

## Principles on Bail-in Execution

### Overview of Responses to the Public Consultation

#### Introduction

On 30 November 2017, the FSB published a consultative document – [Principles on Bail-in Execution](#) that proposed guidance on the operational execution of bail-in. The guidance should assist authorities as they develop bail-in resolution strategies and make resolution plans operational for global systemically important banks (G-SIBs). The guidance should support the implementation of the FSB’s [Key Attributes for Effective Resolution Regimes for Financial Institutions](#), which set out the bail-in powers authorities should have for use in resolution, and the FSBs standard on Total Loss-absorbing Capacity (TLAC), which defines a minimum requirement for the instruments and liabilities that should be readily available for bail-in within resolution at G-SIBs.<sup>1</sup> The principles cover:

- disclosures on the instruments and liabilities within the scope of bail-in;
- valuations to inform and support the application of bail-in;
- processes to suspend or cancel the listing of securities, to notify creditors, and to deliver new securities or tradeable certificates following the entry into resolution;
- securities law and securities exchange requirements during the bail-in period;
- processes for transferring governance and control rights and establishing a new board and management for the firm in resolution; and
- market and creditor communications.

The FSB received nine responses to the public consultation from G-SIBs, industry associations and official sector bodies.<sup>2</sup> Respondents generally welcomed the consultative document, and noted the importance of addressing the operational complexities associated with the implementation of bail-in.

This note summarises the comments raised in the public consultation and sets out the main changes that have been made to the guidance (‘the final guidance’) to address them.

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<sup>1</sup> See *Principles on Loss-absorbing and Recapitalisation Capacity of G-SIBs in Resolution and Total Loss-absorbing Capacity (TLAC) Term Sheet* (<http://www.fsb.org/wp-content/uploads/TLAC-Principles-and-Term-Sheet-for-publication-final.pdf>), November 2015.

<sup>2</sup> The comment letters are published on the FSB’s website: <http://www.fsb.org/2018/02/public-responses-to-the-consultation-on-principles-on-bail-in-execution/>.

## Summary of Main Issues

### *Scope and application of the guidance*

The principles focus on the operational implementation of bail-in resolution strategies for G-SIBs and, accordingly, the bail-in of instruments and liabilities that are eligible for the FSB's TLAC standard. Several respondents suggested that the principles may also be relevant for firms other than G-SIBs, including firms that are subject to different resolution strategies other than bail-in, and that instruments and liabilities other than those eligible as TLAC may be subject to bail-in. The final guidance maintains the focus G-SIBs and the bail-in of TLAC-eligible instruments and liabilities. However, it states that the principles may also be relevant for banks other than G-SIBs and that the principles are also relevant for liabilities other than those eligible as TLAC standard.

### *Cross-border aspects*

Two respondents expressed the view that the principles should focus more on the cross-border aspects of a bail-in transaction, and de-emphasise aspects that strongly depend on the underlying legal system. In this regard, one respondent noted that the FSB should encourage jurisdictions to provide transparent and expedited processes to give effect to foreign bail-in-related resolution measures, as set out in the *Key Attributes*. The principles do not include any specific guidance on mechanisms to give cross-border effect to resolution actions given that such guidance is set out in the *Key Attributes* and in the *Principles for Cross-border Effectiveness of Resolution Actions*.<sup>3</sup> To take account of the fact that practices and legal frameworks across FSB jurisdictions differ in relation to the use of a valuer, the final guidance refers to 'identification' of a valuer rather than 'appointment.'

### *Bail-in scope*

Respondents recognised the importance of ex ante communication by the authorities on how they anticipate applying discretionary exclusions from the scope of bail-in and departures from pari passu treatment of similarly situated creditors to improve transparency and predictability in the resolution process, as provided in Principle 2. However, these respondents argued that discretionary exclusions from the scope of bail-in and departures from pari passu treatment of similarly situated creditors should not lead to a perception that certain types of creditors will de facto be excluded from bail-in. The final guidance notes that any communication provided by resolution authorities "should not give an expectation that certain types of claims that fall within the category of TLAC or other bail-inable resources would de facto be excluded from bail-in a resolution scenario".

### *Provision of information and data*

The draft principles (3 and 6) identified the need for firms to have appropriate technological infrastructure capability to support timely access to, or provision of, information on bail-inable instruments and liabilities and valuation data. Several respondents stressed the need for a more flexible outcome-based approach focussed on banks having "appropriate capability". These respondents suggested that technological infrastructure is one component, but not the sole

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<sup>3</sup> See *Principles for Cross-border Effectiveness of Resolution Actions* (<http://www.fsb.org/wp-content/uploads/Principles-for-Cross-border-Effectiveness-of-Resolution-Actions.pdf>), November 2015.

component of a firm’s capabilities that should enable the timely availability and access to relevant information or data. The final guidance adopts a broader approach and states that firms should have “appropriate capabilities”. However, it emphasises that appropriate capabilities should include technological infrastructure. The FSB considers that management information systems and technological infrastructure are important elements of this, particularly for the provision of valuation data, which will need to be provided at a sufficient level of granularity and on a timely basis.

A number of respondents also expressed the view that the baseline information requirements on the scope of bail-in and reference to specific accounting standards were overly prescriptive. The final guidance therefore refers to “relevant accounting standards”.

### *Valuation*

Views of respondents differed on the roles of home and host authorities in the valuation process as set out in Principle 5. Two respondents said that it should be clear that the home resolution authority has sole responsibility for the entire valuation, and that any input from host authorities in the valuation process should be subject to a deadline to avoid jeopardising the overall resolution process. On the other hand, one respondent stated that host authorities must be able to provide input into valuations, in particular the development of the valuation methodology. The final guidance acknowledges the responsibility of the home authority for the overall framework and timeframe for group-wide valuations, but it also recognises the role of host authorities, for example in estimating losses in the subsidiaries in their jurisdiction and in providing information pertaining to those entities to the valuer.

Views of respondents also differed on the disclosure of valuation information for a firm in resolution as provided in Principle 8. Some respondents argued that disclosure is important to create confidence in the valuation process and that the disclosure of “summary information” (as provided in the consultative document) would be unlikely to jeopardise resolution objectives. On the other hand, one respondent stated that caution should be exercised with regard to the disclosure of valuation results that may be subject to uncertainty. The final guidance adopts a broad reference to disclosure of “information on valuation outcomes” and subjects any disclosure to the condition that it does not jeopardise the resolution objectives.

### *Exchange mechanics and securities law and securities exchange requirements*

One respondent suggested that the FSB should recommend legislative changes to accommodate the execution of a bail-in transaction and facilitate compliance with applicable disclosure requirements, for example by recommending specific exemptions and exclusions from applicable requirements for actions taken in the course of executing bail-in, such as de-listing, re-listing, or exchange of securities. The principles on securities law and securities exchange requirements (Principles 11 to 14) strike a balance between the financial stability objectives of resolution authorities and the investor protection mandates of market authorities. Key Attribute 5.6 recommends that authorities have flexibility to allow temporary exemptions from disclosure requirements or a postponement of disclosures required by the firm where the disclosure by the firm could affect the successful implementation of resolution measures.

### *Resolution governance*

Some respondents highlighted additional governance related issues for resolution authorities to consider in planning for a bail-in, for example requirements for a new shareholder to submit a

take-over bid. These have been reflected in the final guidance, which notes in Principle 18 that such requirements may also need to be identified and considered by CMG (Crisis Management Group) authorities.

#### *Resolution communications*

Respondents noted a number of additional items to be included in the information to be communicated by the home resolution authority at the point of entry into resolution as set out in Principle 21. This includes information on the liquidity position of the firm in resolution and the availability of backstop mechanisms, information on how complaints or questions could be lodged, and more explicit references to retail depositor communications. One respondent also suggested that there should be communication at the end of the bail-in period about the exit from the bail-in resolution process. The changes to the final guidance emphasise the importance of communication on the treatment of depositors and on the steps being taken by authorities to ensure that a firm in resolution is able to meet its obligations as they fall due. Principle 21 of the final guidance also recognises the need for communication at the end of the bail-in period, including for example additional information on the impact on creditors and ongoing requirements for the firm.