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14<sup>th</sup> October 2013

Dear Sirs,

### **Information sharing for resolution purposes**

This is the British Bankers' Association's response to the invitation to comment on the above consultative document, the opportunity to provide views is welcome.

The consultation document notes correctly that information exchange is fundamental to coordinated and effective planning, preparation and implementation of resolution. This in turn is essential to building the trust and cooperation between national authorities required to coordinate resolution; simply put, if host authorities are unsighted on actions to be taken by the home country authorities they may take actions which inhibit the overall resolution strategy, particularly where the approach taken is single point of entry and bail-in. For this reason efforts to enhance information exchange should be welcomed.

Information exchange is quite rightly a sensitive topic: authorities and institutions must have confidence that confidential or sensitive data will be protected. Whilst national authorities must conduct their own due diligence and retain responsibility for their actions, there is a clear role for the FSB to set minimum standards for the protection of data and to encourage a presumption that sharing is useful and that inappropriate caution should be avoided. In this regard, the focus of the draft guidance on the comparability of regimes – as opposed to equivalence – is to be welcomed. This could usefully be augmented by including an assessment of compliance with the information sharing and confidentiality provisions in the FSB's annual review of adherence to the Key Attributes. That said, the draft guidance should be clearer on the scope of the information to be shared under its framework: this should be limited to information necessary to prepare for and execute resolution.

Answers to the consultation questions are provided below.

**1. The draft guidance is intended to apply in relation to all financial sectors. Do any considerations arise in relation to exchange of information on particular kinds of financial institution that require sector-specific provisions? If yes, please elaborate.**

No. The provisions outlined in the draft guidance appear to be applicable to a wide range of financial institutions, and we do not see the need for specific guidance for different sectors.

**2. Do the provisions on legal gateways for disclosure of non-public information (paragraphs 1.1 to 1.8) outline the key elements that should be included in a jurisdiction's legal framework to allow national authorities to share information for resolution-related**

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**purposes with other national and foreign authorities? Please explain any additional elements that should be included.**

The provisions appear appropriate, if a little generic which could result in inconsistent implementation. The focus on the comparability of regimes in 1.7 – rather than equivalence – is therefore welcome but guidance on best practice might minimise unnecessary differences in approach.

Paragraph 1.3 permits commercially and legally sensitive information to be shared with domestic and foreign authorities 'if it is necessary for the recipient authority to carry out functions relating to resolution'. It would be helpful for the text to clarify under which situations the FSB envisages this sharing being necessary, with some examples. This decision rests with the home authority, but there is a role for the FSB in helping to ensure consistency to give host regulators comfort that information will be shared if necessary.

**3. Does the draft guidance (in particular, paragraph 1.4) provide an adequate standard of protection for all types of information, including supervisory information, that authorities may need to share for resolution purposes? If not, please explain.**

It does but it must be emphasised that this will not replace the need for individual authorities to conduct their own due diligence.

**4. Are the resolution-related purposes for which authorities should be able to disclose information (paragraph 1.9) sufficiently comprehensive? If not, what additional purposes should be included?**

The provisions of paragraph 1.9 are extensive. It would be useful to understand the interaction of the proposed guidelines with gateways for sharing information related to supervision and other matters. For example, 1.9 includes reference to information related to recovery planning which could be considered as being outside the scope of resolution as defined in 1.1 – 1.3. If information relating to recovery planning is to be included within the list it would be useful to clarify the involvement and role of the firm in the sharing of the information. Firms should be aware of any specific recovery information shared by regulators. Furthermore, for consistency, it would be useful to have clarity as to whether the early detection of financial stress under (v) relates to information pre-recovery.

**5. Are the standards of 'adequate confidentiality requirements' set out in the draft principles (paragraphs 1.10 to 1.15, 2.4 and 2.5) sufficient to protect the confidentiality of sensitive information, without being excessively restrictive so as to impede necessary exchange? If not, please explain what more is required or desirable.**

The provisions look to strike an appropriate balance but should not be regarded as exhaustive. Authorities will need to make their own judgements about the adequacy of confidentiality standards in other jurisdictions.

**6. Is it appropriate that information received from foreign authorities should be excluded from Freedom of Information regimes or exempt from disclosure under such regimes (paragraph 1.15)? Are there circumstances when information received from foreign authorities for resolution-related purposes should be subject to disclosure requirements?**

Yes, information received from foreign authorities should be excluded from Freedom of Information regimes. 1.15 is therefore welcome.

**7. What other issues in relation to the exchange of information for resolution-related purposes (if any) would it be helpful for the FSB to clarify in this guidance?**

As noted above, the guidance is unhelpfully generic in places which could result in inconsistent implementation and conflicts between authorities. For example, consideration could be given to defining more specifically the types of information that would be 'necessary' and 'appropriate' for resolution planning purposes. A template or sample document could support greater clarity of COAGs.

The paper is silent on potential consequences (safeguards if any) of jurisdictions not complying with the provisions of the COAG in a crisis situation.

The paper gives an impression that information sharing in the context of COAGs pertains to firm specific information only. Some examples in the paper include information relating to customers or counterparties of the firm. It is very important that COAGs and information exchange in recovery and resolution should also include information pertaining to actions or potential actions of regulators, actions that may be taken under local law etc. For example, is the host regulator intending to impose any additional constraints on the portability of liquidity? This is particularly important in the context of Group plans.

Yours sincerely,



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