

Sent by email to: fsb@bis.org

27 November 2014

Dear Sirs

Consultative Document - Cross-border recognition of resolution action

The ICMA¹ is a pan-European self regulatory organisation and an influential voice for the global capital market. It has a membership of over 400 firms and represents a broad range of capital market interests including global investment banks and smaller regional banks, as well as asset managers, exchanges and other venues, central banks, law firms and other professional advisers. The ICMA's market conventions and standards have been the pillars of the international debt market for over 40 years.

We note that the Consultative Document on builds upon the FSB's September 2013 report on 'Progress and Next Steps Towards "Ending Too Big to Fail"' (the "Progress Report") which identified uncertainties about the cross-border effectiveness of resolution measures as an important impediment to cross-border resolution.

The views expressed in this letter have been compiled in light of a range of inputs provided by the ICMA's member firms, including representations made from both issuer and investor perspectives. As such, it represents a considered, broadly-based view of the discussion informed by both ends of the value chain – i.e. those firms issuing the senior unsecured debt potentially impacted by the contemplated bail-in regime; and those firms investing in such debt instruments.

The ICMA notes that this Consultative Document on cross-border recognition of resolution action builds upon the FSB's September 2013 report on '*Progress and Next Steps Towards "Ending Too Big to Fail"*' which identified uncertainties about the cross-border effectiveness of resolution measures as an important impediment to cross-border resolution, and considers that the Consultative Document goes some way to addressing these uncertainties.

This response relates specifically to question 4 of the Consultative Document and is couched in general, high-level terms. Imposing bail-in by legislation is not necessarily in itself effective where the bail-inable debt is governed by the laws of a third country. Therefore, harmonisation of

¹ For more information regarding ICMA, please go to <http://www.icmagroup.org/About-ICMA/>

appropriate legislation at an international level may be the most effective tool in ensuring the enforcement of the bail-in regime. The ICMA is encouraged by the FSB's continued efforts to develop a coherent international approach to take account of this in finalising any proposal and considers that a hybrid approach of legislation at an international level, coupled with contractual recognition, which demonstrates intention between the parties, may ensure a more consistent and effective imposition of the bail-in regime.

The ICMA appreciates the valuable contribution made by the FSB's examination of the issues articulated in this letter and would like to thank the FSB for its consideration of the points made herein. We remain as always at your disposal to discuss the above points and to facilitate any further discussions as between the FSB and the various interested constituents (i.e. both issuers and investors) whose views are expressed in this letter.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Katie Kelly', followed by a period. The signature is written in a cursive, fluid style.

Katie Kelly

Director, Market Practice & Regulatory Policy
International Capital Market Association