Sent by e-mail to: fsb@bis.org

Mr Svein Andersen
Secretary General
Financial Stability Board
Bank for International Settlements
Centralbahnplatz 2
CH-4002 Basel
Switzerland

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Dear Mr Andersen,

We are pleased to provide our response to the Financial Stability Board's ("FSB") consultative document *"Effective Resolution of Systematically Important Financial Institutions: Recommendations and Timelines"*. We support the direction of the proposals, which we recognise as a serious and ambitious attempt to mandate international co-operation in the resolution of cross-border financial groups, and which, with some important exceptions, are broadly in line with previous Standard Chartered and industry views on this subject. We set out below our high level comments on the FSB's proposals and include as an attachment our responses to the questions posed in the consultative document.

An effective international resolution framework is an appropriate and worthy goal (although there are considerable challenges in implementation), which will contribute to tackling systemic risk and reducing moral hazard. The consultative paper gets at the heart of the solution to tackling systemic risk, and whilst we do not agree with all of the proposals made, we feel that working through the advantages and disadvantages of the various mechanisms proposed will support the development of an appropriate resolution regime. It is critical however that it is supported by alignment of national resolution regulation and law.

Our strong view is that achieving an effective international framework for resolution would be an entirely more effective approach to tackling the issue of systemic risk than recent proposals from the Basel Committee on Banking Supervision ("BCBS") on capital buffers for G-SIBs, which we believe would have only a very limited effect on the resilience of the firms targeted, and by creating a perverse incentive for G-SIB status would have a much greater negative impact on market wide stability. The G-SIB proposals in essence signal the necessity of underlying state support, thereby increasing (rather than, as originally intended, reducing) moral hazard.

To achieve the goal of an effective international resolution framework, we recognise that a comprehensive and far-reaching package of reforms will be required. Real progress will only be achieved if there is cooperation and action from both the official sector and the industry on the

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challenging deliverables. Ultimately it is only when all elements of the framework are in place that a credible cross-border resolution capability will truly exist. Falling short on any individual element is unlikely to lead to an improvement in the status quo. To implement the proposals partially or unevenly will actually increase systemic weakness rather than reduce it. The tightness of the proposed timelines further increases implementation risk.

An effective cross-border resolution framework is predicated on the development and harmonisation of national resolution regimes and the legislative changes necessary to support their operation (something we have not seen significant progress on to date). Implementing this level of legislative and regulatory reform will be challenging nationally, and coordinating outcomes internationally even more so. It will require strong political leadership from the G20 and detailed and comprehensive ongoing monitoring of progress both from the FSB and BCBS.

The onus in the current proposals however is exclusively on the changes required of the industry, and they do not set clear timelines for necessary changes in regulatory and legislative frameworks. The lack of focus on the obligations of the official sector is a very significant omission in the context of a process that will inherently require close co-operation and parallel progress from supervisors and firms. We are highly concerned that without milestones for regulatory and legal reform, the likely result will be at best an incomplete 'patchwork' of regulation, incapable of resolving a cross-border group in practice. To create better balance, alignment and further impetus we would recommend that the proposed requirements on the industry are synchronised with the actions that will need to be made by the official sector.

Clarity on the home-host relationship in recovery and resolution scenarios is central to a co-ordinated resolution framework. We strongly support the FSB's presumption of primacy of the home / group supervisor in the co-ordination of planning, and in the recovery and resolution phases. Recovery and resolution planning should be considered via a single set of Group level recovery and resolution plans ("RRPs") – this approach will lead to the optimal and least discriminatory outcomes, and the most orderly resolution scenarios. We would strongly argue that the principle of home coordination at the Group level should be stated more explicitly rather than as in the current proposals which provide scope for host authorities to intervene in the recovery and resolution phases.

Furthermore there should be a requirement to set out co-operation on a legally binding basis. We are concerned that without a requirement for co-operation agreements to be legally binding, the ultimate result will be a greater capacity and likelihood for national pre-emption, with a malign impact on the prospect for co-ordinated and orderly resolution. This increases market uncertainty around how stress scenarios would evolve for individual institutions, driving pre-emptive ring-fencing that fragments liquidity and capital pools, and increasing the likely speed of a firm's collapse if stress does occur. The real world implications that will arise from academic constraints need to be regularly considered. Clearly legal agreements may not be reliable in practice in all circumstances due to sovereign immunity and the prevailing domestic political context. However we feel that they would at least provide clarity as to the intention for coordination and for non-discriminatory treatment of creditors internationally, and as such an element of moral suasion.

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We note that both these FSB proposals and also the Proactive Intervention Framework (PIF) within the recently proposed UK Prudential Regulation Authority's (PRA) supervisory framework, imply a 'grey zone' between going and gone concern with significant potential for supervisory intervention, and lack of clarity on directors' and officers' liabilities and obligations. This ambiguity entails potential for fundamental conflict which we feel has not been fully thought through in these proposals, and could in practice lead to delay or even paralysis in the implementation of recovery plans. We believe that directors' and officers' liabilities should be clarified, noting that these should be protected in law when taking actions to comply with the decisions of supervisory authorities within the 'recovery phase' (in the same manner as they are when complying with the decisions of resolution authorities during resolution). This will in essence position regulatory authorities as shadow directors. Moreover it may require the then directors of the institution to resign their roles.

We recognise that the co-ordination and co-operation necessary for an effective resolution framework will not be possible without a greater level of international information sharing than currently pertains. However we remain concerned as to how such information would be protected in law. RRP information is potentially highly market sensitive, especially in times of market or name-specific stress. We strongly recommend these proposals contain a clear requirement for a legally binding requirement on Crisis Management Group ("CMG") members to maintain full confidentiality of information provided in a RRP and to sign their acknowledgment of this at the most senior level.

In regard to advanced planning for resolution, these proposals set out the requirement for material data gathering to support the development of a resolution plan by supervisory authorities. We feel that information gathering exercises must be highly targeted to be effective in rapidly progressing to a workable resolution plan. We do not support large scale generic data gathering exercises which we believe have the potential to obscure core resolution issues more than reveal them.

Accordingly, we strongly suggest that a clear requirement is placed on national supervisors to agree a conclusive list of systemic functions with a firm, before any detailed gathering or analysis of information to aid resolution planning commences. This list would provide a solid base for the complex discussions within the CMG around its Institution Specific Cross Border Co-operation Agreement ("ISCBCA"). As soon as practicable following identification of systemic functions, supervisors / resolution authorities and the firm should work together to create a resolution plan. The expertise and understanding that a firm brings of its own markets and operations means its involvement is likely an inevitable necessity for development of a credible plan, though the ownership of the plan clearly resides with the home resolution authority. Involvement of the firm also allows coherent integration with recovery planning, which would create greater certainty on outcomes for host regulators within the CMG, improving the chances of co-operation.

We view bail-in as a potentially effective component of the resolution framework. The FSB's proposals set out necessary elements for an effective and credible mechanism which should (i) only apply under resolution, (ii) preserve the existing creditor hierarchy, and (iii) make no mention of the use of Contingent Convertible bonds ("CoCos"), which we believe to be an academic and superficially attractive construct but in reality highly likely to create rather than

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mitigate unwarranted and deep stress. We would however propose that it is stated clearly that bail-in should be used purely for the purposes of continuing pre-agreed critical functions, with the primary objective of reducing systemic risk. We are concerned that setting an overly broad definition of the purpose of bail-in (for example purely to 'preserve value') would potentially give too much flexibility to supervisory authorities to bail-in on a large scale, which could concomitantly unsettle markets and impact funding costs. Also these proposals should contain a clear blue-print for the process of sequential bail-in / write-off of different classes of capital and debt instruments, which would provide clarity for investors.

We agree that an assessment of resolvability is a necessary part of the resolution tool-kit if it is to become a central part of supervision. We note however the manner in which resolvability is measured is likely to have far-reaching impacts on the structure of firms and the industry, and we do not feel that the FSB's proposals at this stage are sufficiently developed. In particular we are concerned that these proposals do not appear to be cognisant of the overall relationship between resilience, resolvability and systemic risk, and as such lead to supervisory attention being drawn to improving theoretical resolvability at the cost of weakening ongoing resilience, and thus increasing systemic risk. While the proposals to assess the feasibility and credibility of resolution may sound superficially reasonable, they do not correctly embed an understanding of the likely actual entry point to resolution, which has a key impact on resolvability.

We question whether the combination of factors proposed to assess resolvability is artificial and conceived as a backfill to incentivise an *a priori* judgment of the desired structural changes to the industry (for example increased Service Level Agreements ("SLAs"), reduced intra-group relationships) recommended elsewhere in these proposals, rather than being based on any empiricism, or designed as a framework on which to base a truly in depth, tailored and thoughtful supervisory assessment of resolvability.

We recommend that the methodology for assessing resolvability is considered much more deeply, with the co-operation of industry, in order to agree a well founded approach which is cognisant of individual firms' circumstances, and the interaction between resolvability, resilience and systemic risk. This will ensure that the approach gains the credibility and acceptance to assume a more central role in supervision. Ultimately a credible resolvability assessment should build appropriate incentives in the industry by obviating any perceived need to use capital buffers as a tool to address systemic risk, an approach which we strongly oppose.

SCB strongly disagrees with the measures to improve resolvability contained within Annex 6. Firstly, we do not believe that this FSB consultation, which focuses at a high level on the overall international framework for regulatory coordination around resolution, is the appropriate forum to consider firm specific issues. Secondly proposals that firms should reduce intra group support, and booking practices that match risk and risk absorption capacity, in order to improve theoretical resolvability, imply a lack of cognisance of the relationship between resilience, resolvability and systemic risk, and are likely to run counter to prudential goals. Furthermore they do not recognise the starting point of firms' resolvability, their likely entry points to resolution, including likely capital level, number and importance of critical functions and availability of bail-in, and risk imposing a costly and distortive solution to a non-existent problem.

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We recognise that there is merit in reviewing the extent to which a firm's SLAs would support the ongoing operation of its critical functions under resolution, and confirming that its MIS produce information necessary to prepare for resolution in practice. However any debates on obstacles to resolution should be fully firm specific, considered within the context of a firm's net contribution to systemic risk, and managed as part of its Pillar 2 supervisory discussions. Structural change should only be considered as a last resort where it can be proven that it is the only effective means of reducing systemic risk. The implications on shareholders and other investors of structural change and other pre-emptive actions also need to be considered to ensure that the banking industry remains a viable investment proposition.

In conclusion, we welcome the progress made by the FSB in developing its proposals and in setting out a framework for tackling systemic risk. However we would urge the FSB to focus on setting clear timelines for harmonisation of national resolution regimes, regulatory and legislative changes, and implementation of ISCBCAs that embed an unambiguous and legally binding requirement for home-host co-operation and protection of confidentiality. These should be supported by comprehensive but tailored recovery and resolution planning based on agreed critical functions, and a firm specific analysis of resolvability. These must consider the entry point to resolution and be mindful of the broader context of resilience and systemic risk, and ultimately be used to build appropriate incentives for the industry rather than placing undue reliance on the need for additional capital buffers as a tool to address systemic risk. These proposals highlight a certain lack of understanding of the ways in which markets and banks operate which is a fundamental flaw in the framework being developed. We believe that the FSB and other policy makers should work closely with the banks to ensure that the resolution regime is truly capable of enabling failing institutions to be resolved in an orderly manner.

Yours sincerely,

Richard Meddings

Richard Meddings
Group Finance Director

Standard Chartered Bank
1 Basinghall Avenue
London EC2V 5DD
Tel +44 (0)20 7885 8888
www.standardchartered.com

ANNEX: RESPONSES TO FSB'S "EFFECTIVE RESOLUTION OF SYSTEMICALLY IMPORTANT FINANCIAL INSTITUTIONS" CONSULTATION QUESTIONS

Annex 1 – Effective Resolution Regimes

Q1 Comment is invited on whether Annex 1 […] appropriately covers the attributes that all jurisdictions' resolution regimes and the tools available under those regimes should have.

We have consistently supported the implementation of Recovery and Resolution Planning as a tool to end the phenomenon of Too Big To Fail, and promote market discipline, while urging that the approach used should be proportionate to the underlying risks of individual institutions, and not impose ex ante changes on business models in the industry.

We are generally positive on the ambition and direction of the proposals to strengthen and harmonise resolution regimes set out in Annex One. We note this largely follows the direction suggested by previous views expressed by SCB and industry associations such as the IIF.

The implementation deadlines are extremely ambitious, creating a material risk that the industry is forced to embark on costly preparation and disclosure of market sensitive information, before the international framework is fully in place. This could lead to a dangerous 'half way house' which is in fact more prejudicial to market stability than the status quo.

We would propose that requirements on the industry vest in step with progress on achieving necessary regulatory and legislative changes, including national resolution regimes.

The above points are detailed further in our responses to Q9, Q10 and Q11 on Annex 3 ISCBCAs, Q20 on timelines.

We propose that it is essential that the Recovery and Resolution Planning process starts from a clear list of critical functions, agreed between the firm and its CMG, to avoid wasted effort and increase the likelihood of co-ordination further down the track.

The above point is detailed further in Q14 and Q15 on Annex 5 - RRPs.

The proposals set out material new host powers for resolution, while not resolving key inherent home-host coordination issues. Without a binding requirement for international co-operation, this could lead to greater ring-fencing and fragmentation of pools of liquidity and capital on the financial system, which would reduce overall resilience in the sector, than currently pertains.

We are concerned by the general presumption that resilience can be sacrificed for resolvability, as we believe that at the margin this trade off would likely increase systemic risk.

To rectify this we propose that:

(i) cross border co-operation agreements are binding and/or
(ii) host actions are a truly extraordinary contingency and/or
(iii) host actions would require specific assent from the firm's CMG.

The above points are detailed further in our responses to Q9, Q10 and Q11 on Annex 3 ISCBCAs.

The proposals require an unprecedented degree of co-operation and information sharing between regulators.

We propose that clear and legally binding confidentiality frameworks are directly mandated to avoid the risk of market sensitive information being misused.

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The above point is discussed further in our responses to Q9, Q10 and Q11 on Annex 3 ISCBCAs.

We strongly disagree with the suggestions within Annex Six - Measures to increase resolvability, being included in the FSB resolution recommendations. Some of the detailed actions described are questionable in terms of their positive impact on systemic risk, and should certainly not be applied on a 'one-size-fits-all' basis.

We propose that resolvability, capital, and bail-in are part of the same debate and that firms are judged by their supervisors to have resolvability issues should in the first instance discuss this further via their Pillar 2 process. Furthermore, strong resolvability should be incentivised by lower capital buffers.

We propose that any discussions with a firm on actions to increase its resolvability must be coordinated by the Home regulator.

Q2 Is the overarching framework provided by Annex 1 specific enough, yet flexible enough to cover the differing circumstances of different types of jurisdictions and financial institutions?

Annex 1 envisages a major change in the framework for regulating SIFIs under very tight timetables.

We propose that the framework should provide specific guidelines on the required standard of co-operation between international regulators.

The above points are detailed further in our responses to Q9, Q10 and Q11 on Annex 3 ISCBCAs.

We propose that specific timelines should be set for supervisors and firms to agree their critical functions, and for national jurisdictions to implement the necessary changes in legislation and regulatory structure.

The above point is detailed further in our responses to Q20 on timelines.

We do not believe that these proposals are sufficiently specific in setting out the supervisors' desired trade-off between resilience and resolvability. We are of the belief that the benefits of trading resilience for resolvability are not yet proven, and likely to be illusory.

We do not feel that the overarching framework is sufficiently flexible to cover the varying circumstances of different institutions. For example, firms with high capital minima, few critical functions, and potentially bail-in debt represent a much smaller challenge for resolution, before perceived issues around structure even begin to be considered.

We propose that in line with the UK Prudential Regulation Authority's Proposed Supervisory Framework, the firm's resilience is taken into account when assessing its minimum standard of resolvability.

The above points are discussed further in Q12 and Q13 on Annex 4 Resolvability Assessments.

We believe that more specific details are required on the rights and obligations of directors during implementation of recovery plans, as the increased supervisory intervention envisaged in the later stages create a 'grey zone' between going and gone concern status. The ambiguity could lead to delay or even paralysis in implementation of recovery plans in practice.

We propose specific guidelines on directors' and officers' rights and obligations under supervisory intervention are set out clearly.

We believe requirements on resolution planning are too specific and hint towards an extensive, paper based information gathering exercise.

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We would propose more flexibility on the specific information requirements within resolution planning and a focus on moving directly to the end purpose, a workable resolution plan.

Generally we feel the balance between specificity and flexibility in the proposals is adequate to take into account the different circumstances of jurisdictions.

Annex 2 – Bail-in within resolution

Q3 Are the elements identified in Annex 2 […] sufficiently specific to ensure that a bail-in regime is comprehensive, transparent and effective, while sufficiently general to be adaptable to the specific needs and legal frameworks of different jurisdictions?

The Annex 2 bail-in framework is in line with many aspects of SCB's previous comments on the subject, i.e. it sets out elements of an effective and credible regime, only applies under resolution, aims to preserve the existing creditor hierarchy, and makes no mention of CoCos.

However we would note this envisages a significant concentration of discretionary power with the regulators, which could be exercised on a pre-emptive basis, with the potential to unsettle markets and increase funding and capital costs. The burden of proof on the benefit of pre-emptive action appears to be skewed in favour of the regulator.

We would propose it is clarified that bail-in is carried out purely for the purposes of continuing agreed critical functions.

The proposals do not provide specific details on how the write-down / conversion to equity procedure would work for different classes of capital instrument / liability covered under the scope. This could cause the economic profiles of different instruments to converge.

We propose that a clear write-down structure must be included in the final rules as is the essential pre-requisite for ensuring that the goal of maintaining the creditor hierarchy be achieved.

We propose that bail-in of debt should always be initiated at the Group level. If bail-in of subsidiary debt changes ownership structure, an equity swap for bailed-in creditors may be arranged.

Q4 Is it desirable that the scope of liabilities covered by statutory bail-in powers is as broad as possible, and that this scope is largely similarly defined across countries?

We propose that bail-in should cover investor liabilities (i.e. not trading, deposit, commercial or other business liabilities), and apply within resolution only for the purpose of reducing systemic risk.

There should be a clear indication ex ante of the amount that may be required, which forms a cap on the amount that could be bailed-in, and is informed to the firm. We would support harmonisation of scope across countries.

As such, bail-in debt would effectively define a new asset class, and retain the option of non bail-in debt for investors who prefer or require it.

Q5 What classes of debt or liabilities should be within the scope of statutory bail-in powers?

See response to Q4.

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1 Basinghall Avenue
London EC2V 5DD
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Q6 What classes of debt or liabilities should be outside the scope of statutory bail-in powers?

See response to Q4.

Q7 Will it be necessary that authorities monitor whether firms' balance sheet contain at all times a sufficient amount of liabilities covered by bail-in powers and that, if that is not the case, they consider requiring minimum level of bail-in debt? if so, how should the minimum amount be calibrated and what form should such a requirement take; eg (i) a certain percentage of risk weighted assets in bail-inable liabilities or (ii) a limit on the degree of asset encumbrance (eg thru use as collateral)?

Rather than a floor, we propose an amount of bail-in based on an ex ante calculation of the amount that may be required to recapitalise systemic functions, taking into account base capital levels and resolvability.

Where bail-in debt is maintained by an entity, we propose this should be incentivised through lower capital buffer requirements. Without this incentivisation, such bail-in debt would carry similar costs and economic risks as regulatory capital but without being recognised as adding to solvency.

Q8 What consequences for banks' funding and credit supply to the economy would you expect from the introduction of any such required minimum amount of bail-inable liabilities?

Please refer to response to Q5. We propose setting an amount of bail-inable debt based on expected resolution requirements that would be linked to the firm's critical functions and its existing capital strength.

This should provide greater clarity and lower impact on funding costs than the converse. However it is not clear at this point that the impact of the threat of bail-in (even under the mitigating condition that creditors would not be worse off than in a liquidation), would have on senior funding spreads, as the reaction of the market is unknown. We would also like to note that bail-in, regardless of its form, is bound to have an impact on funding costs and hence on economic growth ultimately.

Annex 3 - Institution-Specific Cross-Border Cooperation Agreements (ISCBCA)

Q9 How should a statutory duty to cooperate with home and host authorities be framed? What criteria should be relevant to the duty to cooperate?

The general principle of international coordination set out in Annex 3 is laudable.

We propose that the requirement for host authority to cooperate with the home authority is binding in law (while we recognise the limitation of direct enforceability on sovereign entities) and is incentivised via the rules of the CMG.

Q10 Does Annex 3 […] cover all the critical elements of institution-specific cross-border agreements and, if implemented, will the proposed agreements be sufficiently reliable to ensure effective cross-border cooperation? How can their effectiveness be enhanced?

We propose that ISCBCAs set out guidelines of conduct, and incentives and punishments to incentivise co-operative behaviour and confidentiality. We propose the ISCBCA should contain an agreement for host regulators not to take any action with respect to the firm locally:

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(i) Without first informing the other members of the intention to take such action and where such action would be necessary only on the grounds of overriding consideration for local market stability.

(ii) Where such action would prefer local creditors (including depositors over and above any existing rights available to them under a local deposit guarantee scheme), local banks, local borrowers at the expense of other creditors or borrowers or other counterparties in other markets.

(iii) An agreement to observe (subject to the above) the intentions within the agreed Recovery Plan permitting the institution to execute its prescribed mitigating management actions in the manner laid out within the plan and therefore not to take any actions that might prejudice the intentions within the agreed Recovery Plan.

(iv) An agreement to observe (subject to the above) the intentions within the Resolution Plan permitting the Home regulator member and each other member to implement the prescribed actions in the manner laid out in the plan and therefore not to take any actions that might prejudice the intentions within the agreed Resolution Plan.

(v) An agreement to treat all information provided by the institution, the Home regulator member, and other members as strictly confidential and provided for the purposes only of permitting the Recovery and the Resolution plans to work effectively. Consequently such information may not be distributed or shared with any entity outside the "core CMG" WITHOUT the express agreement of the donor of that information. Information provided under this agreement will form part of an inventory of information pre-agreed between the members and subject to an annual review. Any request for additional information by any member must be submitted to and agreed by all members of the "core CMG".

(vi) With respect to information available to members this would specifically exclude highly sensitive competitive information within the institution with respect to prospective acquisitions, disposals or other material changes to the corporate structure and/ or profile of the institution. Such information will be maintained only between the institution and its Home regulator member but other members will be permitted to assume that the Home regulator member will divulge such information at the appropriate time having due regard for market stability, and market disclosure regulations prevailing at the time

Should it be proved that an individual host regulator has acted pre-emptively, or shared market sensitive information inappropriately, we propose there should be provision in the ISCBCA for sanction.

Furthermore we propose that provision of increased sensitive information by the industry should proceed in step with national authorities' progress in developing their legal frameworks and harmonising their resolution regimes, and signing up to ISCBCAs.

Q11 Who (ie which authorities) will need to be parties to these agreements for them to be most effective?

We propose that given the complexity of planning required, the firm needs to be heavily involved in the process of designing its cross border cooperation agreement. Other than this resolution, supervisory and finance ministry officials should be involved.

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Annex 4 - Resolvability assessments

Q12 Does Annex4 […] appropriately cover the determinants of a firm's resolvability? Are there any additional factors to be considered in determining the resolvability of a firm?

At a high level the concepts of feasibility and credibility, and the indicators considered within them appear broadly reasonable. The assessment of credibility (residual systemic impact of failure) in particular represents a very sophisticated analysis which will be challenging to calibrate and execute. The methodology for assessment of resolvability will likely strongly influence the nature of actions required to improve resolvability, and so will have a big impact on the structure and priorities of the industry in future.

We support the assessment of resolvability and believe it should obviate the perceived need for G-SIFI and other capital buffers. As such the assessment should be clearly linked to overall capital requirements and increased resolvability should attract incentives.

We disagree with the specific penalisation of intra group exposures - which are likely to have a negative impact on a firm's resilience. We note that assessment of resolvability needs to be calibrated to be clearly comparable and integrated with assessments of resilience in order to understand the net impact of a firm's contribution to systemic risk. We propose that a clear balance is struck between resilience and resolvability. When this balance is struck we would argue that in general resilience should not be traded off for increased resolvability as systemic risk may likely be increased.

Q13 Does Annex 4 identify the appropriate process to be followed by home and host authorities?

We propose a top-down resolvability assessment co-ordinated by the Home authority.

Annex 5 - Recovery and Resolution Plans

Q14 Does Annex 5 […] cover all critical elements of a recovery and resolution plan? What additional elements should be included? Are there elements that should not be included?

We propose that resolution commences from a clear agreement of critical function and proceeds rapidly to development of the resolution plan, coordinated and agreed via the CMG.

We feel that untargeted, large scale information gathering exercises can be ineffective at generating rapid progress toward a workable resolution plan. As soon as practicable following identification of systemic functions, supervisors / resolution authorities and the firm should work directly together to create the resolution plan.

We propose that the FSB should set out clear standards and templates for RRPs internationally to avoid duplication of effort.

We firmly oppose hard triggers for and pre-sequencing of recovery actions.

Q15 Does Annex 5 appropriately cover the conditions under which RRPs should be prepared at subsidiary level?

We strongly advocate creating a single group level resolution plan, based on a list of critical functions agreed at the CMG. The first step should be the identification of the group's systemically important functions through the CMG. The Group resolution plan would then provide clear details of how these

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1 Basinghall Avenue
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functions would be continued or wound down safely in resolution, and would be developed with input from and agreed by the CMG. Operational procedures would be set out in an ISCBCA.

We also strongly advocate a single Group Recovery Plan. Recovery planning is by its nature inherently linked to the Head Office of the firm, as decision making on actions which damage the franchise, may be necessary in recovery scenarios, and would need to be approved by senior staff centrally. Operational procedures would be set out in an ISCBCA.

We are firm supporters of the principle for a single Group resolution plan that we view as the appropriate safeguard against imposed structural changes to the firm's business model and organisation (eg risks of ring-fencing and / or subsidiarisation).

Annex 6 – Improving Resolvability

Q16 Are there major potential business obstacles to effective resolution that need to be addressed that are not covered in Annex 6?

SCB strongly disagrees with the imposition of structural solutions on the industry on a 'one-size-fits-all' basis, as this question implies. We propose that discussion of obstacles to resolvability should be placed in the context of the firm's starting point contribution of systemic risk, including capital levels, number and size of critical functions and resilience.

We propose that any conversations around improving resolvability would have to proceed on the basis of an independent assessment that the proposed measure directly reduced the systemic risk of resolving agreed critical functions, taking into account impact on resilience and the commercial impact. These conversations would be co-ordinated by the Home regulator and aired in the CMG in the context of the ISCBCA.

Q17 Are the proposed steps to address the obstacles to effective resolution appropriate? What other alternative actions could be taken?

As stated in our other responses we strongly disagree with ex ante structural changes to firms' business models and organisations. In many cases these will lead to lower flexibility, resilience and potentially higher systemic risk. Furthermore we believe resolution obstacles are essentially firm specific issues and as such are more appropriately dealt with as part of firms' Pillar 2 discussions with their supervisors than in generic guidelines applying equally to all firms.

The requirements for intra-day information systems may be onerous for the industry. Even more crucially they imply that full resolution would need to take place over a very short time period. This assumption is questionable in practicality and also we question whether with increased capital levels, the potential for bail-in and strong resolution planning, this assumption is necessary in the first place. We propose that firms should maintain the capability to produce essential incremental updates to existing resolution planning over a reasonable and practical timeline.

We feel that the limitation of intra-group transactions potentially has deleterious effects on systemic resilience and should be considered much more carefully, in conjunction with the industry before any hard guidelines are produced. As noted in our response to other questions, the balance between resilience and resolvability needs to be set out clearly, and proven to be optimal in reducing systemic risk before the efficacy of these proposals can be reasonably evaluated.

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London EC2V 5DD

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Q18 What are the alternatives to existing guarantee / internal risk-transfer structures?

Alternatives to internal risk transfer structures which achieve the same goal (risk pooling and diversification) would essentially have the same economic features, and likely have the same perceived impact on theoretical complexity of resolution.

There is some inevitable trade-off between day to day resilience and potential resolvability, and the trade off of this decision on incremental systemic risk needs to be understood much more clearly. We are strongly of the view that day to day resilience should not be reduced by measures to reduce the theoretical complexity of resolution (a very unlikely event) and may increase overall systemic risk.

As such, we propose that use of intra-group guarantees / internal risk transfer should ultimately remain firms' decisions in the context of their risk management strategy.

Q19 How should the proposals set out in Annex 6 in these areas best be incorporated within the overall policy framework? what would be required to put those in place?

We do not feel that one size fits all prescriptive standards are appropriate.

We propose that all debates on obstacles to resolution must be fully firm specific, proportionate to firms underlying resolvability (as demonstrated by capital levels, number and size of critical functions and potential for bail in), and considered in subject to strict analysis of net impact on systemic risk, cost benefit trade off and practicality.

We propose that much further debate and research is needed by supervisors, industry and academia to identify more clearly the appropriate measures in this area. This should involve analysis of costs and benefits and the incremental impact on systemic risk.

This research should lead to more in depth and credible guidance for supervisors at the level of general themes, to ensure international consistency in their conversations with firms. These can then be explored within Pillar 2 discussions, and where necessary via their CMG to ensure full agreement to the ultimate resolution plan.

Q20 Comment is invited on the proposed milestones for G-SIFIs

The timelines envisaged will be challenging in particular for national authorities to develop and / or harmonise their national legal systems or regulatory frameworks sufficiently to allow the co-operation and co-ordination envisaged in the proposals. We are concerned that a 'half way house' on this point may in fact lead to greater systemic risk, as were greater resolution powers to be in put in place without the corresponding legal framework or 'rules of the road' greater fragmentation with a negative impact on systemic risk may ensue.

The interaction of deadlines must be carefully managed. We note that the timelines set out in the FSB consultative document are largely focused on the industry's deliverables.

We propose that delivery of RRPs must be sequenced to follow (i) a deadline for agreement of critical functions (ii) agreement of legally binding confidentiality agreements between CMG members and simultaneous with signing of ISCBCAs and agreement of necessary national legislative and regulatory changes.

Standard Chartered Bank
1 Basinghall Avenue
London EC2V 5DD
Tel +44 (0)20 7885 8888
www.standardchartered.com

Questions for public consultation:

Q21 Does the existence of differences in statutory creditor rankings impede effective crossborder resolutions? If so, which differences, in particular, impede effective crossborder resolutions?

SCB would like to reiterate that the main requirement for effective resolution is to ensure that no creditor is worse off than in liquidation. We are in-principle supportive of FSB's argument that clarity and predictability with regards to statutory creditor ranking in insolvency is a necessary pre-requisite for an effective resolution. Alongside allowing for appropriate losses allocation, statutory hierarchy of claims is a determinant for market appetite and pricings of the various debt categories / instruments.

Assessing whether existing differences in statutory creditor rankings impede effective cross border resolutions appears particularly challenging especially when considering that the legal expertise/environment on financial institution insolvency is in its infancy. Such assessment would require a specific separate technical analysis as well as a peer comparison between jurisdictions and firms to be able to make an informed judgement.

SCB would assume that the main differences in hierarchy of claims currently existing across jurisdictions would relate to depositor preference regimes, their forms and scopes. SCB would also note in line with the FSB that the existence of depositor preference is only relevant for the uninsured portion of the depositor claim. As a result, obstacles, if any, to effective group resolution would depend on the jurisdictions a firm operates in, its critical functions and liability structure and geographical concentration. SCB would expect the resolution authority to be ultimately responsible for ensuring creditor ranking is strictly applied in the event of cross border group resolution.

Q22 Is a greater convergence of the statutory ranking of creditors across jurisdictions desirable and feasible? Should convergence be in the direction of depositor preference or should it be in the direction of an elimination of preferences? Is a harmonised definition of deposits and insured deposits desirable and feasible?

Greater convergence of statutory ranking of creditors across jurisdictions is in theory desirable. Assuming depositor preference applies to retail deposits only, SCB believes that such framework would potentially increase funding costs and make wholesale deposits more flighty under stress, and as such potentially push firms to structural changes in their liability structure and / or business model.

While SCB understands the reasoning behind depositor preference we believe that underlying depositor protection is adequately addressed via the national Depositor Guarantee Schemes (DGS). Changes in the insolvency hierarchy have the potential to destabilise creditors (particularly any depositors which are not preferred, or creditors currently ranking equally with un-insured depositors who would become structurally subordinated), increasing liquidity risk and impacting the economics of the industry, in an unpredictable fashion. We propose that understanding and choice of position in the hierarchy are important aspects of satisfying different investors' risk appetites.

Q23 Is there a risk of arbitrage in giving a preference to all depositors or should a possible preference be restricted to certain categories of depositors, e.g., retail deposits? What should be the treatment of (a) deposits from large corporates; (b) deposits from other financial firms, including banks, assets managers and hedge banks, insurers and pension funds; (c) the (subrogated) claims of the deposit

Standard Chartered Bank
1 Basinghall Avenue
London EC2V 5DD
www.standardchartered.com
Tel +44 (0)20 7885 8888

guarantee schemes (especially in jurisdictions where these schemes are financed by the banking industry)?

Please see answer to question 22. We believe that in general systemic concerns should be managed under DGS. In general we believe that once protection of systemic concerns has been achieved, creditors should have an understanding and broad choice about the level they occupy at in the hierarchy (with corresponding returns) rather than the ranking for products being fixed under statute. We are concerned that implementing a fixed ranking based inter alia on product type and customer type would lead to newly subordinated deposits outside preference or other creditors being disproportionally impacted, with resulting impact on funding costs and behaviour in a crisis.

Q24 What are the costs and benefits that emerge from the depositor preference? Do the benefits outweigh the costs? Or are risks and costs greater?

We would however recommend that more research is done to help form an informed judgement when assessing whether the former outweigh the latter, or the contrary.

We would outline that the current/proposed deposit preference frameworks seem to focus on the categories of liability holders, grouping them by their perceived level of sophistication. An alternative approach could be to let liability holders decide – based on their risk appetite and provided they are fully informed - where they wish to be in the risk/reward hierarchy. The firms would embed in their product documentation a provision by which the depositors would recognise that they do not rank parri passu with other depositors of the same product but with lower risk appetite. In the event of a resolution losses would be assigned to the most subordinated tranche of each product.

Q25 What other measures could be contemplated to mitigate the impediments to effective cross-border resolution if such impediments arise from differences in ranking across jurisdictions? How could the transparency and predictability of the treatment of creditor claims in a cross-border context be improved?

Given the complexity of the issue SCB would recommend a detailed analysis be conducted on the matter. Harmonisation of national resolution and insolvency regimes, complete elimination of national preference, potential move to a 'group interest' modified universal approach to bank insolvency would be some of the mitigating actions SCB would support to achieve efficient cross-border resolution.

Annex 8 - Temporary stay on Early Termination Rights

Q26 Please give your views on the suggested stay on early termination rights. What could be the potential adverse outcomes on the failing firm and its counterparties of such a short stay? What measures could be implemented to mitigate these adverse outcomes? How is this affected by the length of the stay?

Whilst SCB understands the reasoning behind the FSB proposal and in principle supports measures aimed at effectively reducing systemic risk, we are concerned that such proposal for a stay on early termination rights might actually be counterproductive and lead to material adverse impacts on the market and its participants regardless whether the resolution authorities'power is exercised in a discretionary or a statutory manner.

Standard Chartered Bank
1 Basinghall Avenue
London EC2V 5DD
Tel +44 (0)20 7885 8888
www.standardchartered.com

We would in particular expect these measures to (i) increase commercial and funding costs as firms would anticipate/adapt their behaviours to these new market rules and therefore require more collateral up front; (ii) potentially change the firms' funding structures as firms would not be able to hedge themselves as efficiently/effectively; and (iii) incentivise the firms to originate / book their financial transactions in non-FSB jurisdictions where stay on early termination rights would not apply.

We fear that, once the stay on early termination is exercised, market uncertainty and volatility peak, therefore leading to a potential risk for the firm in resolution to be unable to meet marginal calls during that stay and its counterparties to buy credit risk protection against the struggling firm, exacerbating the situation.

In light of the above:

- We recommend that a deeper analysis / discussion with all appropriate parties is conducted to help and achieve a reasonable level of clarity and in particular of legal understanding on the application of any stays.
- Were a stay on early termination be eventually applied, international harmonisation across jurisdictions on triggers, conditions, safeguards, and scope of stay would be a pre-requisite
- We would also be strongly opposed to any capital surcharge as a result of a stay on early termination.

Q27 What specific event would be an appropriate starting point for the period of suspension? Should the stay apply automatically upon entry into resolution? Or should resolution authorities have the discretionary right to impose a stay?

As outlined above, given the technical and legal aspects of the issue, we reiterate our recommendation for a proper study and deeper conversations with market and legal experts before a general consensus can be achieved.

Providing the resolution authority with a discretionary power to impose at its discretion a temporary stay on close out rights upon entry into resolution of the firm would create general market uncertainty as well as a risk of an arbitrary decision from the supervisor. The firm's counterparties would see this approach as an additional risk when entering into any financial contract that they would then try and mitigate, seeking for some form of protection and/or shifting their financial market activities into non-FSB ISDA-friendly jurisdictions. The ultimate result would most probably be a cost increase on inter alia commercial, credit risk protection, funding, and capital/equity strategic decisions. Mitigating measures would include (i) accountability of the resolution authorities and (ii) setting international standards of interpretation/approach across jurisdictions.

On the other hand, introducing a statutory provision that prevents the exercise of early termination clauses upon would partly lift market uncertainty with regard to the risk of arbitrary decisions from supervisors. It would however generate structural changes across the financial markets industry which it is difficult to predict in advance.

Standard Chartered Bank
1 Basinghall Avenue
London EC2V 5DD
Tel +44 (0)20 7885 8888
www.standardchartered.com

Q28 What specific provisions in financial contracts should the suspension apply to? Are there any early termination rights that the suspension should not apply to?
We broadly support the FSB proposals for conditions and safeguards as outlined in the Consultative Document.

Q29 What should be an appropriate period of time during which the authorities could delay the immediate operation of contractual early termination rights?
We would question the feasibility (including among others legal aspects) and practicality (including large volumes of transactions, back-to-back booking practices and arm's length transactions) of a 48 hour stay pending the transfer to a solvent third party or a bridge bank. We share the industry's general view that such timeframe is highly unrealistic. We would reiterate our stance, ie that a stay on early termination rights should be generally avoided. In the event however that a stay applies, it should be kept as short as possible to avoid increasing systemic risk and market disruption at all costs.

Q30 What should be the scope of the temporary stay? Should it apply to all counterparties or should certain counterparties, eg Central Counterparties (CCPs) and FMIs be exempted?
Were a temporary stay on termination rights be applied we support the proposed exemptions of Central Counterparties and Financial Market Infrastructures.

Q31 Do you agree with the proposed conditions for a stay on early termination rights? what additional safeguards or assurances would be necessary, if any?
We broadly agree to the proposed conditions and safeguards for a stay on early termination rights as outlined in the FSB paper. We would however strongly recommend that a principle for resolution authorities' accountability and / or an external review be added to the proposal. This would prevent any arbitrary decision be taken.

Q32 With respect to the cross-border issues for the stay and transfer, what are the most appropriate mechanisms for ensuring cross-border effectiveness?
As outlined on several occasions, we view the leading role of the home authority in resolution as key to cross-border effectiveness. Additional measures would also include international cooperation and coordination as well as legislative changes to achieve international standards/consistency across jurisdictions.

Q33 In relation to the contractual approach to cross-border issues, are there additional or alternative considerations other than those described above that should be covered by the contractual provision in order to ensure its effectiveness?
We have repeatedly affirmed our support to the "group resolution" principle, and view the CMG chaired by the home authority as the best placed/most adequate forum to ensure the effectiveness of cross-border issues.

Standard Chartered Bank
1 Basinghall Avenue
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Q34 Where there is no physical presence of a financial institution in question in a jurisdiction but there are contracts that are subject to the law of that jurisdiction as the governing law, what kind of mechanism could be considered to give effect to the stay?

We believe that the home authority would have the ultimate responsibility to coordinate with the relevant jurisdictions involved and allow for an effective resolution.

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1 Basinghall Avenue
London EC2V 5DD

Tel +44 (0)20 7885 8888

www.standardchartered.com