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Secretary General
Financial Stability Board
Bank for International Settlements
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18th December 2015

Dear Mr Andresen,

Guidance on arrangements to support operational continuity in resolution

This is the British Bankers' Association's ('BBA') response to the above consultation; we welcome the opportunity to provide our views. The BBA is the leading trade association for the UK banking sector with 200 member banks headquartered in over 50 countries with operations in 180 jurisdictions worldwide.

The BBA has firmly supported the role the FSB has played to coordinate the development of effective resolution regimes and recognises the contribution this has made to enhance the resolvability of the globally significant and wider community of banks. As demonstrated by the FSB Resolvability Assessment Process, inadequate provision to underpin the operational continuity of critical functions provided by banks could act as an impediment to resolution. We therefore support the development of guidelines to assist firms to enhance their arrangements.

In considering the proposals for operational continuity, however, it should not be forgotten that significant progress has been made and that many firms have developed a well-advanced understanding of their critical economic functions which are supported by robust recovery and resolution planning arrangements. Great progress has also been made towards the evolution of balance sheets to account for new loss absorbency requirements and to ensure that contracts with counterparties are resolution-friendly. It is in this context that the proposals for operational continuity should be reviewed.

We provide specific comments on the draft guidelines in response to the questions identified in the consultation in the attached annex. It is important, however, to highlight the following overarching points:

- the intention to develop guidelines which focus on outcomes to be achieved and are model neutral is very welcome;
- whilst it is important to ensure that operational continuity arrangements will be effective, requirements should be considered and assessed predominately in the context of the preferred resolution strategy;
- the two stages of resolution – stabilisation and restructuring – covered by the guidelines are different and it should be recognised that the demands and ability to pre-plan and organise for the two are different. Whilst planning for stabilisation must understandably be detailed this is not the case for the post-resolution restructuring phase where planning needs to be much more flexible and able to support numerous solutions;

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- the need for adequate financial resources to be available to critical shared service providers is understood but any requirements should be judged against the resolution strategy. It should also be noted that it is most critical to have available resources during the immediate stabilisation phase of resolution. The need for financial resources during the restructuring phase will be dependent on the strategy pursued and may be partly met by resource generation during the period; and
- the guidelines could do more to promote cooperation and coordination through Crisis Management Groups and colleges of supervisors. We consider that global cooperation will be essential in the context of requirements for global firms and therefore encourage further work on this important topic.

Please do not hesitate to contact me if you would like to discuss any of the points in our response.

Yours sincerely,



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ANNEX: RESPONSES TO CONSULTATION QUESTIONS

1. Do you agree that the three service delivery models set out in Section 3 of the draft guidance represent, singly or in combination, current industry practice? Do you have any comments on the analysis of each model from a perspective of resolvability under different resolution strategies?

We agree that the delivery models identified under 3.1 are consistent with current industry practice. As 3.2 notes, many firms employ a mix of the three delivery models and decisions are often influenced by organisational structure, jurisdictional law and regulatory standards. The requirement to review how the service delivery model supports critical functions in resolution is an appropriate expectation. This analysis should, however, be focused on the resolution strategy and not additional analysis of alternative scenarios or open-ended assessment of post-stabilisation restructuring as implied at the end of 3.2.

Provision of services within a regulated legal entity

The articulation of the model and its strengths are succinct. We are not convinced that remedies to the cross-border challenges identified in 3.7 are strictly proportionate but explore these issues in more detail in response to other questions. In this context, however, there should be a role for CMGs to seek to address these impediments.

Provision of services by an intra-group service company

Again, we concur with the high-level articulation of the model. It is not clear why the fact that a service company is not prudentially regulated should have a bearing on the legal enforceability of contracts. Whilst we agree that adequate financial resources must be available, assessment of this should be judged against the resolution strategy.

Provision of services by a third party service provider

As 3.14 notes, the risks associated with potential modification of contracts or rights can be addressed through the use of appropriately drawn SLAs.

2. Are the arrangements to support operational continuity set out in Section 4 comprehensive and likely to be effective? What additional arrangements, if any, should be considered for inclusion? Should any elements be modified for specific service delivery models?

The focus on identifying outcomes that need to be satisfied by firms is welcome as it permits firms to satisfy these in a manner consistent with the structure and resolution plan. It is understood that a firm's service model must provide continuity during the two stages of resolution but it should be recognised that the demands and ability to pre-plan and organise for the two are different. Whilst planning for stabilisation must understandably be detailed this is not the case for the post-resolution restructuring phase where planning needs to be much more flexible and able to support numerous solutions. The drafting of the requirements under 4.4 is generally consistent with the outcomes based ambition of the guidelines. We nevertheless have the following observations:

- Management information systems: The importance of information systems which are fit for purpose is clearly fundamental and understood. We note that it is proposed that firms should be able to search this information is illustrated with the example of a 'searchable centralised repository'. This may have relevance in some circumstances but should not be regarded as a de facto requirement.
- Financial resources: It is noted that the draft guidelines indicate that financial resources should be sufficient to cover the two stages of resolution. Whilst we welcome the inclusion of footnote 10 that recognises that the restructuring phase may result in the resolution entity

being 'right sized' it should also be stated that the adequacy of financial resources should be judged against the resolution strategy and that it is most critical to have available resources during the immediate stabilisation phase of resolution. The need for financial resources during the restructuring phase will be dependent on the strategy pursued and may be partly met by resource generation during the period.

- Pricing structures: We question whether arm's length pricing is necessary and recommend that the guidelines be refocused to require firms to demonstrate that their charging structures are sufficiently granular and transparent.
- Operational resilience: The requirements to support the restructuring phase should be drafted to reflect the need to assure capacity is available at the start of the process rather than to imply that full optionality must be available to cover the whole exercise.
- Governance: We agree that there must be clarity of governance and reporting lines but are not convinced that it is necessary to prohibit reliance on key staff from core business lines when it is possible that arrangements can be made to ensure they are available.
- Rights of use and access: A requirement that certain operational assets should be owned or leased by the same entity as that providing the critical shared services should be judged proportionately against the resolution plan. It should be noted that leases such as those for property are often very long-term and the costs of breaking these may be significant.

Contractual provisions

BBA members anticipate that it will be complex to renegotiate contracts with non-group providers to ensure enforceability post-resolution. Whilst it is accepted that time will help address this problem, it would be beneficial for the FSB to provide public high-level messaging explaining the policy reasons to which banks could point when entering negotiations with their providers.

Resolution strategies and post-stabilisation restructuring

The resolution strategy should drive specific focus on the need for operational continuity arrangements to support separability and restructuring. Although some level of capability is obviously required as a backstop, the degree of planning and level of supervisory requirements should be proportionate.

Cross-border provision of shared services

We welcome the fact that the draft guidelines note the significance of cross-border issues and the importance of cooperation to the successful execution of resolution strategies. We encourage the FSB to undertake further work on this issue, to ensure what should be solvable issues do not become perceived barriers to resolution.

3. Are any of the arrangements particularly important in the context of either a Single Point of Entry ('SPE') or a Multiple Point of Entry ('MPE') resolution strategy, or are they strategy-neutral?

Arrangements for service provision should be independent from the resolution strategy but their effectiveness should be judged in the context of the resolution strategy.

4. Do you consider that any of the arrangements identified in Section 4 would be challenging to implement in the context of all or specific types of the service delivery models identified in Section 3?

We have no specific comments on this question.

- 5. Does the legal entity ownership structure for the provision of critical shared services (for example, wholly owned or partly owned through joint ventures) give rise to specific challenges in relation to operational continuity? If so, what are these challenges and how might they be mitigated?**

It is possible that different ownership structures might give rise to different complexities but we do not regard these as insurmountable and believe they can be managed with appropriate contractual provisions.

- 6. Are there measures, in addition to those suggested in Section 4 of the draft guidance, that might reinforce contractual arrangements for the provision of shared services to support operational continuity in resolution? Do you foresee any challenges in adopting such measures in the context of all or specific types of service delivery model?**

We have no specific comments on this question.

- 7. Are there any arrangements that might mitigate challenges in connection with (i) service providers from outside the jurisdiction of the resolution authority and (ii) non-regulated third party or intra-group service providers that should be covered in this guidance?**

Many global groups will operate cross-border service delivery models and it is therefore important that the guidelines are drafted to reflect this otherwise there is a risk that existing synergies and cost-efficiencies will be lost. In our view, the guidelines could do more to promote the use of Crisis Management Groups and dialogues with non-CMG hosts and encourage further work on this topic.

- 8. Do you agree with the classes of information set out in the Annex as necessary to support firms and authorities in their assessment of operational continuity in resolution? Do you foresee any challenges for firms in producing and maintaining that information?**

The need for information to support assessment of operational continuity is understood and it is useful to have illustrative guidance of the typical information which might be required from firms. We believe, however, that the annex is unnecessarily granular and prescriptive and the data could only be provided after substantial operational efforts which are not warranted. In terms of specific comments, the annex refers to 'key personnel' (1(b)) and 'critical employees' (1(d)). It is not clear whether these are one and the same or should be understood to be different. In any case, both terms are very subjective and we recommend that they should be understood to refer to a small list of critical employees, e.g. linked to knowledge of key systems/platforms/applications and a few specialist heads. It is also unclear why 2.1(b)(ii) refers to audit reports demonstrating adherence to pricing policies.

- 9. Are there any other actions that could be taken by firms or authorities to help ensure operational continuity in resolution?**

We see an on-going role for the FSB to monitor the implementation of the guidelines by member jurisdictions and through participation in CMGs with a view to achieving consistent implementation.