



COMMENTS FROM THE ASSOCIATION OF SUPERVISORS OF BANKS OF THE AMERICAS (ASBA) TO THE CONSULTATIVE DOCUMENT

“Guidance on Arrangements to Support Operational Continuity in Resolution”

(ISSUED BY THE FINANCIAL STABILITY BOARD FOR COMMENTS BY
4 January 2016)

I. Introduction

The Financial Stability Board is seeking comments on its proposals to secure operational continuity when firms enter in either a stabilization or resolution processes. To this end, it addresses three models wherein services may be provided by a regulated entity operating within the firm; by an intragroup company, or by a third party. In all cases, supervisory challenges to consider at the time of assessing a firm's capacity to provide critical services during stabilization or resolution are identified.

Following are the comments made by the members of the Association of Supervisors of Banks of the Americas (ASBA), providing feedback that could help secure proportional assessment activities in developing and emerging economies.

II. General Comment

The Association supports the Financial Stability Board's proposal in securing resolvability through a thorough assessment of the critical shared services provided to financial intermediaries, the identification of arrangements that will secure their operation under stabilization or resolution, and the provision of guidance to address potential obstacles.

Albeit those mentioned above, the Association suggests including a specific section on detailed authority-oriented guidelines. It would also be useful to encourage regulators to have memorandums of understanding with the authorities that supervise service providers outside the jurisdiction of the resolution authority or authorities.

III. Specific Comments

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 ***Do you agree that the three service delivery models set out in Section 3 of the draft guidance represent, singly or in combination, current industry practice?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We agree that the three service delivery models set out in Section 3 of the draft guidance, represent, in general, current industry practices. The scope of the analysis is adequate for the three models.

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?***



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The arrangements to support operational continuity set out in Section 4 are comprehensive; however, as far as effectiveness is concerned, it would be difficult to measure accurately each arrangement.

Among these items, it may be complex to operationalize the governance device to its fullest. Some activities, although highly critical, may not have a priority level over other demands to be considered by a senior committee or the board of directors. This situation demands a follow-up.

On the other hand, it could be useful to strengthen the role of risk management related to key services. This analysis must be comprehensive, including the evaluation of each risk involved in operating the service. The latter would be particularly critical when an outsourcing model is employed.

(Cf. section 4 on Possible Arrangements to Support Operational Continuity starting on page 13).

The Association also recommends to consider developing guidance for the following cases:

- a. A firm - within the scope of a resolution regime - that is from the financial system and delivers services and:
- b. A firm - within the scope of a resolution regime – that is from the financial system and receives services.

On the “Operational resilience and resourcing” arrangement, the Association considers helpful to include more detailed guidelines to ensure an organized and timely transfer of services to another service provider in case of resolution. Thus, it recommends including the following guidelines:

- a. Firms should identify potential providers to transfer services delivered by the provider in resolution.
- b. Firms should develop a plan for the transfer of services to another provider that would be suitable for implementation in case of resolution.
- c. The plan should be tested to identify improvement opportunities and implement corresponding measures.

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?



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In general, the members of the Association consider the arrangements strategy-neutral. However, depending on the country each entity operates in, the following issues would have different levels of importance in the resolution strategy:

- Contractual provisions;
- Pricing structures robustness; and
- Rights of use and access.

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?

Arrangements for the “Provision of services by a third party service provider” model could be the most challenging to implement because third party service providers are not regulated and could have restrictions on sharing information, particularly related to pricing structures.

The following arrangements for the “Provision of services by a third party service provider” model should be considered:

- a. Contractual provisioning for the timely access to information systems and data during resolution processes.
- b. Arrangements to have suitable and updated communications between the regulated entity and service providers, given that it could be necessary to take control of shared services with new staff during the resolution process.

Secondly, in general, “contractual provisions” will present challenges because their implementation requires operational maturity (usually lost within a resolution) for mapping services; therefore, establishing an adequate service level agreement (SLA).

(Cf. section 3 on Service Delivery Models and Resolvability starting on page 10)

Furthermore, the provisions in paragraphs 4.9 and 4.10, related to the cross-border provision of shared services, could present challenges. The optimal servicing and cooperation between two or more countries require the building of a relationship of trust. In this regard, it is suggested to stress the need for the signing of memoranda of understanding as a way to enhance collaboration.

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?



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As for the provision of critical shared services, please see our comments on alternative providers in question number 2.

Also, some organizational structures (e.g. joint ventures, either wholly owned or partly owned) may generate problems to operational continuity because shareholders may have conflicts of interest with the resolving entity.

Challenges from the above may be mitigated taking the following steps:

- a. By requiring contracts that allow full access to the supervisor when an intervention takes place;
- b. By issuing specific legislation that could impose firms the obligation to have sound practices to cover the risks derived from critical shared services and specific types of ownership;
- c. By revising on a periodical basis all contracts in use that are legally binding/enforceable.

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?*

Measures described in Section 4 are considered complete and efficient. However, the Association recommends including guidelines to deal with the anticipated suspension of contract agreements as well as arrangements to address conflict resolution and confidential information management.

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?*

The following arrangements are recommended for analysis:

- a. Although challenging, jurisdictions should seek to have a homogeneous level of enforceability of their contracts.
- b. To analyze the feasibility of establishing "Transitional Service Agreements" with these entities, as shown in item 4.6 (i).
- c. To add the need to assess the resiliency and recovery capacity of these service providers.



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- d. To sign memoranda of understanding between both financial and real sector regulators.

(Cf. section 3.13 on page 12)

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?

In general, the information provided is adequate to support firms and authorities in their assessment. However, it shall be stressed that with the current IT evolution, some items should be reviewed, for example, the survey proposed in item 2.1 (c) is inappropriate when considering the possibility of using cloud computing or even when considering the outsourcing of some innovative services, like financial technologies.

Although the information listed in the Annex is correct and sufficient, the Association recommends considering the financial structure of critical services providers under a differentiated classification.

(Cf. section 2 on Information Requirements et al. on page 19)

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

Additional elements or actions that could be taken by firms or authorities are:

- a. To identify and thoroughly assess the efficiency of the processes supporting the provision of critical shared services.
- b. To develop open standards for certain services, which could facilitate interoperability and migration of certain operations to other entities when a firm is placed under resolution.
- c. To ensure that a comprehensive communication strategy is in place to secure a transparent process before stakeholders and third parties.

(Cf. numeral 1. on Information Requirements starting on page 18).