

# Guidance on Arrangements to Support Operational Continuity in Resolution

## Overview of Responses to the Public Consultation

### Introduction

On 3 November 2015, the FSB published a consultative document – [\*Guidance on Arrangements to Support Operational Continuity in Resolution\*](#) – (‘the guidance’) that proposed a set of arrangements that could support operational continuity in resolution and help address obstacles to resolvability that arise from uncertainty about the continuity of a firm’s critical shared services. These arrangements were discussed in the context of three prevailing industry models: service provision within a regulated entity; service provision by an intra-group service company; and service provision by a third party service provider.

The FSB received 11 responses to the public consultation from official sector bodies, individual G-SIBs and industry associations.<sup>1</sup> Respondents generally welcomed the FSB’s focus on operational continuity and agreed that inadequate provisions to support the operational continuity of critical functions provided by firms – a core objective of resolution – could act as a major barrier to resolvability.

This note summarises the comments raised in the public consultation and sets out the main changes that have been made to the guidance to address them.

### Summary of Main Issues

#### *Service provision models*

There was strong support among respondents for the consultation document’s neutrality regarding the choice of the three service delivery models that firms typically adopt, singly or in combination, for the provision of operational services. These respondents agreed that the guidance should not be prescriptive in respect of a firm’s choice of model(s). That said, one respondent raised a concern that differentiating the requirements for certain arrangements by type of service model could have the unintended consequence of encouraging firms towards the model they perceived to have the least onerous requirements.

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<sup>1</sup> The comment letters are published on the FSB’s website (with the exception of those that requested otherwise): <http://www.fsb.org/2016/01/public-responses-to-the-november-2015-consultative-document-arrangements-to-support-operational-continuity-in-resolution/>

One other respondent noted that the provision of services through a regulated entity comprises two types of services: “intra-entity” (i.e., provision of service within the regulated entity itself) and “inter-entity” (i.e., provision of service to another entity in the group). It was suggested that the guidance should distinguish between these two types of service, or at least clarify the different implications for resolvability.

The final guidance retains the service model neutrality of the consultation document. Regarding the concern that firms may select the model that they perceive to have the least onerous requirements, the FSB considers that, if adopted appropriately, all three models can adequately support operational continuity in resolution. Moreover, the FSB is aware that many firms are more likely to employ a mixed service delivery model that combines different models, rather than adopting a single model. The final guidance also clarifies in paragraph 3.5 that provision of services within a regulated entity may comprise inter-entity or intra-entity services.

*Resolution strategies and resolvability*

There was a general consensus among respondents that the arrangements identified in the guidance should be neutral to the choice of a Single Point of Entry (SPE) or Multiple Point of Entry (MPE) resolution strategy. A number of respondents noted the distinction in paragraph 4.2 of the guidance between the two stages of resolution (stabilisation and restructuring) but expressed the view that the ability of firms to pre-plan and organise for these two stages differed, and that the requirements for the two stages should therefore also differ. In particular, these respondents believed that while planning for stabilisation would necessarily be granular and detailed, restructuring is not likely to be predictable and planning should therefore be more flexible to accommodate multiple scenarios.

To address these comments, the final guidance acknowledges that restructuring needs in resolution will depend on, amongst other things, the circumstances that led to the firm’s failure and market conditions at the time of resolution. However, as per paragraph 4.9 of the final guidance, any service model (or combination of models) adopted by a firm will need to support business separability and restructuring, and restructuring options should be taken into account in planning for operational continuity.

*Arrangements to support operational continuity*

Respondents broadly agreed with the arrangements to support operational continuity set out in Section 4 of the guidance, and few additional arrangements or actions were suggested. However, respondents’ views differed on the granularity of the guidance. Some proposed that the arrangements should be phrased generically and not refer to the implications for different service models, while others suggested that the guidance should be more granular and set out which arrangements would be more or less relevant for the different service models. In light of these differing views, Section 4 of the final guidance retains the same level of granularity as the consultation document, which sought to highlight practical considerations for certain arrangements as they relate to different service models.

A number of comments were made in respect of the individual arrangements. These are summarised below under each arrangement.

Financial resources

Several respondents drew a distinction between the stabilisation and restructuring phases of resolution and asserted that the need for financial resources in resolution would be most critical

for the stabilisation phase. In the view of these respondents, the need for financial resources during the subsequent restructuring would depend on the strategy and may be offset by, variously, resource generation; rightsizing of the firm in resolution; and funding secured through the resolution funding plan (cf. FSB consultation document on [\*Guiding principles on the temporary funding needed to support the orderly resolution of a global systemically important bank \("G-SIB"\)\*](#)). As such these respondents argued that the guidance should avoid implying that there would be an ‘open ended’ requirement on financial resources for the restructuring phase. Other respondents raised a more general concern about the cost of pre-positioning financial resources and stated that it should not impose a burden on business-as-usual operations or duplicate existing regulatory requirements.

In light of these comments, the final guidance clarifies that financial resources should be sufficient to cover the stabilisation phase of resolution and to facilitate the subsequent restructuring period, recognising that recapitalised entities may have access to sources of liquidity.

#### Robust pricing structures

A concern was raised by some respondents that the provision in the guidance for cost structures to not be “influenced by the financial performance of the service recipient” was too rigid, and that it may – in some cases – be appropriate for service providers to require additional compensation in the resolution of a service recipient, given the risks and adjustments that may be required of the service provider. As such, the final guidance instead provides that cost structures should not alter solely as a result of the entry into resolution of the service recipient.

#### Operational resilience and resourcing

Consistent with previous comments regarding the need for flexibility in the restructuring phase, some respondents expressed the view that firms should not be required to plan for an ‘indefinite’ restructuring phase, and that decisions on employee retention should be made at the time of the restructuring, when the actual needs would be clearer. The guidance has been amended to clarify that firms and authorities should plan for the retention of critical employees necessary for the provision of critical shared services in resolution.

#### Governance

Several respondents thought that the requirement in the guidance that governance arrangements should not rely on senior staff from business lines that may be wound down was unnecessary, in particular because arrangements could be made to ensure the availability of such staff. Others felt that there might be challenges in implementing the proposed governance arrangements. These respondents recommended that, instead of prescribing additional governance arrangements for critical shared services, the guidance should propose that firms remain cognisant of the need to provide such services within their existing governance structures.

The final guidance establishes that critical shared service providers should have sufficient governance oversight or planning and contingency arrangements to ensure that services can continue to be provided in resolution.

#### *Contractual provisions*

Respondents generally agreed with the need for contractual provisions to help ensure operational continuity in resolution, but several considerations were highlighted. In particular,

it was noted that firms are likely to need time to make the necessary amendments to existing contracts, particularly for third party providers who may have less incentives to renegotiate existing contracts. Respondents also suggested that the guidance should reference statutory solutions to the risk of early termination of contractual arrangements for service provision, and that the promotion and extension of these statutory approaches may help address the difficulties of the contractual approach to renegotiation described above.

The final guidance references statutory provisions to prevent contract termination or contractual modification solely on the grounds of early intervention or resolution. However, these provisions may not be enforceable on a cross-border basis and, as such, the FSB considers that there is a need for firms to have clearly documented contractual arrangements and Service Level Agreements for critical shared services which, to the greatest extent possible, remain valid and enforceable in resolution provided there is no default in payment obligations.

*Information requirements*

The final guidance establishes that the information requirements in the Annex should be viewed as ‘indicative’. Some of the specific items of information have also been removed (for example, the proposed information requirement for audit reports demonstrating adherence to pricing policies governing the provision of services), to address concerns raised by some respondents that some of the items of information were too granular or not necessary to facilitate operational continuity. That said, the FSB considers that the ability of firms’ management information systems to provide accurate and detailed information on critical shared services – in particular a clear mapping between critical shared services, critical functions and legal entities – as an important aspect of operational continuity arrangements.