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c/o Bank for International Settlements  
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By email: [fsb@bis.org](mailto:fsb@bis.org)

Zurich, 2 February 2015

**Re: Consultative Document "Adequacy of loss-absorbing capacity of global systemically important banks in resolution"**

Dear Dr. Andresen

UBS would like to thank the Financial Stability Board (FSB) for the opportunity to comment on the Consultative Document "Adequacy of loss-absorbing capacity of global systemically important banks in resolution".

UBS agrees that a bank failure should be possible without causing systemic consequences and / or requiring bail-outs. Subject to the comments in this document, we are supportive of the FSB proposal on Total Loss Absorbency Capacity (TLAC).

The following issues are of particular importance for us and, thus, we would appreciate particular consideration by the FSB:

- As a general principle, the FSB should focus on the key risks to be addressed and **keep the complexity of TLAC as low as possible**. This will greatly contribute to the understanding and acceptance of TLAC in the market and facilitate communication to the different stakeholders. This includes the clear positioning of the TLAC concept compared to regulatory capital requirements, allowing a clear understanding of the purpose of the two requirements (going vs. gone concern) and how they complement each other.
- The FSB should promote globally applicable common standards for TLAC, especially given the cross-border nature of the application of TLAC (e.g., internal TLAC positioning). This is essential to establish trust in the concept, ensure comparability and maintain a **level playing field** across jurisdictions.
  - We strongly concur with the FSB that **a single consistent number must be defined as the minimum TLAC requirement** rather than providing a range and would welcome the FSB encouraging national supervisors to refrain from "gold plating".
  - In this context, we believe that the **minimum TLAC requirement should be 16% of RWAs**, i.e., double the Basel III minimum requirement. Should the FSB, however, conclude that a higher requirement is necessary, we believe that **such a higher requirement should be designed as a buffer** and not as a minimum requirement. Similarly, we suggest defining a **consistent single number for the TLAC leverage ratio** requirement which should not exceed twice the current Basel minimum (i.e., **6%**).

- **We do not believe that a Pillar 2 requirement is necessary.** The consultative document, in our view, does not provide sufficient rationale / guidance on the purpose of Pillar 2. Any remaining risks can be in principle absorbed by the existing Basel III buffers and / or TLAC Pillar 1 buffer. A TLAC Pillar 2 would unnecessarily increase ambiguity regarding application and thus overall complexity.
- We agree to a specific, well-balanced amount of internal TLAC to be required to be pre-positioned. The **calibration of internal TLAC** should, however, **ensure that the sum of internal TLAC requirements does not exceed the external TLAC requirements.**
  - In particular, we recommend that (i) **principles regarding TLAC size / adequacy** are further defined and (ii) an **adequate implementation approach / planning** is defined by the FSB (e.g., top-down steering / guidance by Crisis Management Colleges (CMC) for individual G-SIBs).
  - We further suggest that **the basis for the calculation for both internal and external TLAC should be the consolidated balance sheet and RWAs** which exclude any intra-group items.
  - A high amount of pre-positioned TLAC **reduces flexibility of the CMC** in a crisis and, in particular, the ability to move resources **to cover significant losses of a particular subsidiary** with a buffer at the top. There is an inherent conflict of interest between the global resolution ability through retention of a higher amount of flexible TLAC at the top versus local regulatory demands to improve resilience and resolution. We therefore recommend that the CMC takes the lead in discussions with key host regulators and ensures that the pre-positioning is not unnecessarily constraining the global resolution strategy. In this respect, we are of the opinion that a pre-positioning of up to 90% TLAC as measured by local requirements is excessive. We recommend that the **pre-positioning should be limited to a range between 65% and 75%.**
- A strict interpretation of the requirement for structural subordination of TLAC would effectively **create significant technical issues for structural subordination via holding companies.** Thus, the FSB should propose **a principle-based approach to structural subordination** which would allow for a low amount of necessary and common business liabilities to remain on the balance sheet of holding companies. The FSB may consider **a de minimis exemption**, allowing for a specific amount of such liabilities to remain on a holding company balance sheet.

Please find detailed answers to the questions of the consultative document in the appendix. 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 Markus Ronner (markus.ronner@ubs.com; +41-44-2348630) or William Widdowson (william.widdowson@ubs.com; +41-44-2345565).

Yours sincerely,

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## Appendix - Response to the questions of the consultative document

### Part 1: Calibration of the amount of TLAC required

1. *Is a common Pillar 1 Minimum TLAC requirement that is set within the range of 16 – 20% of risk-weighted assets (RWAs), and at a minimum twice the Basel III leverage requirement, adequate in the light of experiences from past failures to support the recapitalisation and resolution objectives set out in this proposal? What other factors should be taken into account in calibrating the Pillar 1 Minimum TLAC requirement?*

#### 1. RWA-based requirement

- UBS strongly concurs with the FSB that the **external minimum Pillar 1 TLAC requirement should be a single number rather than a range**. This minimum requirement should be applied consistently to all G-SIBs, should not be subject to local deviations and, thus, also provide for an international level playing field. In this context, we would also welcome the FSB encouraging national jurisdictions to refrain from "gold-plating" in order for a common international standard to be developed.
- With regards to the calibration of the minimum TLAC requirement, we believe that the **common Pillar 1 minimum TLAC requirement should be twice the minimum Basel III requirement of 8% total capital (i.e., 16% of RWAs)**. When considering that capital buffers and G-SIB surcharges will come on top, the total amount should provide resources adequate to meet all resolution needs.
- Should the FSB, however, conclude that a higher requirement than 16% of RWAs is necessary, we believe that **such an additional requirement should be designed as a buffer and not as a minimum requirement**.

#### 2. Leverage ratio-based requirement

- With respect to the calibration of the **TLAC minimum leverage ratio requirement**, as a guiding principle, UBS strongly believes the risk sensitive, model-based RWA approach should be maintained as the core of the capital/ TLAC framework. As such, **the TLAC minimum leverage ratio should act as a supplemental measure** rather than being the binding constraint. A leverage ratio as the binding constraint would have a number of well-known shortcomings and would set wrong incentives (e.g., banks would be incentivized to reduce their holding of High Quality Liquid Assets and favour more risky assets). The TLAC leverage ratio should, therefore, be calibrated accordingly to avoid it becoming a binding constraint.
- We suggest defining **a consistent single number for the TLAC leverage ratio requirement which should not exceed twice the current Basel minimum (i.e., 6%)**. The current wording "*at least twice the quantum of capital required to meet the relevant Tier 1 leverage ratio requirement*" does not provide full clarity on the level of the leverage ratio banks must fulfill.
- To ensure consistency and predictability, we believe that **the TLAC leverage ratio should be based on the Basel III leverage ratio and its calibration at the time the FSB finalizes the TLAC framework**. After that, potential changes to the Basel III leverage ratio requirement should not be automatically reflected in the TLAC leverage ratio.

### 3. Proposed QIS, historical losses analysis and micro- and macroeconomic assessments

- **We welcome the approach of the FSB to conduct further research before defining the minimum levels of TLAC.**
- In the context of the survey on historical losses and recapitalization needs, we believe it will be important that the **FSB focuses on large, internationally active banks which are comparable to G-SIBs**, as a comparison with small or narrow focused banks could result in misleading conclusions.
- **We additionally suggest that the FSB analyzes the economic impacts of leverage ratio requirements in different jurisdictions** as part of its macroeconomic impact assessment. These could vary significantly depending on structural differences of the respective financial markets. For example, in the US, a significant part of credit extended to the real economy is securitized and therefore outside of banks' balance sheets. Also, the possibilities of direct capital market financing for corporates are much more developed in the US than in Europe. As such, the economic impact of the new TLAC requirements (and in particular the leverage ratio) in various jurisdictions should be considered very carefully.
- Finally, we would like to highlight that the **calibration** of the TLAC requirements **needs to take into account past and forthcoming regulatory reforms related to the calculation of RWAs**, as well as all **other regulatory developments** (such as the liquidity requirements, central clearing, etc.) which substantially contribute to more resilient financial markets.

2. *Does the initial exclusion of G-SIBs headquartered in emerging market economies (EMEs) from meeting the Common Pillar 1 Minimum TLAC requirement appropriately reflect the different market conditions affecting those G-SIBs? Under what circumstances should the exclusion end?*

- **UBS does not support the exemption for G-SIBs headquartered in emerging market economies (EMEs)** as proposed in the consultative document. In our view, the exclusion of specific G-SIBs from the scope of the proposals is contrary to the FSB's aim to create a level playing field. G-SIBs headquartered in emerging market economies create similar risks to financial stability as G-SIBs from developed markets. Furthermore, EMEs G-SIBs are expanding internationally and as such should be subject to the international regulatory standards.
- If the FSB, however, as a result of its impact analyses, concludes that the consequences of a TLAC requirement on G-SIBs in emerging markets outweigh the benefits of a level playing field, **we suggest providing only a longer phase-in period** for G-SIBs in these jurisdictions instead of an overall exemption for those institutions to comply with the TLAC requirement.

3. *What factors or considerations should be taken into account in calibrating any additional Pillar 2 requirements?*

- **We do not believe that a Pillar 2 requirement is necessary** and the rationale for the inclusion of such additional Pillar 2 appears unclear to us. We are in particular uncertain as to which risks (which may not already be covered by the Basel III buffers and Basel III Pillar 2) such requirement should cover. As currently drafted, the Pillar 2 requirement may allow for an idiosyncratic increase in the external TLAC requirement for an individual firm, leading to an un-level playing field and potentially creating confusion in the market. Any remaining risks can be in principle absorbed by the existing Basel III buffers, and / or TLAC Pillar 1 buffer. A TLAC Pillar 2 would unnecessarily increase ambiguity regarding application and thus overall complexity.

- If the FSB, nonetheless, chooses to maintain this option, we would strongly encourage **issuance of specific, publically available guidance** by the FSB on how these Pillar 2 requirements should be calculated and which risks Pillar 2 is intended to cover. This would facilitate an internationally consistent application.
- Moreover, we believe that **Pillar 2 should**, in case it is maintained, **only be designed to cover specific extraordinary needs to increase total loss-absorbing capacity, for example as a result of failed stress-tests**. In this sense, we believe that Pillar 2 should be more in the spirit of a clearly defined counter-cyclical buffer as opposed to a permanent requirement. In this context, it should also be ensured that any Pillar 2 TLAC requirement is **not duplicative** with existing Basel III Pillar 2 or counter-cyclical buffer requirements.
- Finally, any **Pillar 2 requirement should be set only by the home authority on group level** (in consultation with Crisis Management Groups (CMG) and subject to review in the Resolvability Assessment Process (RAP)). There should be no Pillar 2 requirement at the subsidiary level.

***Part 2: Ensuring the availability of TLAC for loss absorption and recapitalization in the resolution of cross-border groups***

4. *Should TLAC generally be distributed from the resolution entity to material subsidiaries in proportion to the size and risk of their exposures? Is this an appropriate means of supporting resolution under different resolution strategies? Which subsidiaries should be regarded as material for this purpose?*

- **We agree to the proposal that a limited part of TLAC should be distributed from the resolution entity to material subsidiaries in proportion to the size and risk of their exposures.** As such, we are generally supportive of the FSB's proposed thresholds for material subsidiaries based on 5% of consolidated RWAs, revenues or leverage exposure measure. As an additional criterion, we believe that only subsidiaries which host critical functions (as defined by the CMG based on the FSB Key Attributes) should be defined as material subsidiaries.
- Contrary to the clear definition of a material subsidiary, in the penultimate paragraph of section 20 of the term sheet, **the consultative document** also **mentions that hosts can overrule the proposed internal TLAC requirements** and impose internal TLAC on non-material subsidiaries. **We believe that the FSB should provide clear language that hosts should refrain from doing so.** The FSB should encourage cooperation among regulators with agreements at the CMG. Local deviations through the use of the option to overrule the proposed FSB measures should be avoided.
- We strongly support the FSB's proposed definition that **material subsidiaries are only entities incorporated in a national jurisdiction other than that in which the resolution entity is incorporated.** Nonetheless, we believe that the QIS should take into account that some home authorities may require material subsidiaries in their own jurisdictions to hold internal TLAC. This will ensure that the FSB has the complete data set for the calibration of internal TLAC.

5. *To what extent would pre-positioning of internal TLAC in material subsidiaries support the confidence of both home and host authorities that a G-SIB can be resolved in an orderly manner and diminish incentives to ring-fence assets? Is a requirement to pre-position internal TLAC in the range of 75 – 90% of the TLAC requirement that would be applicable on a stand-alone basis, as set out in the term sheet (Section 22), appropriate to satisfy the goals of the proposal and ensure that TLAC is readily and reliably available to recapitalize subsidiaries as necessary to support resolution? Can this pre-positioning be achieved through other means such as collateralized guarantees?*

## 1. Balance between trust and stability

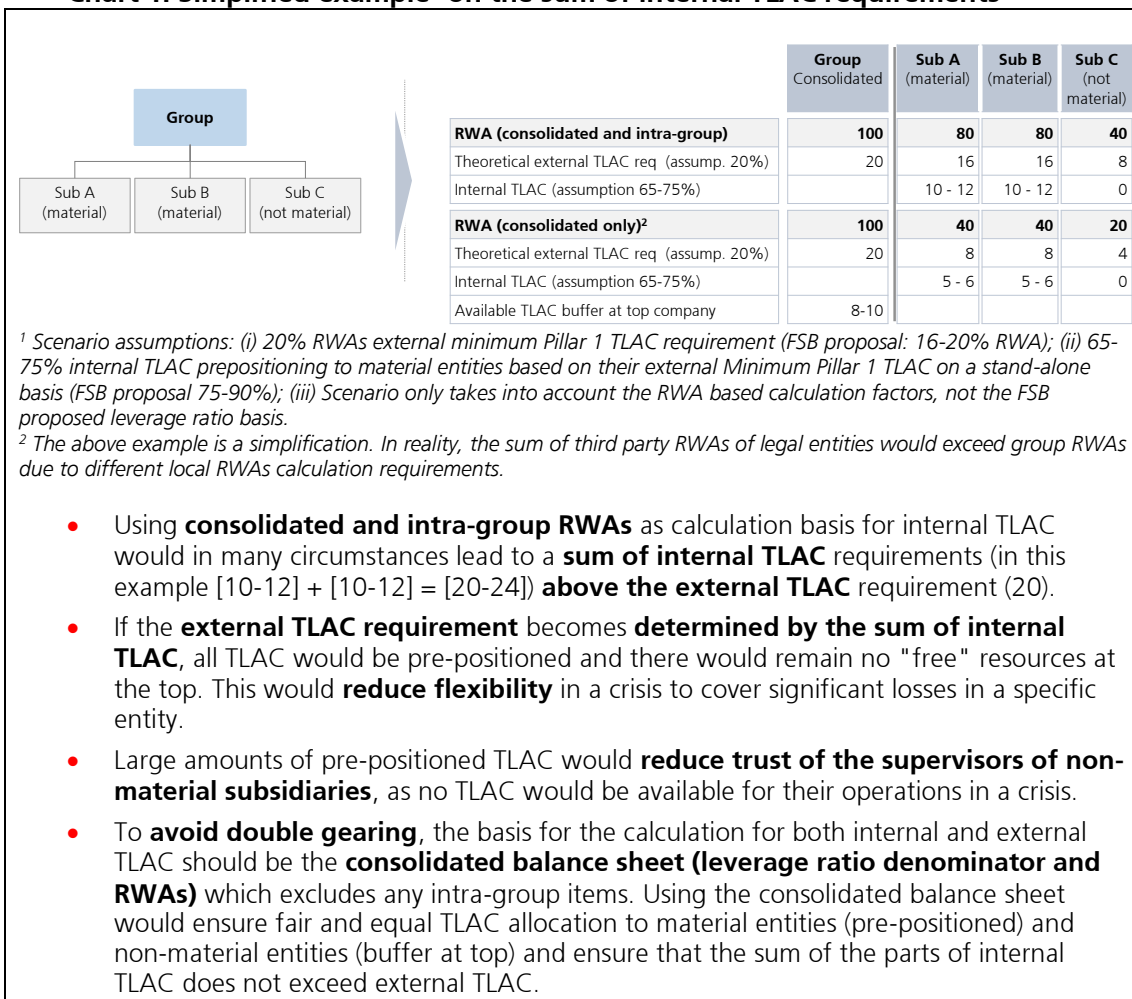
- As recognized in the consultative document, the purpose of internal TLAC is to create trust among home and host authorities, which is a goal we support. Therefore, **we agree with a specific, well-balanced, amount of internal TLAC to be required to be pre-positioned at material entities.**
- **There is, however, a trade-off between trust and financial stability** which requires a careful balance:
  - **A high amount of pre-positioned TLAC reduces flexibility of the Crisis Management College in a crisis** and, in particular, the ability to move resources to cover significant losses of a particular subsidiary with a buffer at the top.
  - A high amount of pre-positioned TLAC in material subsidiaries also **reduces the availability of TLAC at the top (holding company) level to support non-material subsidiaries in a crisis.** Thus, it may reduce trust of the host authorities of non-material subsidiaries into the firm's ability to support such subsidiaries (and potentially of the home authority for material subsidiaries in the home country), as this would deprive non-material entities of their "share" of TLAC. It is important to ensure that a buffer for host regulators of non-material entities is available at the top. Additionally, the fact that CMG host authorities require internally pre-positioned TLAC to create trust among CMG members will create concerns among host authorities of non-material entities that the SPE bail-in approach can successfully be executed in a crisis.
  - In a scenario in which **total TLAC at the group level is determined only by the sum of internal TLAC requirements** to be pre-positioned in material subsidiaries, **there would remain no buffer at the top at all.**

## 2. Avoiding double gearing

- In its current form, the internal TLAC requirements may **result in total cumulative TLAC requirements that are significantly higher than the proposed standard on a consolidated level** (in both its RWA and leverage ratio terms) due to double gearing effects. The pre-placement of TLAC in a subsidiary increases the intercompany balance sheet of the subsidiary, leading to higher RWAs and leverage ratio denominator which, if inter-company positions have to be included into the internal TLAC calculation, will have to be covered by TLAC. In fact, TLAC pre-positioning leads to additional internal TLAC requirements if inter-company positions are included.
- In this context, we recommend in particular that (i) **principles regarding TLAC size / adequacy** are further defined and (ii) **an adequate implementation approach / planning** is defined by the FSB (e.g., top-down steering / guidance by CMC for individual G-SIB).

- In order to avoid double gearing, we further suggest **that the basis for the calculation for both internal and external TLAC should be the consolidated balance sheet** (RWAs and leverage ratio denominator) which excludes any intra-group items (i.e., internal TLAC requirements should be based on third party RWAs or leverage ratio denominator only). Using the consolidated balance sheet would ensure fair and equal TLAC allocation to material entities (pre-positioned) and non-material entities (buffer at the top) and avoid that the sum of the parts of internal TLAC exceeds external TLAC.
- The risk that cumulative internal TLAC requirements are higher than the proposed standard on a consolidated level could be even **amplified, if the relevant internal TLAC requirements for various material subsidiaries are determined based on a different binding constraint** (leverage ratio for some subsidiaries and RWAs for others).
- To avoid this issue, we believe that **the calculation of internal TLAC requirements should either be based only on RWAs or only on the leverage ratio denominator** for all material subsidiaries, but not on both requirements at the same time. A possibility would be that the requirement (RWA or leverage ratio) used to determine the internal TLAC requirements would be the same as the binding constraint which determines the external TLAC requirements at the group level.

**Chart 1: Simplified example<sup>1</sup> on the sum of internal TLAC requirements**



### 3. Level of prepositioning

- There is an inherent conflict of interest between the global resolution ability through retention of a higher amount of flexible TLAC at the top versus local regulatory demands to improve resilience and resolution. **We therefore recommend that the CMC takes the lead in discussions with key host regulators and ensures that the pre-positioning is not unnecessarily constraining the global resolution strategy.**
- In this respect, we are of the opinion that a pre-positioning of up to 90% TLAC as measured by local requirements is excessive. We recommend that the **pre-positioning should be limited to a range between 65% and 75%.**
- We also believe that **banks should have flexibility regarding the composition of internal TLAC.** In particular, the split of internal TLAC between debt and equity should be left to the discretion of management and banks should have the possibility to use guarantee structures.
- Finally, **clarity on the form of internal TLAC debt** (can it be a senior obligation or must it be subordinated) **is required.** It is important that there is a level playing field between banks with non-operational holding companies down-streaming internal TLAC to their material operating bank subsidiaries, and those banks, particularly in Europe, who will issue external TLAC directly from their operating bank. If the latter are given a derogation to issue TLAC in senior unsecured form, perhaps with contractual bail-in language, or at least to recognize a portion of their senior unsecured debt as TLAC, at least then internal TLAC instruments should be treated similarly.

### 4. Increased cross-border recognition of statutory frameworks

- While we support the concept of pre-positioned internal TLAC, **the main basis for trust among authorities** – and therefore the willingness to refrain from unilateral actions in a crisis – **is the existence of binding cooperation agreements between the CMG members.** Pre-positioning TLAC can therefore only support but not replace the development of such agreements. On the contrary, over time as trust increases, the regulatory requirement for internal TLAC should diminish and management flexibility should increase. Binding cooperation agreements will also ensure that home and host regulators adhere to the proposed FSB rule set on material entities, common external Pillar 1 TLAC and level of prepositioning.

### ***Part 3: Determination of instruments eligible for inclusion in external TLAC***

6. *Are the eligibility criteria for TLAC as set out in the term sheet (Sections 8-17) appropriate?*

- In general, subject to our comments below and to questions 8 and 9, **most of the eligibility criteria appear to be appropriate** in our view.

### TS 9: Issuer

- As a matter of clarification, we believe that for **Tier 2 instruments with a maturity of 1 to 5 years, the full amount without the maturity haircut** imposed under the regulatory capital rules should qualify as TLAC. This would be consistent with the treatment of non-Tier 2 TLAC debt and, in resolution, the full amount would be available to absorb losses. The current wording (“only to the extent that they are recognized as Tier 1 or Tier 2 capital instruments”) is unclear and may suggest otherwise.



### TS 12: Excluded liabilities

- UBS believes that **structured notes** are listed as excluded liabilities on the basis that these liabilities are not stable, have significant price uncertainty, and/or that the unwind of related market hedges may have a negative impact on the derivative markets.
- In our view, **these reasons are less relevant for principal protected** (subject to on-default of the issuer) **structured notes** and hence we **are of the opinion that such notes should be eligible for inclusion in external TLAC**. This is based on the following factors:
  - The potential mark-to-market volatility of an embedded derivative in a principal protected note is more limited compared to the mark-to-market volatility of an embedded derivative in a non-principal protected note. Hence, **principal protected notes are more stable liabilities**, making it in our opinion possible to include them in TLAC.
  - The presence of **principal protection significantly reduces price uncertainty** around the note.
  - We also believe that **for most principal protected structured notes** (e.g., collared FRNs, zero coupon bonds, callable bonds) the **market impact of unwinding the embedded derivative following a write down would be limited** and hence actual capital creation (after hedge unwind costs) following a bail-in is expected to be similar to the expected capital creation.
- Finally, with regards to maturity, we would suggest that **callable principal protected structured notes would be treated as liabilities with a maturity equal to the next call date**.

### TS 13: Priority

- Please refer to our answer to question 9.
- Also, we note again that it is important that a level playing field be established between G-SIBs with non-operational holding companies and those whose substantive operating banks are also their group holding company. **Any legal form of external TLAC permitted for such banks should also be permitted for the internal TLAC instruments which non-operational holding companies may lend to their operating subsidiaries**. The market should not be in a position to charge holding companies a premium for TLAC over that achieved by operating banks, simply because, for example, internal TLAC must be invested only in subordinated form.

### TS 15: Redemption

- The current wording of the section 15 of the term sheet is not clear to us. Our interpretation is that the requirement for supervisory approval **does not apply to the redemption of a TLAC note at final maturity**, since at that stage, it is not eligible as external TLAC anymore, as its maturity is less than a year. We would **appreciate clarification** from the FSB on this point.
- More generally, **we believe that the current wording on redemption restrictions is too restrictive** ("*G-SIBs are prohibited from redeeming eligible external TLAC without supervisory approval, except when replacing eligible TLAC with liabilities of the same or better quality and the replacement of liabilities is done at conditions which are sustainable for the income capacity of the bank*"). Banks will not redeem TLAC-eligible liabilities if, as a consequence, this would lead to a breach of the TLAC requirements. We believe that as long as a bank fully fulfills the TLAC requirements and all buffer requirements post-redemption, it should be able to redeem eligible external TLAC without supervisory approval. At least, the FSB should define specific circumstances in which redemption would require supervisory approval.

- **Requiring supervisory approval for redemption** (especially if also applicable at maturity) would add unnecessary features to TLAC notes, bringing them closer to equity-like instruments, and **would likely reduce market appetite for such instruments**.

7. *What considerations bear on the desirability of an expectation that a certain proportion of the common minimum Pillar 1 TLAC requirement consists of (i) tier 1 and tier 2 capital instruments in the form of debt plus (ii) other eligible TLAC that is not regulatory capital?*

- In general, **UBS favours management flexibility regarding the composition of TLAC**.
- In particular, as mentioned in our answer to question 5, we believe that the expectation that a certain proportion of the common minimum Pillar 1 TLAC requirement consists of: (i) tier 1 and tier 2 capital instruments in the form of debt plus (ii) other eligible TLAC that is not regulatory capital, **should not apply to internal TLAC requirements**.

8. *Are the conditions specified in the term sheet (Section 8) under which pre-funded commitments from industry-financed resolution funds to provide resolution funding contribute to TLAC appropriate?*

- We believe that the **eligibility of pre-funded commitments from industry-financed resolution funds should be limited to the portion that has been actually paid-in by the resolution entity**.

9. *Is the manner in which subordination of TLAC-eligible instruments to excluded liabilities is defined in the term sheet (Section 13) sufficient to provide certainty regarding the order in which creditors bear loss in resolution, and to avoid potentially successful legal challenges or compensation claims? Where there is scope for liabilities which are not subordinated to excluded liabilities to qualify for TLAC, are the transparency and disclosure requirements set out in section 13 and 24 sufficient to ensure that holders of these instruments would be aware of the risk that they will absorb losses prior to other equally ranking but excluded liabilities? If not, what additional requirements should be adopted?*

- In our perspective, **a strict interpretation of the requirement for structural subordination of TLAC** (section 13.c of the term sheet: "*issued by a resolution entity which does not have excluded liabilities on its balance sheet (for example, a holding company) so that TLAC eligible liabilities are not pari passu or senior to any excluded liabilities*") **creates significant technical issues for structural subordination via holding companies**. The current list of excluded liabilities (as defined in section 12 of the term sheet) includes a number of liabilities which represent common business liabilities a holding company ordinarily incurs or engages in ("common business liabilities"), including compensation liabilities, replacement values as a result of hedging risks through derivatives contracts and tax liabilities. **We believe that this issue needs to be corrected**.
- The FSB should propose **a principle-based approach to structural subordination** which would allow for a low amount of necessary and common business liabilities to remain on the balance sheet of holding companies. The FSB may consider a **de minimis exemption**, allowing for a specific amount of such liabilities to remain on a holding company's balance sheet.

**Part 4: Interaction with regulatory capital requirements and consequence of breaches of TLAC**

10. Do you agree that the TLAC requirement for G-SIBs should be integrated with Basel III such that the minimum TLAC requirement should be met first, and only after TLAC is met should any surplus common equity tier 1 (CET1) be available to meet the Basel III buffers?

- **We do not agree** with the current strict wording in section 7 of the term sheet **that a breach (or likely breach) of the TLAC requirements should be considered as seriously as a failure to meet the minimum capital requirements.**
  - According to the consultative document (section 7 of the term sheet), "a breach, or likely breach, of the Minimum TLAC requirement should ordinarily be treated by supervisory and resolution authorities as seriously as a breach, or likely breach, of minimum regulatory capital requirements". Section 10 of the proposed principles, nonetheless, states that "if a firm exhausts its regulatory capital buffers and has breached or is likely to breach its minimum TLAC requirement, authorities should require the firm to take prompt action to address the breach or likely breach. Authorities must ensure that they intervene and place a firm into resolution sufficiently early if it is deemed to be failing or likely to fail and there is no reasonable prospect of recovery."
  - The wording, in particular when only looking at section 7 of the term sheet, in our perspective, **lacks clarity as to what exactly is expected to happen in the event of a breach of the TLAC requirements** and could be misinterpreted as meaning that a breach of TLAC is a point of non-viability (PONV) trigger.
  - **It would not be proportionate to put a bank into resolution if it does not represent an actual danger to financial stability**, i.e., if it is still fully viable. Such a result may not have been intended by the FSB, but the current wording of the term sheet may allow for such an interpretation.
  - In a theoretical scenario where TLAC requirements are 20% of RWAs and a bank chooses to fill the maximum amount possible with CET1 (i.e., 66%) and only 33% in the form of debt (tier 1 and tier 2 capital instruments or other eligible TLAC), **a breach of the TLAC requirements could be triggered when a bank still has a CET1 ratio of 13.3% of RWAs.** This is well above the current Basel III minimum requirements, the current capitalizations of most banks and clearly the bank is at that point still fully viable.
  - **A breach of TLAC may also happen because a TLAC instrument reaches maturity** while the TLAC market may temporarily be illiquid, but without the bank enduring any loss.
- In our view, the decision as to when a bank has reached the **point of non-viability should be at the discretion of the home regulator and be based on the regulatory capital ratios** as defined by the Basel III framework whose requirements are already well set out and defined in local legislations.
  - We understand the FSB's desire to ensure that a failed G-SIB has sufficient outstanding long-term debt to absorb losses and/or effect a recapitalization in case of a resolution and that depending on a firm's liability / capital structure (e.g., in cases where firms use equity to fulfill a large part of the TLAC requirements), an earlier intervention may be needed under particular circumstances. Nonetheless, **we ask the FSB to provide more clarity** on the consequences of a breach of TLAC and to provide guidance as to where it sees the point of non-viability within the TLAC framework. Debt capital markets will likely need such guidance.
  - We propose that an early breach of TLAC requirements triggers the **requirement for the bank to provide the regulator with a plan to re-establish its TLAC over a well-defined period of time**, depending on market conditions.

- Moreover, as mentioned in our answer to question 1, we believe that if the required minimum TLAC is higher than 16% of RWAs (which we do not favor), the **amount above 16% should be clearly defined as a buffer only**.
- Finally, it should be made clear by the FSB that in a situation, in which the bank is required to take prompt action to address a breach of TLAC by its home authorities, **host authorities should defer to such action and refrain from taking additional actions** at the same time.

### ***Part 5: Transparency***

*11. What disclosures (in particular in terms of the amount, nature and maturity of liabilities within each rank of the insolvency creditor hierarchy) should be required by resolution entities and material subsidiaries to ensure that the order and quantum of loss absorption in insolvency and resolution is clear to investors and other market participants?*

- **We strongly support comprehensive disclosure requirements** with respect to TLAC as a way to create clarity for the market on the amount of bail-in-able liabilities banks hold and for investors on which liabilities would be subject to bail-in under local regulations and under FSB's TLAC requirements. In this context, we especially see the need for disclosure of the overall amount, maturity and composition of TLAC as well as providing clarity regarding the creditor hierarchy within the resolution entity. The well-established Enhanced Disclosure Task Force (EDTF) should be mandated to come up with specific disclosure proposals.

### ***Part 6: Limitation of contagion***

*12. What restrictions on the holdings of TLAC are appropriate to avoid the risk of contagion should those liabilities be exposed to loss in resolution?*

- **Given the substantial amount of TLAC that will be required to be issued, overall market capacity must be carefully taken into account.** In our view, any restriction should be balanced carefully against the need to create a sufficiently large, liquid and diversified market.
- As part of its market analysis, the **FSB should carefully consider the range and classes of potential buyers of TLAC instruments**.
- **It appears unclear, for example, whether insurers and pension funds would be legally able or willing to invest in large parts of the new TLAC debt** (which may be considered more like an equity-like instrument, especially given the specific features of the TLAC instruments outlined in the term sheet (e.g., redemption restrictions, minimum maturity)). We would suggest that the FSB seeks clarity on how such instruments would qualify on the investors' side.
  - **We thus strongly recommend that the FSB includes insurance supervisors in the discussions** to ensure such debt gets an appropriate capital treatment for such entities to incentivize them to invest. For example, Solvency II is a serious impediment to restarting the EU securitization market as the capital charge on ABS for insurers is punitive relative to other bonds. Co-ordination across all financial services sectors is crucial.
  - **We also encourage the FSB to talk directly to representatives of insurers and pension funds** to ensure that features of such instruments required by the term sheet (e.g., redemption restrictions) do not make them unpalatable to them.

- Furthermore, in the context of its market analysis, **the FSB should consider whether existing regulatory requirements, such as large exposure rules, would not already be sufficient to limit the risk of contagion between G-SIBs** and thus whether the proposed requirement in section 18 of the term sheet that "*G-SIBs must deduct from their own TLAC or regulatory capital exposures to eligible external TLAC liabilities issued by other G-SIBs*" should not be removed.
  - It seems, in particular, that the above-mentioned requirement in section 18 of the term sheet would also force banks to deduct inventory held for market making or underwriting purposes, as opposed to investment. We believe that **an exemption for market making and underwriting will at least be needed** as otherwise such activities will become uneconomical for many banks. As a consequence, the market would be very illiquid, spreads would increase, and costs of issuance could rise significantly.

### ***Part 7: Conformance period***

*13. Should G-SIBs be required to conform with these requirements from 1 January 2019? Why or why not? What, within the range of 12 to 36 months following the identification as a G-SIB, should be the conformance period for banks identified as G-SIBs at a future date?*

- Any externally communicated timeline should be **carefully designed** following the FSB's market analysis.
  - The main issue is the **market capacity to absorb the amount of necessary TLAC instruments issuance**. This will thus likely be a key determining factor for the time needed to build the required TLAC.
  - Moreover, **the interaction between the TLAC framework and the NSFR should be taken into account** in the design of the conformance period. Banks should be given enough time for implementation to ensure that balance sheets are not over funded. Otherwise, this might lead to potentially expensive liability management exercises for the banks. It would also undermine further the economically important maturity transformation function of banks and potentially increase funding costs even more; costs which would have to be passed on to end-users.
  - The transition period for the introduction of TLAC should be set in a way that provides **sufficient time for national jurisdictions to change their legislations**, if required to be compliant with the FSB standard.

### ***Part 8: Market impact and other aspects***

*14. How far is the TLAC proposal, if implemented as proposed, likely to achieve the objective of providing sufficient loss-absorbing and recapitalization capacity to promote the orderly resolution of G-SIBs?*

- We are supportive of the TLAC requirements and believe that they will contribute to achieving the objective of providing sufficient loss-absorbing and recapitalization capacity to promote the orderly resolution of G-SIBs. However, we believe aside from ensuring a sufficient amount of available TLAC, the **accompanying implementation of cross-border agreements where host regulators and host resolution authorities agree to abstain from potential ring-fencing will be of at least similar importance**.

15. *What will be the impact on G-SIB's overall funding costs of the adoption of a Pillar 1 Minimum TLAC requirement?*

- **While we expect funding costs to substantially increase, an exact assessment is currently not possible given the number of open issues to be finalized.** We expect the increase to be stronger in the transition phase as the market has not matured.

16. *What will be the impact on the financial system and its ability to provide financing to the real economy?*

- **With the introduction of TLAC, costs for the entire senior funding curve will increase. These higher costs will be transferred to the clients and thus raise the financing costs for the real economy.** As mentioned in question 15, we believe that the effect will be more acute during the transition phase.
- In this context, the **FSB's macroeconomic impact assessment should carefully take into consideration the potential cumulative effects of all ongoing and outstanding regulatory reforms.**

17. *Do you have any comments on any other aspects of the proposals?*

- n/a