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Consultative Document 'Guidance on Arrangements to Support Operational Continuity in Resolution'

Dear Sir / Madam

UBS would like to thank the Financial Stability Board (FSB) for the opportunity to comment on the consultative document 'Guidance on Arrangements to Support Operational Continuity in Resolution'.

We greatly appreciate the efforts of the FSB in establishing clear and transparent global standards and principles and agree in general that the arrangements outlined in this guidance are suitable to support operational continuity in resolution. However, we would like to point out that their effectiveness will be determined to a large degree by mutual recognition of the arrangements by home and host regulators as well as the ability of the industry to implement the new requirements.

Before we take the opportunity to share our considerations referring to the specific questions raised by the FSB, we would like to outline a number of issues that are of particular importance for us and, thus, would appreciate due consideration by the FSB:

- We agree that intra-group providers of critical shared services should have the financial resources to facilitate operational continuity of critical functions. However, we caution the extent of such resources and question whether these resources need to be sufficient to cover both the stabilization and the restructuring phase of resolution. We believe that financing a reasonable transitional period should be agreed based on concrete resolution planning considering various measures, including disposal of specific entities or measures to 'right-size' the shared services provider(s) after a resolution event.
- The introduction of new clauses in third party service contracts will enhance the continuity of service provisioning to regulated banks. UBS has achieved substantial progress in amending all contracts. However, there are counterparties, including financial market utilities, which are resisting to sign amended contracts. As such, regulators may also need to get greater involved to ensure that all financial market participants are constructively seeking solutions in this area.
- The effectiveness of any arrangements to ensure operational continuity in resolution will depend on the mutual recognition of measures taken by different resolution authorities.

The Crisis Management Groups and Colleges should play an important role in the implementation of the new requirements as they are best placed to assess whether a G-SIB has ensured operational continuity of its critical shared services and to what extent further arrangements will be required – also taking into account the resolution strategy and planning of the institution. A respective reference in the FSB guidance would be welcomed.

- The FSB notes that the arrangements for operational continuity focus primarily on critical shared services that it considers to be transactional and can be addressed by contractual terms. As such, it would be helpful if the FSB would provide additional clarity how the shared services excluded from this guidance will be treated.
- The FSB proposes three service delivery models to ensure operational continuity. We welcome the principles-based guidance and strongly believe that banks should be free in defining the most effective mix of the three models to meet resolvability criteria. In this regard, we would welcome a statement that regulatory requirements should finally not push banks into a distinct model by differentiating requirements such as financing of an intra-group service company versus third party providers.
- Finally, we would welcome a framework which helps regulators and the industry to assess the level of operational continuity that has been achieved by a G-SIB. This would provide planning security and overall improve compliance with the regulatory requirements.

Please find detailed answers to the questions of the consultative document. Our response should be considered complementary to the letter of the Joint Associations Group (IIF-GFMA Joint Comments) to which we also contributed.

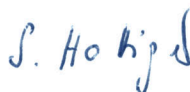
We would be happy to discuss with you, in further detail, any questions you may have. Please do not hesitate to contact us.

Yours sincerely,

UBS AG



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Steve Hottiger
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Detailed answers to the 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 three service delivery models described in section 3 represent the setups that can currently be observed in the industry. As the industry tends to utilize a combination of the different models, we believe it is important that the guidance does neither limit the choice of service delivery model and the combinations thereof nor unintentionally push towards a perceived preferred model.

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 arrangements outlined in Section 4 represent the key elements to support operational continuity in resolution and we see no further arrangements that would need to be included.
- Their effectiveness will be strongly impacted by their collaboration between resolution authorities coupled with mutual recognition of resolution measures. Furthermore, a key element will be the ability of the industry to implement the requirements. As outlined in our response to question 4, some arrangements in this guidance will pose substantial challenges to the industry and could limit their effectiveness.

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?*

- Generally, maintaining service provisioning should be independent from the agreed resolution strategy. Thus, in our view the arrangements should be strategy-neutral.

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?*

- Some of the proposed arrangements will likely prove challenging to implement. This relates particularly to contractual arrangements with third party service providers which usually cannot be changed or amended unilaterally. While UBS has achieved substantial progress in amending all contracts there are counterparties, including financial market utilities, which are resisting to sign amended contracts. As such, regulators may also need to get greater involved to ensure that all financial market participants are constructively seeking solutions in this area. In addition, sufficient time needs to be granted to renegotiate existing contracts (e.g., 2 years).
- While we agree in principle, that there should be a certain level of information available, the current guidance seems overly prescriptive. The data-set described in the annex of the consultative document is very granular, in many cases would have to be prepared for the sole use of operational continuity and could only be made available with disproportionate effort. This applies in particular for the following information requirements listed in the annex:

- Staff required for the provision of critical shared services: identification of staff required for each critical service distinguishing between FTEs dedicated to support critical functions and FTEs delivering group-wide services; experience in employee crisis communication.
- Operational, legal and governance structure of critical shared services: inventory, including location, of all operational assets necessary to deliver services; analysis of stressed financial condition of the service company(/ies) [...] through conservatively estimated severe stress conditions.
- Contractual arrangements: a method for determining the relative priority of contracts; ability and time required to replace a service provider; retention clauses and employment terms for critical staff.
- Against this background we propose that the catalogue of data requirements in the annex should serve only as an illustrative list of issues which can be relevant but is not necessarily applicable as a general requirement.
- We acknowledge that intra-group providers of critical shared services should have sufficient financial resources to facilitate operational continuity of critical functions. We have, however, the following comments on the arrangement outlined in the consultation:
 - We question whether these resources need to be sufficient to cover both the stabilization and the restructuring phase of resolution. In this respect, we are of the opinion that it will be sufficient to bridge a limited period of up to six months. The determination of the period should also take into consideration measures outlined in the resolution plan, e.g. for 'right-sizing' of the shared services provider after a resolution event, and should be aligned across jurisdictions.
 - In addition, we would appreciate further clarity how this requirement relates to existing capital and liquidity rules (including pre-positioning of internal TLAC). Also, further guidance is required with regards to the types of resources, eligible instruments, on how these instruments could be utilized in a business-as-usual or a going concern scenario as well as how the requirement shall be applied in case services are delivered by a third party service provider.
- The FSB should be conscious that its guidance should not allow preferential treatment of one service delivery model over another, which could have unintended consequences for the industry as a whole. For example, the FSB should ensure within its legal competence that the capital / liquidity implications for service delivery by a division within a regulated legal entity or an intra-group service company are not less favorable than a third party service provider. This would be important in order to avoid that the industry might adopt service delivery models that uniformly use offshore, unregulated, less capital intense third party service providers. Although the actual implementation will take place on a national level, a respective guiding statement by the FSB would be welcomed.
- We note that the FSB differentiates between finance-related and operational shared services and that the arrangements for operational continuity focus primarily on critical shared services that it considers to be transactional and can be addressed by contractual terms (i.e. operational critical shared services). As such, it would be helpful if the FSB would provide additional clarity how the shared services excluded from this guidance will be treated. The PRA consultative document on operational continuity (CP38/15) moves away from the concept of differentiating finance-related and operational shared services. We consider this helpful and encourage the FSB to revisit its guidance.

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?*

- Certain challenges in relation to operational continuity depending on the legal ownership structure might arise (e.g., additional complexities arising from a multi-ownership structure). However, we believe that these challenges should be manageable with

appropriate contractual provisions. Thus, we do not believe that there should be specific guidance with respect to different ownership structures.

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 see no further measures.

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?*

- Global banking groups usually operate a service infrastructure that is focused on realizing synergies, economies of scale and taking advantage of a high degree of specialization, which help to enhance cost efficiency and innovation as well as stability and sustainability of service provisioning.
- In order to maintain flexibility, we do not believe that this guidance should define potential restrictions with regards to the location / domicile of the service provider and that this should be addressed by the individual country resolution regimes.
- As outlined above, the effectiveness of this guidance will depend on the mutual cooperation and recognition of measures taken by different resolution authorities. Therefore, we believe cross-border considerations are of particular importance. As such, we are of the view that the Crisis Management Groups and Colleges should play an important role in the implementation of the requirements outlined in this guidance. They are best placed to assess whether a G-SIB has ensured operational continuity of its critical shared services and to what extent further arrangements will be required – also taking into account the resolution strategy and planning of the institution. A respective reference in the FSB guidance would be welcomed.

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?*

- Please refer to our answer to question 4.

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

- The FSB should consider to include the implementation of the arrangements in their regular reviews and assess their consistent implementation both from a content and timing perspective.