The Bank of England's approach to assessing resolvability – UK Finance response

UK Finance is the collective voice for the banking and finance industry. Representing more than 250 firms across the industry, we act to enhance competitiveness, support customers and facilitate innovation.

General remarks

UK Finance and its members welcome the opportunity to respond to the Bank of England's consultation on its approach to assessing resolvability.

Our members are supportive of enhancing the UK's financial stability by putting in place a credible resolution regime, so that firms are no longer reliant on public funds in the event of failure. We welcome the Bank of England's consultation paper which details its views on what constitutes the final large piece of the UK's resolution regime. Enhancing financial stability of the system as a whole, ensuring the continuity of business services and protecting the customers they serve is of vital importance and interest to our members. Nevertheless, we believe that a careful balance must be struck between regulators' and firms' responsibilities with regard to ensuring firms' resolvability.

We are pleased to be able to respond to the Bank's Consultation Paper (CP) and appreciate the intention behind the explorative nature of the paper. However our members are concerned by the lack of clarity in a number of areas, particularly with regard to (but not limited to):

- **Scope**: applicability to third country branches and subsidiaries and the level of application within banking groups.

- Broadening of the Bank's **Operational Continuity in Resolution (OCIR)** policy.

- **Governance, management and communications**: Our members are concerned by the lack of clarity regarding how the roles and remits of the Bank, the Bail-in Administrator (BIA) and Directors will interact. In order to facilitate a smooth resolution, establishing these responsibilities and linkages early on is essential.

Our members welcome the Bank's intention to apply a proportionate approach across the RAF piece and we have a number of suggestions as to how this can be built upon, specifically:

- Timing of the **reporting and disclosures of self-assessments** so that the quality of information is not jeopardised and market confusion is avoided. We believe that resources should be devoted to building and enhancing firms' resolvability capabilities.

- **Continuity of access to Financial Market Infrastructure (FMIs)**: firms should be able to focus on ensuring their existing relationships with FMIs are functional during a resolution scenario.

We have provided more detailed responses to the consultation questions below and would welcome the opportunity to discuss these issues more fully in due course.

Scope

1. Do you agree with the proposed scope of the Bank's Policy Statement on the Resolvability Assessment Framework as set out in paragraphs 2.1-2.5?

To globally operating firms, internationally coordinated supervisory action and cooperation is crucial in order to avoid duplicative or contradictory requirements from different authorities in different jurisdictions, which are costly to banks and the customers they serve. Our members therefore welcome the Bank's intention to apply a proportionate approach to overseas banking groups operating in the UK, as stated in paragraph 2.5 of the consultation paper. We understand that in order to apply the resolvability framework in an effective way across the whole group, much depends on the outcome of discussions between different resolution authorities and supervisors. Nevertheless, we are concerned that it is not yet clear what form this proportionate approach will take – particularly in relation to the applicability of this approach to subsidiaries of overseas banking groups rather than simply branches - and our members would appreciate further guidance on this point, prior to the publication of final requirements. Our members understand that typically there is only one consultation prior to implementation, however the exploratory nature of this CP necessitates a further clarification of policy intent so that firms have an understanding of what is expected of them and their subsequent implementation is a smooth one.

Application to different types of firm in scope

2. Do you agree with the proposal for how the Bank's Policy Statement on the Resolvability Assessment Framework will apply to different types of firm?

We support the application of the proposals to different types of firms as set out in the policy. However, our members would find it helpful if the Bank could recognise that its expectations may be different to those set by other resolution authorities and in particular the home authorities of the group. As outlined above, coordinated supervisory action and cooperation is of particular importance to globally-operating banks. As such, we believe it would be helpful if the Bank were to coordinate its expectations with other resolution and competent authorities, especially the Single Resolution Board (SRB). This is to avoid divergent expectations by the authorities causing firms to duplicate - or counteract - their efforts. Current experience suggests that firms are expected to provide information to both the Bank of England and their parent's home resolution authority, which is contrary to our interpretation of what both Multiple Point of Entry (MPE) and Single Point of Entry (SPE) resolution strategies envisage. Furthermore, we request that the Bank makes a clear statement that it does not expect its proposals to apply to entities outside the UK resolution group and that such entities are considered as if they were ordinary third parties.

Our members also had a number of concerns regarding the application of the Resolvability Assessment Framework (RAF) to subsidiaries and branches of third country headquartered firms. In the case of UK subsidiaries of third country headquartered firms with an SPE resolution strategy, the SPE strategy does not envisage resolution proceedings to be undertaken by UK authorities. As such, the home resolution authority requirements may not align to that of the RAF. The Bank should provide greater clarity on the specific parts of the RAF policies that the Bank deems applicable to third country headquartered subsidiaries.

Similarly, we would ask the Bank to clarify that the scope of application does not include UK branches of foreign firms, as the current language leaves room for misunderstanding, especially in relation to the use of the term "hosted firms". By definition, branches of foreign firms are subject to resolution planning by their home authorities, which can be either MPE or SPE but in all cases includes the branch business and assets. We support the Bank's intention to use Crisis Management Groups (CMGs) when assessing how to apply the RAF to hosted firms and indeed, through fora such as these the Bank has the opportunity to receive comfort and provide input on firms' resolution plans. The Bank should use these channels for any information in relation to the role of UK branches in these foreign firms and not impose additional conditions and expectations on a standalone basis, which could frustrate the home authority's resolution plan and undermine the resolution strategy.

Achieving resolvability

3. Do you consider there to be any additional generic barriers that will need to be removed in order for firms to be considered resolvable?

Our members firmly believe that any additional remaining barriers to resolvability are likely to be particular to each firm's operating model, resolution strategy and general ways of working. In order to best mitigate potential threats to financial stability, it is crucial that the Bank continues to apply resolvability measures in a proportionate, targeted way, taking into account the idiosyncrasies of each firm.

4. The Bank will apply the measures within the CP in a proportionate way. Are there any specific areas of new policy that would be unduly burdensome or unnecessary for certain types of firms to implement?

We welcome the Bank's intent to apply RAF measures proportionately, however there remain many gaps in the policy development so far and the proportionality of the measures as a whole will depend on how these gaps are eventually addressed. For example, it is not yet clear at which level the RAF capabilities are intended to apply (perhaps internal MREL entities but this seemingly has not yet been decided) and this decision will naturally have a significant bearing on the proportionality of the final requirements. Similarly, we request the Bank takes due consideration of proportionate application where policy is very recent or where further guidance is still required. This is particularly relevant to the amount of assurance it will be possible to conduct for certain impediments where policy is more recent and/or there is more work to remove the impediment ahead of the 2022 compliance deadline.

In terms of specific areas of new policy which might be unduly burdensome for firms, the timing of the reporting and disclosure of banks' self-assessments as proposed in the PRA CP31/18 poses a significant burden on relevant firms.

Firstly, the timing of firms' initial report to the PRA in September 2020 is so ambitious that the quality of the output is likely to be jeopardised. In order to submit by September 2020, firms will be required to approve the report by the July 2020 Board meeting. Given the level of senior engagement suggested by this consultation, it is likely that a pre-Board governance cycle will be necessary, therefore the submission will need to be broadly complete by June 2020 – only 9 months after the expected date of finalised policy. Bearing in mind that firms do not yet have self-assessment frameworks in place and that there will be significant work for firms to close the gaps (especially in areas where policy is new and being consulted on by the Bank for the first time), we do not believe this deadline is achievable.

The gap between the submission to the PRA and the public disclosure is significant and disproportionately long in comparison to the lead time for submitting the initial report to the PRA. This indicates that more time should be dedicated to assurance, rather than designing and establishing the self-assessment framework within firms and improving their capabilities. We do not believe this balance is right – more time should be given at the beginning of the process so that firms can close remaining gaps, and embed ownership and assessment frameworks within the business.

Furthermore, we are concerned that public disclosures are mandated prior to binding final policies. The reporting cycles will be an iterative process, with the first set likely to vary in terms of the quality and the level of detail, as firms get to grips with the new requirements. These are high level - and in some cases still being developed - so a large amount of interpretation and judgement will be required, which ultimately lead to a heterogenous set of reports from firms. This will also affect the proposed public disclosures as there is no prescriptive format in place. These disclosures are therefore likely to be high-level and it is not clear how informative or useful they would be. We are also highly concerned that this could confuse the market and therefore be counterproductive. With this in mind, we believe that firms' resources would be more efficiently leveraged if they are devoted to improving the firms' capabilities and honing their self-assessment frameworks, as opposed to developing public disclosures with marginal benefits to the public. In any case, firms' quarterly reporting (QMS) already contain details concerning resolvability; although these typically focus on MREL issuance, investors and market participants can (and often do) request more detail on resolvability if they choose. Firms believe that public understanding of resolvability outside investors and market participants remains limited and therefore that clarity should be prioritised to avoid confusion. **We recommend that, following firms' first submission to the PRA (according to the timetable we set out below), firms do not make public disclosures in the first phase and, ahead of the second, the Bank assesses whether or not public disclosures by firms would be essential to determining whether or not they are resolvable.**

Whilst our members accept that that the RAF reporting and disclosure cycle is likely to become a requirement, in view of the above they think that the following would be a more constructive approach:

First reporting cycle

- Firms submit their assessments to the PRA in H1 2021;
- Bank/ PRA to conduct assurance work and bilateral engagement with firms to continue to close gaps
- Bank to make a public statement relating to in-scope firms by end 2021, working with firms so that messaging and comms can be prepared;
- Firms do not make a public disclosure in 2021.

Second reporting cycle

- Bank to conduct a review as to whether or not disclosures by firms are necessary for the second reporting phase, or if resources would be better utilised if devoted to improving their resolution capabilities
- If it is to be decided that firms' disclosure is valuable, firms to make a public disclosure in the second cycle but the format of this to be uniform and to reflect lessons learned in the first cycle. In the second cycle the PRA may also issue further guidance on its expectations relating to the PRA submission.

We believe this better meets the RAF objectives: it allows the Bank to deliver on its commitment to Parliament to ensure that firms are resolvable by 2022, it provides firms with time to focus on addressing barriers to resolvability where these exist and embedding ownership and assurance relating to these in the business, and that it makes the messaging and communications manageable during the first cycle when firms will inevitably take different approaches to the RAF exercise.

The minimum requirements for own funds and eligible liabilities (MREL)

5. Do you agree that the measures proposed in the CP are appropriate to enable firms to show that they have adequate loss-absorbing resources to support resolvability?

The CP states that the Bank is still developing its policy on surplus MREL, in conjunction with other authorities in CMGs. However, it is not clear how the surplus MREL policy would apply to hosted firms which issue internal MREL only. We would welcome further clarification on the scope of the surplus MREL rules (i.e. application to UK firms only) given the expectation that comparable requirements would be expected at the home authority level. In addition, we would welcome clarity on what is meant by the statement in the CP that surplus MREL is expected to be "readily available" to recapitalise any direct or indirect subsidiary.

In paragraph 6.12, the Bank states that firms within scope of the RAF should consider “whether loss-absorbing instruments issued by entities within their group comply with the relevant requirements in non-European Economic Area jurisdictions”. Our members believe that responsibility for ensuring the MREL compliance of overseas subsidiaries should primarily remain with the corresponding subsidiary. Whilst an awareness of the compliance may be logical, any concrete UK firm responsibility should be clearly set out by the Bank.

It is also proposed that firms assess the impact on resolvability caused by differences in form of internal and external MREL. We believe that it should be the responsibility of the home resolution authority to ensure that losses can be passed up the entity chain and out of the UK.

Furthermore, the Bank proposes in paragraph 6.21 that adequate documentation in relation to the MREL eligibility of instruments issued under third country law constitutes independent legal advice. Our members believe that general legal advice should suffice to meet the Bank’s expectations.

Valuations

6. This CP does not propose any additional policy or guidance on valuations capabilities to that set out already. Are there any areas where you think additional clarity would be required on the valuation capabilities that firms will need to achieve the outcomes of resolvability?

We note that the RAF does not propose any new policy with regards to valuation which is appreciated, as firms are currently undertaking significant efforts to comply with the existing Valuations Policy by 1st January 2021.

However, with regards to required capabilities, we would like to draw to attention the issue of timing for compliance with the existing policy statement and the proposal for Solvent Wind Down capabilities on which the consultation paper is expected at some point during 2020. Given firms will need to start the implementation of capabilities well in advance of the 1st January 2021, firms may incur significant additional cost and resource burden in order to amend existing capabilities to reflect the capabilities needed for Solvent Wind Down.

Regarding areas requiring additional clarification, our members are keen to understand how the EBA's draft Handbook on Valuation[1] and guidance will inform implementation of the Valuation Statement of Policy (SoP) and request further explanation on this point.

Funding in resolution

7. Do you agree with the objectives and principles set out in this section?

No comments.

8. Do you agree with the proposed approach to determining which entities and currencies are considered material and the proposed scope of analysis?

No comments.

9. To what extent do you consider that firms' existing capabilities and arrangements already meet the proposed principles? Where are the significant gaps likely to exist?

Our members do not believe it is clear what the Bank's expectations are beyond business-as-usual and whether or not any subsequent requirements will be necessary for resolvability on an ex-ante basis. It is crucial to our members that the Bank maintains ongoing bilateral dialogue with firms in order to foster mutual understanding of what is expected and to ultimately enhance the quality of firms' self-assessment disclosures.

In particular, some aspects of the proposals could be interpreted as representing a significant uplift compared to existing capabilities. For example, paragraph 6.54 seems to suggest that firms should be able to estimate liquidity needs in resolution on a forecasted future balance sheet. We recognise the need for modelling to be sufficiently flexible to allow for updates to estimates during the period following entry into resolution as the facts and circumstances surrounding the failure of the firm become clear (and as recommended in the FSB's guidance) but requiring an estimate on a projected future balance sheet would present substantial challenges for firms. Similarly, we note the Bank's proposal that firms should be able to estimate their liquidity needs in resolution if they were to enter resolution, either immediately, or "at any point over a period of prolonged stress". This wording could be understood as requiring a firm to estimate liquidity needs for multiple future data points. Such a requirement would be particularly difficult to execute in practice and the added value, from a cost benefit analysis, would be limited. We would propose that firms should have the capabilities in place at t=0 on a spot basis and on a forward-looking basis.

In addition, we would ask for clarity on the timelines for the production of liquidity analysis as set out in Paragraph 6.52 of the CP. We are particularly concerned by the proposal that firms should be able to make the core part of the liquidity analysis available on a T+1 basis, which suggests the potential to require real time data which would not be feasible. We would propose a transition period for the production of liquidity analysis with a "T+2" timeframe, i.e. that a minimum timeframe of "T+1 (but not sooner)" will not begin until 2022.

10. What do you consider the practical obstacles which firms would need to overcome in order to implement the proposed principles?

[1] https://eba.europa.eu/-/eba-publishes-handbook-on-valuation-for-purposes-of-resolution

One area that specifically requires more clarity is the trigger conditions for firms' access to central bank funding, as this will naturally impact a firms' projected liquidity needs in a resolution scenario. The FSB guidance clearly states that central bank funding will be available, however without the Bank's criteria it is difficult to be able to factor this into liquidity assessments.

11. Are there any further liquidity risks or additional considerations which may arise in resolution which are not covered in this section? What approached would firms take to mitigate the impact of these?

No comments.

12. Do you consider that the proposed policy and appendix provide sufficient clarity on what is expected of firms?

Principle 1 proposes that firms develop the capabilities for liquidity assessment at both the material currency level and on a T+1 basis. We would appreciate clarification as to whether the Bank requires this capability to be available on a T+1 basis for both stress testing and under a resolution scenario. This would require significant uplift when compared to existing capabilities, and as such we would propose that the Bank provides more detail on its expectation in this regard.

Principle 5 proposes that the outcome of liquidity analysis should be embedded into internal governance frameworks. We would appreciate clarity on the expectations of governance arrangements in resolution, in particular the Bank's expectation on the uplift compared to existing BAU reporting and governance.

Principle 6 proposes requirements for testing the capabilities and governance arrangements. We would welcome clarification on the Bank's expectation with regards to testing. For example, whether this relates to general model governance, or also includes requirements for testing in the form of simulation exercises.

There are a number of areas where our members require more clarity, namely:

1) Could the Bank clarify the meaning of "alternative facilities" and potentially provide some examples of such facilities?
2) To what extent do "alternative facilities" refer to the use of emergency liquidity assistance or central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms? If relevant, would this be in line with art. 10 (3) of the BRRD? To the extent that resolution authorities should not assume either of the above in resolution plans, would it be proportionate to expect firms' assessment to include similar considerations?
3) Does the RLF constitute a "financing arrangement established in accordance with Article 100 BRRD"? If so, should firms ensure that in the absence of alternative liquidity resources they would be in a position to access the RLF? If this is the case, further clarity on the terms and conditions for accessing liquidity via the RLF would be welcome.
4) Whilst the CP is clear in respect of collateral data expectations, it would be helpful to understand the extent to which the Bank will accept raw loan collateral and the legal and operational requirements to access such a funding source in the event of resolution.

Continuity in financial contracts in resolution (stays)

13. Do you think that the proposed principles regarding the early termination of financial contracts are appropriate?

Our members request clarification as to whether or not the proposals in this section are intended to differ from information requirements specified by Commission Delegated Regulation (EU) 2016/1712 regarding information on financial contracts. There is a concern that any broadening out of requirements will involve additional costs and, where manual interventions are required, increase operational risk. In particular:

- The Commission Delegated Regulation (EU) 2016/1712 does not differentiate “main financial counterparties”.
- Notional values of contracts, as referenced in paragraphs 7.11 and 7.14 in the CP, are not included in the Commission Delegated Regulation (EU) 2016/1712. Rather, the mark-to-market value is more indicative of potential disruption to a firm’s trading book.

We also believe that the entity scope of application of the Principles is too broad, particularly:

- Principle 4 regarding understanding the early termination risk of out of scope financial contracts now extends to “any entity subject to consolidated supervision by the PRA.”
- Principle 1 requires firms to identify main counterparties “across their legal entities”.

Furthermore, paragraph 7.14 should recognise the reduced risk of early termination of contracts governed by third country laws where these laws ensure outcomes at least equivalent to PRA Stay Rules.

We note the Bank's proposal that firms should have a communications plan for the imposition of a stay that can be used once resolution has been declared and during the bail-in period. This plan should be "both proactive and reactive". For the proactive element, the working assumption for firms has always been that communication on stays would be done in a proactive way with a joint announcement (in the appropriate financial press) declaring to the market that a stay has been invoked. For the reactive aspect of the communication plan, we would welcome clarity on whether it is correct to assume that the Bank is referring to communication with counterparties that do try and close-out during the stay period, informing them that they cannot do so.

Operational continuity in resolution (OCIR)

14. In order to be resolvable, what broader set of functions and services should operational continuity apply to?

No comments.

15. What capabilities do firms need in respect of operational continuity to deliver resolvability?

Our members note that the Bank has proposed to extend the scope of its OCIR policy, as outlined in the PRA rule and Supervisory Statement on Operational Continuity in Resolution 2016, to services other than critical functions.

Whilst there may be a logic to extending the scope of this policy to other services when considering the firm’s viability and any impact on wider economic circumstances, we are concerned that there is now an asymmetry of the Bank’s expectations (as outlined in this Consultation Paper) and the

existing regulatory rules with which firms are legally required to comply. Our members would therefore appreciate greater clarity on when revised policy reflecting this change of direction will be consulted on, along with envisaged requirements, scope (in particular, the application to hosted firms) and relevant implementation timelines. It would be particularly helpful to understand the Bank's thinking on the specific set of functions that would be brought into the scope of OCIR. Without this further clarity, firms will not be able to anticipate the change by beginning work to extend their OCIR as they will be reluctant to commit investment spend when the policy may change, notably as a result of the PRA OCIR review that is signalled but for which no timescales are indicated. It is also worth bearing in mind that firms have only just implemented OCIR as it currently stands and a period of embedding and further testing through scenario exercises may be more instructive. This would allow firms - and the Bank - to understand where the gaps may be and what is required to fulfil them.

Aside from the asymmetry, it would be helpful if the Bank could clarify what it is seeking to achieve by suggesting that "OCIR arrangements would need to support continuity of 'most or all' functions in order to ensure continuity of critical functions and support restructuring". Some of the outcomes which the OCIR currently requires firms to achieve may not be relevant to ensure continuity – particularly where bail-in has recapitalised the firm and the firm is continuing to operate – while others may not be relevant to support restructuring – for example where separation is only feasible for certain entities or portfolios. It is also not clear how OCIR supports 'the resolution weekend' – i.e the bail-in. Given this, it would be helpful if the Bank could articulate more clearly what it is expecting, to what end and the level of detail that it expects (or is signalling that it may expect) firms to provide in extending their OCIR arrangements for non-critical economic functions. The Bank should also set out the interaction between operational continuity and operational resilience clearly. Firms are keen that the Bank and PRA should align their policy thinking on this: the infrastructure that is required to extend and maintain service catalogues is significant and costly and without clarity, some firms will find it hard to make the case for – and establish programmes to deliver – these requirements.

There are a number of other areas where our members request further, more specific clarification, namely:

- The CP states that "firms operations would be able to continue in other material jurisdictions". We would welcome further guidance on how the Bank proposes that the definition of material is applied, including the extent to which the assessment is to be documented. For example, it is not clear whether "material" is relative to the franchise value of the entity, or relative to the size of the financial services sector and real economy in that jurisdiction.

  The CP proposes that firm have a "dynamic and searchable service catalogue" which would include information for all functions and services captured in the mapping. We would appreciate further clarification on whether the Bank envisages this to be a standardised tool across the industry and the granularity of information that would be required.

- This CP seems to indicate the Bank's expectation of using OCIR arrangements to identify 'financial disruptions' resulting from divestments. In our view, OCIR policy to date has not addressed financial disruptions aside from the liquidity holding to cover operational costs so the policy intention is not clear.

Continuity of access to Financial Market Infrastructures (FMIs)

16. Do you agree with the proposal that firms should engage with all of their providers of critical FMI services to understand how those FMIs and FMI intermediaries will use discretion in resolution? If not, please explain what limitations firms may face in doing so.

Our members agree that FMI, and indeed FMI services which provide critical functions, are a potential source of systemic risk which could exacerbate a resolution scenario. It is for this reason that contracts between firms and their FMIs cover, in standardised terms, likely actions to be taken in a resolution scenario. It is therefore unclear to our members how the intended bilateral discussions would interact with the terms already stipulated in their contracts. We believe that the requirement for firms to negotiate with FMIs and sustain a dialogue with them to establish what FMIs may or may not do in a resolution scenario would be too burdensome, particularly if all firms are required to do this with all providers. Indeed, we believe the objectives of this section would be better achieved if such discussions were had at a regulator-to-regulator level, in order to ensure that the relevant contractual terms are standardised and to avoid a situation where approaches are fragmented as they have been developed as a result of bilateral discussions between differing firms and FMIs. These discussions could be supported by firms providing to the regulator relevant data outlining details of their existing communication channels with FMIs, so regulators can understand where gaps might exist.

17. Should firms put in place back up providers of critical FMI services as a matter of course? What can a firm do in order to ensure that such relationships would be a credible alternative in resolution?

Our members do not support the proposal to develop relationships with back-up providers. If sufficient collateral has been provided as part of the existing relationship between a firm and its FMI, it is not clear what would result in discontinuity. Indeed, we believe that financial stability would be better achieved by devoting resource to operationalising a firm's relationship with its current provider, as opposed to supporting two FMIs. Furthermore, any relationship with back-up providers would require an underpinning contract between the firm and the FMI, which would result in significant extra costs with marginal financial stability benefit.

18. Do you consider that firms have enough information to meet Principle 4 and make credible predictions about client behaviour should the firm enter resolution?

There are significant challenges when trying to predict client behaviour which would be further increased in a resolution scenario. Therefore, it seems plausible for firms to have robust client communication plans in place, but the ability to predict client behaviour does not seem practical or realistic.

19. Is it sufficient for firms to only consider defensive actions against a full range of plausible actions that providers of critical FMI services may take should the firm enter resolution? Or should firms' contingency plans extend to all possible measures critical FMIs would be able to take?

As outlined above, our members believe strongly that having the correct contractual terms is a means of better achieving many of the objectives of this section. The range of actions which are currently available to FMIs is considerable and it is not clear which additional actions the Bank believes FMIs should have. In any case, in accordance with our response to question 16, we believe that any additional powers should be reflected in standardised contractual terms which are the result of negotiations between regulators.

20. To what extent do firms' existing capabilities and arrangements already meet the proposed principles? Where in particular are significant gaps likely to exist?

No comments.

21. Do you consider that the proposed policy and appendix provide sufficient clarity on what is expected of firms?

Further guidance would be welcome on the capability to provide information to the Bank on request. It is not clear whether there would be a requirement to collect and store information on a daily basis including whether the requirement to provide information would be on an ad-hoc or formal resolution filing basis. We would also appreciate clarification that there is no expectation for firms to understand the resolution plan of each FMI.

In addition, a more distinct link between solvent wind-down planning and funding in resolution planning would be desirable in this section. A solvent wind-down of the Investment Bank is generally seen as one of the key restructuring measures in resolution. As laid out by the FSB in the guidance about Funding Strategy Elements of an Implementable Resolution Plan (June 2018), business run-offs and disposals of subsidiaries are considered as potential sources of funding and hence are an integral part of the estimation of liquidity and funding needs in resolution. Therefore, we believe that the two barriers "Funding in Resolution" and "Restructuring" of the consultation paper would benefit from containing clear cross-references.

Finally, we believe that there will be significant variation in how firms address the principles outlined in the consultation given that specific policy standards have yet to be set. To facilitate adherence to the RAF, we would need greater clarity on the Bank's expectations of what would constitute "reasonable steps" to maintain continuity of access to FMIs. Without such clarity it would be challenging to agree a workplan and timeline to deliver these steps.

Restructuring

22. This CP does not propose for firms to identify restructuring options and develop associated capabilities beyond what is expected under the PRA's Supervisory Statement on recovery planning. Are there situations where it might be appropriate for restructuring options and associated capabilities to go beyond what is expected under the PRA's Supervisory Statement on recovery planning?

Our members support the Bank's approach of leveraging recovery plans as the basis for restructuring; we believe capabilities being developed across recovery planning and valuations will support restructuring. With this in mind, we request that documentation and testing expectations for restructuring options should not exceed corresponding expectations in recovery planning.

23. To what extent do firms' existing capabilities and arrangements already meet the proposed principles? Where in particular are gaps likely to exist?

This is difficult to evaluate given the lack of clarity of the standard firms should meet. We would also welcome clarification as to whether this policy applies to third country headquartered firms given that the SPE strategy does not envisage resolution proceedings and subsequent restructuring of the

entity to take place in the UK. In particular, we request specific clarification that no additional specific UK restructuring plan would be required beyond a group-wide agreed restructuring plan.

24. Do you consider that the proposed policy and appendix provide sufficient clarity on what is expected of firms?

Our members would appreciate further clarity on the Bank's expectations beyond recovery planning, if firms are to meet restructuring objectives as part of their resolvability assessment. Further granularity is required on the objective itself, especially in terms of defining 'the long-term'. The concept of a viable business model that is sustainable is liable to subjectivity and therefore further clarity from the Bank would be welcomed. Mindful of the progress that has been made in recent years on recovery, firms would welcome bilateral engagement from the Bank on where the Bank thinks their current recovery plans are not sufficient for restructuring.

Given the interaction between restructuring and recovery, and the progress that firms have made on recovery in recent years, firms recommend that they submit a single recovery and restructuring plan. Mindful that the annual submission of the recovery plan is a BRRD requirement, there could be a 'light' update (e.g. of key business changes and option availability) - in the alternate years. This would allow firms to focus their resourcing effectively and to meet some of the incremental demands of the RAF in a proportionate way. Firms understand that the PRA is the recipient of the recovery plan and that the Bank would be the recipient of the restructuring plan but anticipate that this would facilitate alignment between all parties and note that the PRA would anyway need to approve any restructuring plan following resolution.

Management, governance and communications

25. What are your views on whether the proposed principles included cover what is needed to achieve the desired resolvability outcomes? Are there any other measures that should be included?

The proposals relating to management appear to build on the assumption that there will be a high degree of staff turnover or exit in contingency planning or resolution. Our members would be keen to see the evidence from recent contingency planning cases that this is likely. In reality our view is that staff - in particular operational staff - will not leave en masse. An informal survey of peers who experienced the financial crisis confirmed that, in any market-wide scenario, the ability of many individuals to leave and be employed by other institutions is likely to be highly curtailed. We therefore think that the requirements to identify large numbers of people who may be critical (but who in any case may not be at risk of leaving) does not constitute a proportionate approach. Firms already have retention and succession frameworks that can be used in resolution and existing remuneration rules (such as deferrals) already reduce the incentive for senior staff to move. If firms are being asked to reduce flexibility in employment contracts (by introducing longer notice periods, for example) we would encourage the Bank to be mindful of the fact that this will curtail flexibility to cut costs in recovery or resolution, particularly if the scope of the 'critical roles' is broad and includes operational rather than leadership roles. It may also lead to demands for higher fixed pay to compensate for reduced flexibility on behalf of staff.

Regarding the proposed principles, we agree that they are the correct principles, however our members are concerned that there is a significant lack of guidance on many of the crucial issues within this section. We therefore request further regulatory guidance and clarity with regard to:

Role of the Bank, the bail-in administrator (BIA) and the independent valuer

- Further clarity is required on the roles and responsibilities of the Bank, the BIA and the independent valuer. In particular, it would be helpful to have clarification on how their roles interact with each other and with senior managers within firms.
- It would be particularly useful to know how the Bank envisages the board voting rights of the Bank, BIA and independent valuer and how these will compare to other members of the board. If this is not made clear beforehand, one runs the risk of there being confusion when attempting to implement board-level resolution decisions.

Directors' duties and SMR

- Explicit legal clarity is required on how the Bank/BIA decision-making interacts with Directors' duties under companies law and other applicable law and accountability frameworks such as the Senior Managers Regime.
- Unless such explicit legal clarity is given, it remains possible that in resolution Directors and executives within the scope of such duties and accountability frameworks will believe themselves still wholly accountable for decisions and therefore may disagree with the Bank/BIA and/or be unwilling to approve or implement their decisions.
- Section 48O of the Banking Act 2009 should continue to apply, so that directors following instructions from the Bank are "not to be regarded as failing to comply with any duty owed to any person".
- Our members also believe that it is worth exploring an alignment of SMCR responsibilities for resolution to those outlined for resolvability assessments, the former being allocated to entity level and the latter to Group level.

Role of boards, including subsidiary boards

- More detail and clarity is required on the anticipated roles of boards in making decisions in Resolution. In particular, the extent to which the board of the RFB is expected to be 'independent' and what this means in practice in the context of applicable company law and during the execution of the resolution strategy by the Bank and/or a Bail-in Administrator.
- Our expectation is that decisions in resolution will be taken by the Bank and/or the BIA and that decision-making and accountability should be indivisible. We would therefore also question the emphasis of the sections on conflict resolution processes in the Draft Policy statement. In our view, while boards and senior management should be consulted and have a clear role in implementing decisions, the Bank and/or BIA should be the parties centrally making decisions in resolution, taking into account their resolution objectives and applicable legislation and rules, such as the Ring-Fencing rules. Given this central direction, no conflict should arise between the boards and this should be reflected in the policy.
- Overall, firms think that their Board and ExCo-level governance arrangements are fit for purpose for resolution – subject to clarity on the roles and responsibilities. However those firms that completed a survey for the Bank on governance in resolution in 2018 would welcome feedback from the Bank on their arrangements and understanding. Further, firms would welcome clarity on the purpose of embedding the objectives of resolution (which apply to the Bank and authorities and are related to the system as a whole) into their governance frameworks and on how this would work in practice/ how the firm would evidence proper consideration of these objectives.

Regulatory approvals

Principle 2 calls for firms to be able to be able to make 'timely and complete' applications for regulatory approvals, including 'in urgent situations' but does not provide any information on what

steps UK regulators may take to expedite their consideration and approval process in such circumstances. Our members would appreciate further clarity on this point and are concerned that any process exceeding 3 months is likely to be unworkable in a resolution scenario.

26. To what extent do firms' existing capabilities and arrangements already meet the proposed principles? Where in particular are significant gaps likely to exist?

There is clarity on the overall approach and what is expected of firms, however further specific guidance is required on a number of details, which we have identified in our answer to question 25.

The Bank also expects firms to change the articles of association prior to resolution. We believe the policy objective of this proposal is unclear and would welcome further clarity on it.

27. Do you consider that the proposed policy and appendix provide sufficient clarity on what is expected of firms?

Our members understand that governance processes in particular may need to be adapted in a resolution scenario and that any adaptation to these processes will depend on the idiosyncrasies of the situation. Nevertheless, firms feel more prescription from the Bank would be helpful, in order to better understand their expectations, given much of this constitutes unchartered territory. We would appreciate further dialogue with the Bank on this issue.

Furthermore, we note that the Bank proposes it will consult on changes to the Senior Managers Regime, to align it with the proposals made in this CP. When amending the SMCR, it is essential to a number of our members that the Bank remains mindful of its proposal within this CP of applying a proportionate approach to overseas firms.

Assurance of firms' resolvability

28. Do you agree with the Bank's proposed approach to assurance?

We broadly agree with the Bank's proposed approach to assurance. We believe that the most effective approach to assurance is to fully embed it within existing control and assurance frameworks and that as little as possible should be created specifically for the purposes of resolvability assurance. However, given that each firm's existing control and assurance frameworks are likely to differ, it would be helpful to understand from the Bank whether or not the use of external assurance is, in their view, preferable to internal assurance only. Our reading of the CP is that the choice to use external assurance rests with the firm, nevertheless our members would welcome clarity on this point.

We believe that clarity and transparency is required from the Bank on the level of assurance required to support its resolvability assessment, especially following firms' reports. This will ensure alignment of expectations, efficient allocation of resources and the avoidance of surprises in the Bank's first public statements on firms' resolvability.

While we understand and support the Bank's objectives in seeking its own assurance through information and evidence (including 'live evidence') requests, our expectation is that the Bank will be pragmatic when doing so and attempt to minimise unnecessary burden on firms. Our expectation is that the Bank will work closely with firms to provide notice of impending tests and, to the extent possible, to embed and coordinate with firms' existing assurance programmes.

Firms ask the Bank to be mindful that designing and embedding assurance mechanisms in BAU will take time, even if these are to leverage existing frameworks. Indeed, we believe a proportionate approach to assurance should balance:

1) The testing frequency of the different RAF components
2) The testing scope (i.e global vs local)
3) Seniority of management involved
4) Speed with which the existence of a capability can be demonstrated, recognising that activities can be carried out faster in actual resolution

29. Are there any additional measures that the Bank could reasonably use to gain assurance around a firm's resolvability (other than those covered)?

We believe that the measures outlined provide a good summary of the relevant categories of assurance measures. There are a variety of types of assurance measures within each category, such as different types of testing, which will provide assurance on different aspects of resolvability. The combination and extent of testing used will be dependent on the workstream and which key aspects must be evidenced.

We believe that clarity and transparency is required from the Bank on the level of assurance required to support its resolvability assessment, including agreement on the extent and mix of assurance activities used for each workstream.

The Bank's public statement concerning resolvability

30. How much detail should the Bank's public statement concerning firms' resolvability contain?

Our strong preference is that the Bank's disclosure deals with firms in aggregate. The purpose of the Bank's disclosure should be to enhance accountability towards compliance with regulatory obligations rather than providing investors with information. When making its public statement, the Bank must balance the need to communicate clearly and simply with providing sufficient detail for the reasons for reaching its determination on firms and providing adequate context on where firms are on the path to resolvability. This is particularly critical in the 2021 public disclosure, which occurs before the compliance deadline for the removal of some impediments.

In our view this should include some detail against each of the resolution workstreams and clearly reference work firms are undertaking to improve their resolvability.

In setting the context of the path to resolvability, we agree with the CP that the Bank should avoid binary statements on firms' resolvability and put the emphasis upon increasing the likelihood of successful and orderly implementation of the resolution strategy. We also believe the statement should not refer to resolvability barriers relating to specific jurisdictions, entities, products or client segments.

31. Are there any examples of information that may be sensitive that the Bank should not disclose? Why would such information be considered sensitive?

Our members caution against the disclosure of at least the following:

- Information related to specific parts of the firm, which is likely to be sensitive and subject to misinterpretation
- Financial information or projections that are not public

- Information that could impact negotiations with third parties, for example providing updates on the progress regarding the 'resolution-proofing' of contracts

More broadly, we would encourage the Bank to remain mindful of the risk that resolvability statements are extrapolated and applied more broadly to firms. For example, comments on valuation capabilities could be understand as relating to a firm's ability to properly value its business.

32. What are your views on the Bank's preferred option for firms and the Bank to publish their summaries and statement (respectively) on the same day, including how it could be implemented?

If the Bank decides, as per our suggestion under question 4, that firm disclosures are necessary, it is our strong preference for firms and the Bank to disclose their summaries and statement (respectively) on the same day. This should be the case for all firms at the same time so no firm is advantaged/disadvantaged by particular timing. We believe that investors need to have complete information on all firms at the same time and any gap in disclosures, either i) between firms in general and/or ii) between individual firms and the Bank, raises risks of inconsistent messaging and causing confusion in the market.

In terms of implementation, we believe that messaging is critical and that the Bank should be setting the context with the media in advance of the releases, to manage media expectations about the purpose of the exercise. In particular, for the first disclosure, the Bank should pre-empt and manage any potential negative messaging about firms being 'not resolvable'. Our preference would be for the Bank to liaise closely with firms in the run-up to the disclosure, ensuring that there is consistency between the firm's summary and the Bank's statement.

Further to this, we believe firms should be given a prescriptive format for the public disclosure to ensure investors and the public have a consistent basis on which to review firms' progress and to prevent any one firm providing, in good faith, significantly more or less detail than others and potentially being advantaged/disadvantaged as a result.

33. What are your views on the alternative option, whereby there would be a short gap between firms' publication date and that of the Bank?

We believe this raises a significant a risk of investors receiving incomplete information and confusion being caused in the market. There is a risk of inconsistent messages between firms' summaries and the Bank's statement and, in the possible event of delay and a longer gap, there is a risk of changes to the resolvability status of firms between the publication of their summary and the Bank's public statement.

Preliminary impact assessment

34. What costs would firms anticipate being incurred to comply with the proposed new policies? Please provide quantitative estimates where possible.

No comments.

35. What commercial benefits do you consider might arise from improvements made in order to comply with the proposed new policies?

No comments.

If you have any questions relating to this response, please contact Parisa Smith parisa.smith@ukfinance.org.uk.

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