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2 September 2011

By email: [fsb@bis.org](mailto:fsb@bis.org) & post

Secretariat to the Financial Stability Board  
Bank for International Settlements  
Centralbahnplatz 2  
CH-4002 Basel  
Switzerland

Dear Sirs

**Consultative Document on Effective Resolution of Systemically Important Financial Institutions**

We refer to the Consultative document, “Effective Resolution of Systemically Important Financial Institutions” published by the Financial Stability Board (“FSB”) in July 2011. On behalf of our members, we would like to provide our comments on the specific questions raised in the consultative document as follows:

**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.**

There should only be one Recovery and Resolution Plan (“RRP”) for a banking group instead of individual RRP for each subsidiary/branch. Any future “fragmenting” of the RRP initiative for international banks with hosts insisting on their own RRP may result in additional effort required to implement the plan and potential lack of coordination.

In addition, two areas need to be strengthened and clarified, (i) binding requirement for international coordination; and(ii) clarity over directors' liability in the recovery phase given new supervisory powers to intervene.

**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 therefore recommend:

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*Vice Chairmen* The Hongkong and Shanghai Banking Corporation Ltd  
Standard Chartered Bank (Hong Kong) Ltd  
*Secretary* Eva Wong Mei Seong

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- (i) ensuring the requirements for the banking industry are in line with progress in reforming national legal systems, regulatory frameworks, confidentiality frameworks etc which are required to implement the banking industry requirements, and
- (ii) clearer checks and balances against taking a firm into resolution and that a rapid independent review should apply

## **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?**

We would reiterate the view that bail-in debt should be used only as a means to capitalize the systemically important functions of a failed firm which may be transferred to a newly established entity or bridge institution in order to reduce systemic risk. This will reduce market uncertainty.

**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 believe that only a limited amount of senior debt should be considered as bail-in liabilities, with the amount determined by an ex ante assessment of recapitalization requirements and communicated to the firm. We would support a harmonised scope across countries.

We are not convinced of the efficacy of allowing host authorities to force bail in, and believe this could lead to a material risk of pre-emption.

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

We believe that bail-in should cover investor liabilities (i.e. not trading, deposit, commercial or other business liabilities), apply within resolution only for the purpose of reducing systemic risk, and there should be a clear indication ex ante of the amount that may be required. As such, it would effectively define a new asset class, and retain the option of non bail-in debt for investors who prefer or require it. Bail-in process should follow the existing creditor hierarchy with the subordinated debt being bailed in first to ensure a clear distinction remains between the two.

**Q6. What classes of debt or liabilities should be outside the scope of statutory bail-in powers?**

Please refer to Q5 above

**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; e.g. (i) a certain percentage of risk weighted assets in bail-inable liabilities or (ii) a limit on the degree of asset encumbrance (e.g. thru use as collateral)?**

We have reservations on the proposal that firms' balance sheets should contain at all times a sufficient amount of liabilities covered by bail-in powers or there should be a minimum level of bail-in debt. We believe that authorities should monitor firms' balance sheets taking into account capital levels to determine whether additional bail-in debt is required.

We also believe it is essential that if there is bail-in debt maintained by an entity, this should be incentivised through lower capital requirements. Without this incentivisation, such bail-in debt would carry similar costs to capital but none of the benefits.

**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 Q5 – we are in favour of setting a cap to the maximum of bail-inable debt based on expected resolution requirements. This should provide greater clarity and lower impact on funding costs than the converse. However, it is not clear at this point the impact the threat of bail in (even under the mitigating condition that creditors would not be worse off than in liquidation) would have on senior funding spreads.

### **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 is laudable. We would therefore suggest that the requirement for host authority to cooperate with home authority should be binding in law (while we recognise the limitation of direct enforceability) and incentivised via 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?**

A key risk is inappropriate sharing of information which is market sensitive or creates un-necessary sensitivity in banks' relationship with host regulators. We recommend setting a legal basis for confidentiality and/or sanctions for breach of confidentiality within the CMG.

**Q11. Who (i.e. which authorities) will need to be parties to these agreements for them to be most effective?**

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.

#### **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.

However, it will be necessary to achieve a simple, clear and internationally consistent underlying methodology for all aspects of the assessment – the assessment of credibility (residual systemic impact of failure) in particular represents a very sophisticated analysis which will be challenging to calibrate and execute.

Also 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.

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

We note some aspects of the proposed resolvability assessment are outside the control of the firm (for example the strength of national resolution regimes it operates in), and it would be unfair to penalize a firm for exogenous factors.

#### **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?**

Efforts to set out clear standards and templates for RRP's internationally will be helpful. We would firmly oppose hard triggers and/or pre-sequencing of recovery actions.

**Q15. Does Annex 5 appropriately cover the conditions under which RRP's should be prepared at subsidiary level?**

We strongly advocate a “group resolution plan” concept. A first step should be the identification of the group's systemically important functions through the CMG, which the Group plan should then address

## 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?**

We are strongly against ex ante structural changes to firms' business model and organisation. In many cases these will lead to lower flexibility, resilience and potentially higher systemic risk.

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

Please see answer to question 16.

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

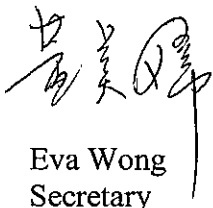
The issue of intra group guarantees and risk transfer represents a trade-off between resilience and recoverability which cannot be fully reconciled. We believe that increasing day to day resilience has a much more important impact on reducing system risk than avoiding a marginal increase in the theoretical complexity of a resolution (a very unlikely event).

**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 believe that detailed and granular suggestions the regulators may propose for individual firms are best considered on a case by case basis, in light of costs, benefits, proportionality and practicality with individual firms via the Pillar II process. As such they are not most appropriately sited within these proposals which cover the overarching regulatory framework and powers.

We hope you would find our above comments useful. If you have any questions or require any clarification, please do not hesitate to contact us.

Yours faithfully



Eva Wong  
Secretary

c.c. Ms. Karen Kemp, Executive Director (Banking Policy), Hong Kong Monetary Authority