this may be satisfied with any TLAC-eligible instruments.

5 With regard to the proposed Pillar 2 TLAC requirements, we acknowledge this could play a legitimate role in incentivising firms to address any impediments to resolvability (eg comingled funding and capital structures), but would urge that any Pillar 2 TLAC requirement is focused solely on firm-specific impediments to resolvability and not more general prudential concerns, which should be captured within Pillar 2 capital requirements.

6 Given the goal of creating a consistent international standard for TLAC, and desire for harmony among a firm's Crisis Management Group authorities, we would advocate a strong presumption against host authorities imposing additional external or internal TLAC requirements (including Pillar 2 TLAC), and more broadly to encourage cross-border regulatory co-ordination in setting a firm's TLAC.

7 We are comfortable with pre-positioning requirements of 75% to material entities *outside* the home jurisdiction (and ask the FSB to encourage this distinction to be applied consistently by national regulators), but note that where funding is 'downstreamed' to material entities via an intermediate entity, and where the applicable regulatory regime includes solo capital requirements, the intermediate entity will attract solo capital charges on funding exposures to its material entities. This could give rise to level-playing field issues if rules are not applied on a consistent basis internationally. We would therefore ask the FSB and BCBS to consider whether a waiver from intra-group capital requirements, Large Exposure rules and leverage ratio requirements would be appropriate for internal TLAC exposures.

8 We welcome the flexibility to meet pre-positioning requirements through collateralised guarantees, and see this of potential benefit to banks from both emerging and developed economies. For example, it could be useful where an individual subsidiary (eg a ring-fenced retail bank) does not need additional funding from its parent. To support the utilisation of collateralised guarantees, we would ask that collateral arrangements are commercially practicable (ie not overly restrictive on collateral types and pooling arrangements).

9 Where there is a breach of buffers or minimum TLAC requirements, we believe this should prompt discussions with regulators without automatic mandatory distribution restrictions. This is because adding TLAC in between capital and buffers means a buffer breach would happen at (much) higher levels of capital, and a TLAC breach could also arise solely through outstanding debt falling below the one-year minimum maturity for TLAC eligibility (conflating liquidity risk with capital risk). This 'cliff effect' also means a firm's TLAC ratio is likely to be more volatile than its capital ratio.

10 We believe holdings of other firms' TLAC instruments (including for market making) should be treated on a Basel-consistent, risk-weighted basis – with risk weights set to reflect the type of instrument (including senior debt) – rather than deducted from TLAC. For market making in own instruments, firms should be able to apply for limits in line with CRD IV. We would also ask that the FSB and BCBS to be pragmatic in allowing a post-underwriting exemption window (for example one month), to support the TLAC issuance process and bolster market liquidity (especially given the aggregate amounts required). This would also be important in providing a level-playing field between investment banks who are G-SIBs and those who are not.

11 In setting the market survey and impact assessment parameters, to promote consistent analysis we would suggest that guidance is provided on what to assume with respect to credit rating agencies' actions (and its impact on pricing). In assessing the overall capacity of the market to absorb new TLAC issuance, we would also suggest that any intention to extend TLAC requirements to D-SIBs is also factored in.

Appendix 1: Barclays' response to the individual consultation questions

Calibration of the amount of TLAC required

1. **Is a common Pillar 1 Minimum TLAC requirement that is set within the range of 16 – 20% of risk-weighted assets (RWAs), and at a minimum twice the Basel III leverage requirement, adequate in the light of experiences from past failures to support the recapitalisation and resolution objectives set out in this proposal? What other factors should be taken into account in calibrating the Pillar 1 Minimum TLAC requirement?**

Barclays believes a Pillar 1 TLAC requirement set at 16% of RWAs would be a sufficient and appropriate level for G-SIBs, to support the resolution objectives set out in the FSB's proposal, based on historical loss analysis[1] and considering that Pillar 2, G-SIB and other capital buffers are excluded. (Even at 16%, including all buffers and Pillar 2 capital could imply TLAC requirements of nearly 25% of RWAs for some G-SIBs, before any management buffers.) Moreover, Basel III has introduced more stringent capital and liquidity requirements (so the baseline is stronger), and advances in recovery and resolution planning now means that any G-SIB which reaches the point of non-viability is likely to emerge from resolution with a smaller balance sheet, as a result of recovery and/or post-resolution restructuring actions. In addition to the TLAC minimum, internal management buffers will be held on top and we would also anticipate expected increases to risk weights from Basel reviews of the trading book and interest rate risk, which would result in higher nominal TLAC requirements for the same balance sheet.

We understand the rationale for a leverage requirement, but recommend that the FSB set a fixed leverage ratio that is applicable to all G-SIBs, once the BCBS concludes its review of the leverage ratio. We would also note that, to keep the leverage ratio broadly consistent with the RWAs-based TLAC requirement, the leverage ratio could be set proportionally, using a conversion factor to reflect market average risk-weights (as the UK FPC has done), drawing on data for G-SIBs from the QIS. Furthermore, we believe any leverage-based TLAC constraint should be a back-stop rather than a front-stop, and should apply solely at the consolidated group level rather than at each Material Entity. Under the alternative where material entities needed to meet their (internal) TLAC requirements on the basis of the higher of their RWAs or leverage, this dual 'higher of' calibration would increase the likelihood of the 'sum of the parts'

[1] Historically, only one European bank (Anglo Irish, which was not well diversified) suffered losses greater than 16% of RWAs in the recent financial crisis (ICB final report, September 2011). BCBS analysis shows that the mean average of historical losses in a systemic crisis is 7% of RWAs (median 3.7%) with the figures for peak losses during the recent crisis being 5% (mean) and 3% (median) respectively (BCBS: Calibrating regulatory minimum capital requirements and capital buffers: a top down approach, October 2010)

(Material Entity requirements) being greater than the whole (group consolidated requirements). Also, we assume that going-concern capital buffers will all count towards TLAC for the purposes of the leverage requirement and that this may be satisfied with any TLAC-eligible instruments.

We recognise the importance of international regulatory co-operation and co-ordination, and note that a Minimum Requirement for own funds and Eligible Liabilities (MREL) is to be introduced for EU banks in 2016, including European G-SIBs subject to TLAC. We encourage the FSB to maintain an open dialogue with the EBA to ensure that MREL requirements for European G-SIBs are set to be numerically consistent with the international TLAC framework (as the EBA was open to in its MREL consultation), such that the binding RWA or leverage-based TLAC constraint for a firm is converted into a gross liabilities MREL requirement using the firm's consolidated balance sheet).

In calibrating the Pillar 1 requirement, regard should also be given to market capacity constraints (see Q16), where the aggregate results of the QIS and impact assessments will be instructive.

2. **Does the initial exclusion of G-SIBs headquartered in emerging market economies (EMEs) from meeting the Common Pillar 1 Minimum TLAC requirement appropriately reflect the different market conditions affecting those G-SIBs? Under what circumstances should the exclusion end?**

We understand the rationale for an initial exclusion of G-SIBs headquartered in emerging market economies, but would support agreement on a timetable for adopting a truly global standard. We would welcome clarity on whether, for a developed country G-SIB, a Material Entity located in an emerging market economy would also initially be excluded from the (internal) TLAC requirements to promote an internationally level-playing field.

3. **What factors or consideration should be taken into account in calibrating any additional Pillar 2 requirements?**

With regard to the proposed Pillar 2 TLAC requirements, we acknowledge this could play a legitimate role in incentivising firms to address any impediments to resolvability (eg comingled funding and capital structures), but would urge that any Pillar 2 TLAC requirement is limited to addressing firm-specific impediments to resolvability. For consistency and to avoid duplication, for banks subject to TLAC, such resolvability impediments should therefore not also be covered within the Pillar 2 capital framework.

We believe any Pillar 2 TLAC requirement should be limited to external TLAC issuance at the top-tier Resolution Entity, rather than more broadly applicable across host countries.

Ensuring the availability of TLAC for loss absorption and recapitalization in the resolution of cross-border groups

4. **Should TLAC generally be distributed from the resolution entity to material subsidiaries in proportion to the size and risk of their exposures? Is this an appropriate means of supporting resolution under different resolution strategies? Which subsidiaries should be regarded as material for this purpose?**

We agree that TLAC should be distributed broadly in proportion to the size and risk exposures of Material Entities, with some flexibility for firms to determine the appropriate form and quantum of subsidiary issuance subscribed for by the Resolution Entity, once the subsidiaries' internal TLAC requirements are met.

We are broadly comfortable with the FSB's proposed criteria for Material Entities (5% of group revenue, RWAs, leverage and/or material to the exercise of critical functions), but would suggest that 'pure service companies' (eg an operational subsidiary) should be exempt from TLAC – even if they provide services which support the exercise of the firm's critical functions – given the nature of their business and risk profile. It would be helpful if, going forward, there was consistency (across jurisdictions and firms) between the FSB's criteria for Material Entities and any similar national definitions (eg 'Significant Legal Entities' in the UK).

We seek confirmation that, where a Material Entity (eg an intermediate holding company) itself has a subsidiary which meets the Material Entity criteria, only the intermediate holding company will face internal TLAC requirements.

5. **To what extent would pre-positioning of internal TLAC in material subsidiaries support the confidence of both home and host authorities that a G-SIB can be resolved in an orderly manner and diminish incentives to ring-fence assets? Is a requirement to pre-position internal TLAC in the range of 75-90% of the TLAC requirement that would be applicable on a stand-alone basis, as set out in the term sheet (Section 22), appropriate to satisfy the goals of the proposal and ensure that TLAC is readily and reliably available to recapitalize subsidiaries as necessary to support resolution? Can this pre-positioning be achieved through other means such as collateralized guarantees?**

We agree that a significant proportion of a group's external TLAC should be pre-positioned with Material Entities, to provide reassurance to host authorities that sufficient internal TLAC would be available to absorb losses and recapitalise the subsidiary if it reached the Point of Non-Viability (PONV), and to avoid the need to ring-fence local assets, and should be set out in CMG co-operation

agreements. Within the proposed range of 75-90%, we believe 75% would be sufficient to balance the host's needs with the desire for some flexibility for the group to deploy centrally held TLAC as required around the group in response to a stress, and for commercial efficiency (we note that 75% is mid-way between 100% pre-positioning, and the minimum (50%) needed to meet 8% of RWAs total capital requirements, with Pillar 1 TLAC of 16%). We agree that collateralised guarantees would be a workable alternative to pre-positioning, and see this of potential benefit to banks from both emerging and developed economies. For example, it could be useful where an individual subsidiary (eg a ring-fenced retail bank) does not need additional funding from its parent. To support the utilisation of collateralised guarantees, we would ask that collateral arrangements are commercially practicable (ie not overly restrictive on collateral types and pooling arrangements).

We welcome the ability to issue external TLAC from Material Entities (providing it meets the Basel definition of regulatory capital, contains a PONV clause linked to that entity's risk – absent a statutory PONV regime – and avoids change of control issues if triggered), and with regard to the definition of regulatory capital, we would ask the FSB and BCBS to help orchestrate the harmonisation of Tier-1 capital rules across jurisdictions.

Where funding is downstreamed to Material Entities via an intermediate entity which has standalone capital requirements, the intermediate legal entity will attract solo capital charges on its funding exposures to its Material Entities. Capital charges may be in the form of intra-group RWAs (Large Exposures and leverage would also be a consideration) or in the form of capital deductions depending on the instrument features. Given the pre-positioning is mandatory, we would ask regulators to consider how the internal TLAC rules will be integrated with the capital regulations (for non-equity TLAC) and whether a waiver from intra-group capital requirements, Large Exposure rules and leverage ratio requirements would be appropriate for such internal TLAC exposures.

Determination of instruments eligible for inclusion in external TLAC

6. Are the eligibility criteria for TLAC as set out in the term sheet (Sections 8-17) appropriate?

While we agree most of the criteria seem appropriate, we believe a number of technical clarifications are required (see Appendix 2).

For example, we would welcome confirmation that legacy capital instruments will be permitted to count towards TLAC, given their subordination and recent EBA guidance that legacy capital which had been (at least partially) grandfathered would be treated *pari passu* with qualifying regulatory capital of

the same tier in a bail-in, and would appreciate confirmation that this is the FSB's intention. In a similar vein, please could the FSB confirm that all regulatory capital (of more than one-year remaining maturty) will count towards TLAC, even if it no longer counts towards regulatory capital for whatever reason (eg it has passed its first call date and has a step-up coupon).

As an issuer and underwriter of structured notes, we believe that structured notes are bail-inable and so should not be excluded from TLAC (they are not excluded from MREL), unless they are insured by a DGS scheme, providing the issuer has a robust framework for valuing the notes on an ongoing basis, and could explain clearly how any associated derivatives entered into by the issuer would be rehedged if the structured notes were bailed-in. To facilitate an orderly identification of holders and support the operational process of bail-in, for TLAC (and MREL) eligibility we would be sympathetic to certain features that would support this, for example for the notes to be held in a central securities depository, meet a minimum issue size and be only 'lightly structured' (this would need to be defined).

Clarity is also required on the definition of structured notes, for example we would not expect callable bonds or foreign currency bonds hedged into sterling to be considered as 'structured notes'.

We would request that – aside from the subordination to operating liabilities – there should be minimal additional changes required to senior debt.

One other technical consideration worth highlighting is the requirement for external TLAC (issued by HoldCo say) to be subordinated to excluded liabilities. We think this could be problematic, even for a 'clean' HoldCo, given the existence of administrative liabilities such as tax and utility bills, and would suggest an exemption to cover such administrative liabilities.

7. **What considerations bear on the desirability of an expectation that a certain proportion of the common minimum Pillar 1 TLAC requirement consists of (i) tier 1 and tier 2 capital instruments in the form of debt plus (ii) other eligible TLAC that is not regulatory capital?**

While we understand the thought behind this proposal (ie to ensure that if a firm's equity is fully depleted at the PONV there would be some debt left to convert to new equity), we believe it is inconsistent with broader regulatory objectives to discourage banks from meeting the TLAC requirement with equity if they wish. If, nevertheless, a minimum debt 'expectation' is retained, we would have thought defining this as 'non-ordinary shares' would be sufficient.

We consider that allowing non-equity instruments to count for loss-absorbency provides some flexibility to G-SIBs to manage their issuance costs and capital structure.

We are strongly of the view that any breaches of TLAC requirements that arise solely from falling below the minimum expectation for the proportion of debt, should not have same consequences as falling below the overall TLAC quantum.

8. **Are the conditions specified in the term sheet (Section 8) under which pre-funded commitments from industry-financed resolution funds to provide resolution funding contribute to TLAC appropriate?**

In our view, pre-funded commitments from industry-financed resolution funds should not count towards TLAC, as their inclusion would raise moral hazard issues (by imposing losses on the broader industry rather than creditors of the failed institution), and could also exacerbate financial system contagion.

9. **Is the manner in which subordination of TLAC-eligible instruments to excluded liabilities is defined in the term sheet (Section 13) sufficient to provide certainty regarding the order in which creditors bear losses in resolution, and to avoid potentially successful legal challenges or compensation claims? Where there is scope for liabilities which are not subordinated to excluded liabilities to qualify for TLAC, are the transparency and disclosure requirements set out in section 13 and 24 sufficient to ensure that holders of these instruments would be aware of the risk that they will absorb losses prior to other equally ranking but excluded liabilities? If not, what additional requirements should be adopted?**

We understand the rationale for requiring TLAC to be subordinated to operating liabilities (ie to negate NCWO claims and in an SPE model to push losses up to HoldCo prior to an OpCo's excluded liabilities that rank *pari passu* with senior unsecured liabilities). However, we believe a key determinant of the potential market impact will be the extent to which existing senior unsecured debt at bank operating companies is permitted to count towards TLAC, as this will drive TLAC issuance requirements, and the cost and ease of transition to a HoldCo / SPE issuance model. Market participants already expect senior unsecured term debt to be bailed-in before operating liabilities, especially during a transition phase where a significant portion of outstanding senior debt may reside at a bank OpCo. The TLAC issuance and transition to SPE costs could be minimised through a clear statement that, during transition, existing OpCo senior external debt would be treated *pari passu* with equally-ranking internal senior debt. If investors expect the authorities to do otherwise, this would disincentivise holders from moving up to HoldCo through refinancing or liability management, likely raise the HoldCo issuance premium, pressurise ratings and exacerbate the market capacity constraint challenges.

We would therefore ask the FSB to recommend solutions which allow banks' existing senior debt to qualify as TLAC, for example encouraging subordination (to operating liabilities) of 'senior unsecured TLAC' issued by subsidiaries on a statutory basis. Otherwise, if each jurisdiction implements different solutions to the subordination problem, this would risk creating an unlevel playing-field internationally, with a competitive advantage bestowed on some firms but not others.

A variant may be for authorities to announce ex ante that senior TLAC (internal or external) issued by subsidiaries would be bailed in before other general unsecured claims (i.e. 'operating liabilities'), and in those circumstances that NCWO safeguards would not apply.

Finally, if senior unsecured debt could then be bailed-in effectively (ie without giving rise to material risk of successful NCWO claims), we do not see the rationale behind restricting the amount of such debt which can count towards TLAC to 2.5% of RWAs (if the Pillar 1 requirement is 16%).

Interaction with regulatory capital requirements and consequence of breaches of TLAC

10. Do you agree that the TLAC requirement for G-SIBs should be integrated with Basel III such that the minimum TLAC requirement should be met first, and only after TLAC is met should any surplus common equity tier 1 (CET1) be available to meet the Basel III buffers?

We support the integration of TLAC requirements with Basel III capital requirements, and would request that greater harmonisation is agreed for AT1 capital definitions internationally (eg the need for a CoCo feature and/or PONV clauses), and due consideration is also given to transitional challenges with appropriate conformance periods agreed.

We observe that under the FSB's proposals, TLAC would be 'added-in' between capital and buffers, which means a buffer breach would happen at (much) higher levels of capital (eg a bank could have CET1 of > 20% of RWAs, and yet still be in breach and face restrictions on distributions). We would therefore suggest that a breach of buffers should prompt discussions with regulators without automatic mandatory distribution restrictions. We further observe that a TLAC breach could arise simply through debt falling below the one-year remaining maturity cut-off, and so would also request that any TLAC breaches prompt discussions with regulators rather than carrying automatic triggers.

Transparency

11. What disclosures (in particular in terms of the amount, nature and maturity of liabilities within each rank of the insolvency hierarchy) should be required by resolution entities and material subsidiaries to ensure that the order and quantum of loss absorption in insolvency and resolution is clear to investors and other market participants?

The proposed disclosure requirements (Section 24 of the term sheet) seem reasonable, to provide a transparency standard for issuers and investors, and the QIS should provide evidence of what sort of disclosures banks could readily provide.

Although conformance is said to be "no earlier than 2019", it would be useful to know when TLAC disclosures will be required for banks' internal planning purposes. Barclays would advocate early disclosure requirements for G-SIBs, to support transparency and market confidence.

Limitation of contagion

12. What restrictions on the holdings of TLAC are appropriate to avoid the risk of contagion should those liabilities be exposed to loss in resolution?

In our view, restrictions on holdings of TLAC confuses capital and funding (where banks are important minority holders for their liquidity pool), and should not be in excess of any constraints imposed by the 'Large Exposure Regime' for G-SIBs, which already addresses contagion in resolution.

Specifically, we propose that capital deductions should mirror current rules under CRR/ CRD IV, and that holdings of other firms' (non-capital) TLAC instruments (including for market making) should be risk weighted – with risk weights set to reflect the type of instrument – rather than deducted from TLAC. Consideration also needs to be given to an exemption for market-making activities in other firms' TLAC instruments, to facilitate underwriting activity and support market liquidity (a large proportion of G-SIBs' TLAC will flow through the desks of other G-SIBs, and market liquidity will be especially important through the implementation stage). For market making in own instruments, we believe that firms should be able to apply for limits in line with CRD IV/ Own Funds rules, and that any holdings should be counted only once the firm has purchased the instrument (rather than when the limit is approved).

Conformance period

13. Should G-SIBs be required to conform with these requirements from 1 January 2019? Why or why not? What, within the range of 12 to 36 months following the identification as a G-SIB, should be the conformance period for banks identified as G-SIBs at a future date?

For a regulatory requirement of this significance, we believe the timeline for transition should be similar to the introduction of Basel III and informed by the QIS. Our expectation is that required TLAC issuance volumes will be high, which would support an appropriately long transition period (beyond 2019) and grandfathering of 'legacy' TLAC instruments, to avoid issuance pressures and provide investors with sufficient certainty about the bail-in hierarchy and process.

Market impact and other aspects

14. How far is the TLAC proposal, if implemented as proposed, likely to achieve the objective of providing sufficient loss-absorbing and recapitalization capacity to promote the orderly resolution of G-SIBs?

We consider that the proposals should meet the stated objective.

15. What will be the impact on G-SIB's overall funding costs of the adoption of a Pillar 1 Minimum TLAC requirement?

There is likely to be a material impact on G-SIBs' overall funding costs, which will be assessed through the QIS and market survey. To promote consistent analysis, we would suggest that guidance is provided on what to assume with respect to credit rating agencies' actions (and its impact on pricing). In assessing the overall capacity of the market to absorb new TLAC issuance, we would suggest that any intention to extend TLAC requirements to D-SIBs is also factored in.

16. What will be the impact on the financial system and its ability to provide financing to the real economy?

On an industry-wide basis, the scale of TLAC requirements may be challenging, given market capacity constraints for the aggregate volumes required. The consequences of TLAC issuance exceeding capacity, or setting an insufficient conformance period, could be forced shrinkage of balance sheets, particularly from deposit funded / retail banks, and a concomitant impact on the real economy. Evidence should come out of the QIS and market survey.

17. Do you have any comments on any other aspects of the proposals?

We would emphasise the importance of regulatory co-operation between home and host authorities, including agreement in advance on the approach to SPE resolution where losses arise in foreign subsidiaries. Communication from resolution authorities is important in shaping market expectations on the treatment of different creditors in a bail-in, especially between HoldCo and OpCos within transition.

Appendix 2: Technical clarifications requested

1. Confirm that while buffers "sit on top of" the Pillar 1 RWAs calibration of TLAC, the buffers can be included in the numerator for the leverage-based TLAC calibration

2. Confirm that legacy capital should count towards TLAC, given subordination and consistency with recent EBA guidance for EU banks on (equal) treatment of legacy capital in a bail-in

3. Confirm that (if retained as per current FSB proposal) the "relevant Tier 1 leverage ratio requirement" will be the Basel III ratio (3%), rather than the higher of that and any national requirement, and without any (national, if applicable) restrictions on the degree to which AT1 will be able to count

4. Clarify that for leverage exposure definitions, the BCBS methodology will be followed to ensure harmonised standards

5. Clarify that it is not the regulatory intention to penalise solo capital ratios through internal TLAC (eg where pre-positioned through an intermediate entity), such that waivers would be available from large exposures, leverage and intra-group RWAs arising solely through the pre-positioning of TLAC through an intermediate entity

6. Clarify whether capital instruments issued by foreign subsidiaries will have to satisfy local capital requirements (as well as the TLAC requirements), in order to be eligible as group TLAC?

7. Will internal TLAC instruments need to be both subordinated to excluded liabilities and to include a PONV trigger (absent a statutory PONV regime)? If so, how will the PONV trigger be set and who will determine whether PONV has been reached?

8. Relatedly, is it the intention that PONV triggers in internal TLAC could be exercised outside of resolution and if so, would there be any NCWO protection for *pari passu* investors? Could senior internal TLAC with a PONV trigger be exposed to loss before tier 1 / tier 2 internal TLAC with no PONV trigger?

9. Clarity is required on the definition of structured notes, for example we would not expect callable bonds or foreign currency bonds hedged into sterling to be considered as 'structured notes'

10. Clarify whether equity-accounted AT1 (which is legally debt) would count towards the minimum expected (33%) 'debt' requirement

11. While conformance is said to be "no earlier than 2019", it would be useful to know as soon as possible when TLAC disclosures will be required

12. Clarify whether 'pure' service companies (eg an operational subsidiary) will be exempt from TLAC, even if they provide services which support the exercise of the firm's critical functions

13. Confirm that for callable securities, the remaining maturity is based on the contractual maturity date and not the first call date (given that regulators would need to approve any call prior to maturity)

14. Confirm the process and expected turnaround time for regulatory approval to call a TLAC-eligible security

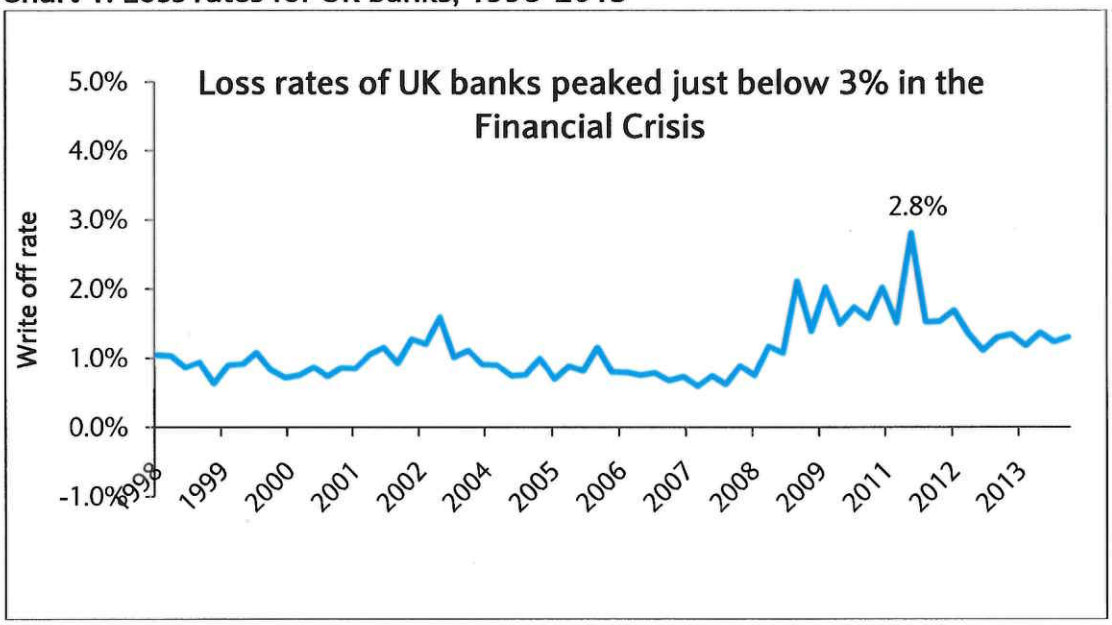
15. Confirm whether, for a developed country G-SIB, a Material Entity located in an emerging market economy would initially be excluded from the (internal) TLAC requirements

Appendix 3: Historical loss observations

The amount of relevant historical data available for calibration of TLAC for G-SIBS is limited. Where data is available, there are sometimes structural differences in balance sheet composition (eg US firms typically do not keep mortgages on balance sheet), such that data from failed banks across jurisdictions is not always comparable. We would consider Credit Risk loss data as potentially the most useful for comparison purposes, as it considers the structural positions banks hold in respect of their loan books and is more stable than other areas such as the trading book.

The Bank of England has published historical credit risk loss data for UK banks going back to 1997 (Chart 1). We believe the data from the recent financial crisis provides a good benchmark, as some large international UK banks required capital support in this period.

Chart 1: Loss rates for UK banks, 1998-2013



Source: Bank of England

The data shows loss rates peaked at 2.8% in 2011. Given that RWAs are calculated by applying a risk-weight to regulatory exposure (roughly equivalent to the balances used to calculate the loss rates), the loss rate can be translated into a suggested RWA-based TLAC requirement using the following steps:

1. Divide the loss rate by the risk-weight to obtain loss as a % of RWA (and leaving aside the potential availability of profits during the year): using an average risk weight of 35%[2] this translates to an 8% RWA loss rate (ie 2.8% loss rate / 35% Risk Weight)
2. Allowing for an 8-10% capital ratio post-resolution (ie recapitalisation amount), this translates to a total 16-18% TLAC requirement.

[2] Average Risk Weight for Credit Risk for EU banks at 31/12/2013 (based on EBA data)