



BANK OF ENGLAND

December 2018

The Bank of England's approach to assessing resolvability

A Consultation Paper



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Responses to both this consultation and the accompanying PRA consultation can be sent together and are requested by Friday 5 April 2019.

Please address any comments or enquiries to:

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1 Overview of the Bank consultation

1.1 The Bank of England (Bank) is responsible for taking action to manage the failure of financial firms in the UK – a process known as ‘resolution’.¹ In ‘The Bank of England’s approach to resolution’ (the Purple Book),² the Bank set out its general approach to resolution and how it discharges its statutory responsibilities as the UK Resolution Authority, including how it sets resolution strategies for particular firms.

1.2 The Bank is responsible for resolving firms and firms need to be able to carry out their responsibilities to make this happen. In order for the authorities to be able to take charge, recapitalise and restructure a bank, regardless of the cause of failure, firms need to have adequate financial resources that can be used in resolution, and the ability to continue functioning operationally when the authorities take control. This includes the ability to maintain trading and operational relationships so that any restructuring can be achieved.

1.3 The Bank believes that further transparency around the resolution regime, how it would operate a bail-in resolution strategy, and the progress made by individual firms towards being considered resolvable will foster greater and more widespread understanding of the resolution regime. It should also incentivise firms to take steps to embed changes to enhance their resolvability. The Bank is therefore proposing to introduce a new Resolvability Assessment Framework.

The Resolvability Assessment Framework (RAF)

1.4 The proposed Resolvability Assessment Framework (RAF) consists of three elements:

- enhancements to the Bank’s **assessment of firms’ resolvability**;
- a requirement for firms to **carry out an assessment** of their preparations for resolution, to **submit a report** of that assessment to the PRA and publish a summary of that report (**‘public disclosure’**); and
- the publication of a **statement** by the Bank concerning the resolvability of each firm which makes an assessment.

1.5 This framework is designed to make resolution more effective by increasing transparency and enhancing predictability for the clients and counterparties of firms. Greater transparency will also be important for investors and creditors when assessing the risks they face should a firm fail.

1.6 This consultation paper (CP) sets out:

- how the Bank proposes to assess resolvability as part of the RAF, consistent with its statutory obligation to conduct an assessment of resolvability for UK firms and groups;

¹ This includes UK banks, UK building societies and certain UK investment firms. All of these are referred to hereafter, for the sake of simplicity, as ‘banks’ or ‘firms’. The investment firms subject to the United Kingdom’s resolution regime are those that deal as principal, hold client assets and are subject to a minimum capital requirement of €730,000. The regime also applies to financial holding companies (and mixed financial holding companies) that are incorporated in the United Kingdom, and certain other UK group companies.

² Bank of England (2017) ‘The Bank of England’s approach to resolution’ available at: <https://www.bankofengland.co.uk/paper/2017/the-bank-of-england-approach-to-resolution>.

- how the Bank proposes to increase transparency over the resolvability of individual firms by making a public statement on resolvability. This is consistent with the Bank's commitment to Parliament in April 2017 that major UK firms will be resolvable by 2022;¹
- a draft Statement of Policy (SoP) setting out policy where the Bank is consulting on new requirements for firms; and
- a glossary of resolution terms used in this CP.

1.7 This consultation is relevant to firms where: (i) the Bank, as Resolution Authority, has notified them that their preferred resolution strategy is bail-in or partial-transfer, i.e. that the Bank would expect the strategy to involve the use of its stabilisation powers; or (ii) in its capacity as host Resolution Authority, the Bank has notified them that they are a 'material subsidiary' of an overseas-based banking group for the purposes of setting internal MREL in the UK.²

1.8 Readers are encouraged to refer to the PRA CP31/18 'Resolution Assessment and Public Disclosure by Firms' (the PRA CP), published alongside this document.

The outcomes for resolvability

1.9 The authorities have to be confident that, if needed, it would be feasible, from a practical point of view and credible given the wider circumstances, to use their powers to resolve a firm, while protecting public funds, avoiding significant adverse effects on the financial system, and ensuring continuity of banking services and critical functions. In turn, firms need to have the capabilities to carry out their resolution strategy, as set for them by the authorities.

1.10 To be considered resolvable, a firm must, as a minimum, be able to achieve these outcomes:

(i) Have adequate financial resources in the context of resolution:³

Ensure that it has the resolution-ready financial resources available to absorb losses and recapitalise without exposing public funds to loss. This includes resources to meet its financial obligations in resolution. This is necessary to allow the authorities to keep the firm operating as described below. This means that firms must:

- meet the 'minimum requirements for eligible liabilities' (MREL) appropriately distributed across its business;
- be able to support a timely assessment of its capital position and recapitalisation needs; and
- be able to analyse and mobilise liquidity in resolution.

(ii) Be able to continue to do business through resolution and restructuring:

Ensure that the firm's activities can continue while the authorities take charge and begin to restructure the firm in such a way that the business can be reshaped, including any parts of it being sold or wound down (as appropriate). This includes ensuring that the resolution does not result in the firm's financial

¹ Bank of England (2017) 'The Bank of England's response to the Treasury Committee's enquiry into capital' available at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/treasury-committee/capital-and-resolution/written/69208.html>

² Bank of England (2018) 'The Bank of England's approach to setting a minimum requirement for own funds and eligible liabilities (MREL)' available at: <https://www.bankofengland.co.uk/paper/2018/boes-approach-to-setting-mrel-2018>.

³ Appropriate minimum levels will be determined by the relevant authorities

and operational contracts being materially disrupted or terminated and that direct or indirect access to services delivered by financial market intermediaries is maintained. This is essential to having a continuing business that can be returned to long-term viability through restructuring. It also means building on recovery planning work so that the operational and support services needed for a viable business can be identified, separated and reorganised to support restructuring options.

(iii) Be able to coordinate and communicate effectively within the firm and with the authorities and markets so that resolution and subsequent restructuring are orderly.

The stylised resolution timeline

1.11 Resolution allows for the stabilisation and restructuring of a group in a way that recognises public policy objectives, unlike normal corporate insolvency arrangements which are designed to act in the interests of the firm, its creditors and employees. The causes of failure cannot be known in advance and so firms must be structured and operate in a way that allows the Bank to execute the resolution plan regardless of the underlying cause of losses.

1.12 The Bank has developed an indicative stylised resolution timeline for a bail-in resolution to assist firms in thinking about how they relate resolvability and resolution actions to their business model. This stylised resolution timeline, presented in Chapter 4, illustrates the multiple actions and/or decisions by different parties (regulators, HM Treasury, firms and advisers) at different stages in a resolution process.

1.13 The stylised resolution timeline is designed around the bail-in tool.¹ A bail-in enables shares, debt and other liabilities of a bank to be written down or converted to absorb losses so that it can be recapitalised.

1.14 The stylised resolution timeline is integral to how the Bank assesses resolvability for a bail-in firm. All of the other capabilities proposed in this CP should be developed in relation to the preferred resolution strategy² of the firm and how the Bank intends to operate it.

1.15 The timeline is separated into three phases: i) pre-resolution contingency planning; ii) the 'resolution weekend'; and iii) the bail-in period. The timeline does not include every action or decision that will need to be taken but does include the key outcomes necessary for resolvability.

1.16 Figure 1 provides a visual interpretation of the stylised resolution timeline.

Barriers to resolvability

1.17 For resolution strategies and plans to be effective, any significant barriers to their implementation must be identified and removed.³

1.18 The Bank has worked with the Financial Stability Board (FSB) to identify generic impediments to resolvability.⁴ On the basis of this work, the Bank has developed domestic policy it requires firms to meet

¹ This is the preferred resolution strategy for the largest and most complex UK firms and the majority of other firms to which stabilisation powers would likely be applied. Firms whose preferred resolution strategy does not involve Bank-led bail-in should consider what aspects of this timeline may still be relevant to their case.

² The Bank will notify a firm of its preferred resolution strategy on an annual basis. For firms that are subsidiaries of overseas-based banking groups, this will be the resolution strategy determined by the home resolution authority, unless otherwise notified by the Bank.

³ Please see: Bank of England (2015) 'The Bank of England's power to direct institutions to address impediments to resolvability' available at: <https://www.bankofengland.co.uk/paper/2015/the-boes-power-to-direct-institutions-to-address-impediments-to-resolvability-sog> and Part 3 of the Purple Book for further details on the Bank's policy for exercising its power to direct institutions to address impediments to resolvability under Section 3A of the Banking Act 2009.

⁴ FSB (2015) 'Removing Remaining Obstacles to Resolvability' available at: <http://www.fsb.org/wp-content/uploads/Report-to-the-G20-on-Progress-in-Resolution-for-publication-final.pdf>. The Bank uses the term 'barriers' as a more common usage term for 'impediments'.

for eight barriers to resolvability. The Bank expects to use the RAF as the basis for assessing the implementation of these policies.

1.19 The barriers described in this CP should not be considered as an exhaustive list. In order to achieve the three outcomes for resolvability, firms will also need to consider their specific business model and whether there are any additional barriers to satisfying the outcomes. Where firms consider requirements from other jurisdictions may be relevant for their resolvability, these should also be taken into consideration.

1.20 Chapters 6-8 set out the existing domestic and international policy for overcoming each barrier to resolvability, and how these link to i) the actions firms need to take to allow the Bank to conduct a resolution; and ii) the capabilities the Bank expects firms to include in their business-as-usual operations.

1.21 Box 1 sets out a brief description of each barrier grouped by the outcome for resolvability that they will contribute to achieving.

Box 1: The objectives of the eight barriers to resolvability

Outcome: Financial resources

- (i) **The minimum requirements for own funds and eligible liabilities (MREL):** Firms maintain a sufficient amount of resources that can credibly and feasibly be used to absorb losses and recapitalise them to a level that enables them to continue to comply with the conditions for regulatory authorisation and sustains market confidence.¹
- (ii) **Valuations:** Firms' valuation capabilities enable a valuer to carry out sufficiently timely and robust valuations to support effective resolution (including by informing entry into resolution, the choice of resolution tools, the terms of the resolution, and the No Creditor Worse Off (NCWO) risks around this).
- (iii) **Funding in resolution:** In order to ensure they continue to meet their obligations as they fall due, firms are able to estimate, anticipate and monitor their potential liquidity resources and needs and mobilise liquidity resources in the approach to and throughout resolution.

Outcome: Continuity

- (iv) **Continuity of financial contracts in resolution (stays):** Firms suitably address the risk of early termination of financial contracts upon entry into resolution to limit any impact on their stability and the wider financial system (eg market contagion) that may otherwise occur as a result of resolution.
- (v) **Operational continuity in resolution (OCIR):** Firms' operational continuity arrangements ensure continuity at the point of entry into resolution and permit post-stabilisation restructuring, to ensure the continuity of banking services and critical functions.
- (vi) **Continuity of access to Financial Market Infrastructures (FMIs):** Firms are able to take all reasonable steps available to maintain continued access to clearing, payment, settlement, and custody services in order to keep functioning in resolution (recognising that providers of these services may retain a degree of discretion over their ability to terminate a firm's membership).
- (vii) **Restructuring:** Firms are able to identify, develop and execute post-stabilisation restructuring options on a timely basis to ensure that, following entry into resolution, they can (i) return to fulfilling

¹ For firms with a partial-transfer resolution strategy, recapitalisation may be limited to the level that (i) ensures that the transfer does not undermine the capital position of a private sector purchaser or (ii) enables a new bridge bank to be adequately capitalised.

relevant regulatory requirements on a forward-looking basis, and (ii) return to a viable business model that is sustainable in the long-term.

Outcome: Co-ordination and communication

(viii) **Management, governance and communications:** Firms are able to – during the execution of a resolution – ensure that their key roles are adequately staffed and incentivised, that their governance arrangements provide effective oversight and decision making, and that they deliver timely and effective communications.

The Bank's public statement concerning firms' resolvability

1.22 The Bank considers the effectiveness of the resolution regime will be increased if there is transparency over its operation. As such, in the Purple Book, the Bank has published its approach to resolution which includes the types of preferred resolution strategies the Bank will apply to firms. Beyond this, the Bank has also published the indicative loss-absorbing capacity requirements (MREL) it has set for each of the UK's global and domestic systemically important banks as well as the average levels for all other UK firms that have a resolution plan involving the use of our bail-in or partial transfer tools.¹

1.23 Building on this approach to transparency, the Bank proposes to make a public statement concerning the resolvability of each of the firms in scope of the draft Resolution Assessment Part of the PRA Rulebook. This public statement will be informed by the summary report made by these firms on their preparations for resolution (see the PRA CP) and the Bank's assurance and testing of the capabilities firms have described in these reports. This assurance and testing may require firms to provide additional information to the Bank.

1.24 It is intended that the Bank's public statement will cover how far each firm has achieved the three outcomes for resolvability, in particular by reference to the eight barriers identified by the Bank and any other barriers that are specific to the firm's business model. The Bank will also consider and assess any forward looking plans firms have to improve their resolvability.

1.25 The progress firms have made in implementing the measures proposed in this CP will form the content of the reports made by firms, and will form the basis of the Bank's statutory annual resolvability assessment. The Bank's public statement for firms in scope will not replace the Bank's existing obligation to complete a formal resolvability assessment and review resolution plans on an annual basis.

1.26 However, when preparing its public statement, the Bank will ensure that it is consistent with its statutory responsibilities in relation to resolvability assessments and resolution planning, which it will continue to discuss and agree with international counterparts as appropriate.

1.27 The proposals in this CP have been designed in the context of the current UK and European Union (EU) regulatory framework. As set out in Consultation Paper 25/18 'The Bank of England's approach to amending financial services legislation under the European Union (Withdrawal) Act 2018',² the Bank and PRA are also preparing for the situation where the UK leaves the EU on 11:00pm Friday 29 March 2019 ('exit day') without an Implementation Period. The UK's withdrawal from the EU requires changes to be made to UK legislation to ensure that it remains functional in that scenario.

¹ Bank of England (2018) 'The Bank of England's approach to setting a minimum requirement for own funds and eligible liabilities (MREL)' available at: <https://www.bankofengland.co.uk/paper/2018/boes-approach-to-setting-mrel-2018>

² Bank of England (2018) 'The Bank of England's approach to amending financial services legislation under the European Union (Withdrawal) Act 2018' available at: <https://www.bankofengland.co.uk/paper/2018/the-boes-approach-to-amending-financial-services-legislation-under-the-eu-withdrawal-act-2018>

2 Scope

2.1 This chapter sets out which firms are in scope of the proposals in this CP. Chapter 3 sets out in more detail how the Bank proposes to apply this CP to different types of firm within its scope.

2.2 The Bank is responsible for taking action to manage the failure of UK banks, UK building societies and certain UK investment firms.¹

2.3 This CP applies to firms where:

- (i) the Bank, as Resolution Authority, has notified them that their preferred resolution strategy is bail-in or partial-transfer, i.e. that the Bank would expect the strategy to involve the use of its stabilisation powers; or
- (ii) in its capacity as host Resolution Authority, the Bank has notified them that they are a 'material subsidiary' of an overseas-based banking group for the purposes of setting internal MREL in the UK.²

2.4 For the purposes of this CP, all references to 'firm' or 'bank' are to those falling into the categories described at (i) or (ii) above, unless otherwise stated. It is proposed that firms should be able to achieve the outcomes set out in this CP. The Bank will then assess whether they can achieve these outcomes when assessing their resolvability.³

2.5 The Bank expects that this CP will also be of interest to overseas banking groups operating in the UK via a branch. For these branches, the Bank proposes to apply a proportionate approach to its assurance around resolvability, depending primarily on the firm's footprint in the UK.⁴ The Bank plans to engage with relevant home authorities to ensure that these overseas banking groups deliver an ability to execute the preferred resolution strategy that is broadly comparable to that set out in this CP. This CP refers to these branches and the material subsidiaries described in paragraph 2.3 (ii) as 'hosted firms'.

Firms in scope of the Resolution Assessment Part of the PRA Rulebook

2.6 The PRA is proposing draft Rules and an accompanying supervisory statement that complement this CP by requiring major UK firms⁵ to undertake a realistic assessment of their preparations for resolution including analysis of how they understand they would be resolved, any risks to their resolution and the steps taken or plans made to remove or reduce those risks; and to submit a report of that assessment to the PRA. Furthermore, it would require them to publish a summary of that report ('public disclosure'). In addition, the Bank will make a public statement concerning these firms' resolvability, as described in more detail in Chapter 10.

Questions

1. Do you agree with the proposed scope of the Bank's Policy Statement on the Resolvability Assessment Framework, as set out in paragraphs 2.1-2.5?

¹ UK-incorporated banks, UK-incorporated building societies and certain UK-incorporated investment firms that are authorised by the PRA or the Financial Conduct Authority (FCA). Investment firms subject to the United Kingdom's resolution regime are those that deal as principal, hold client assets and are subject to a minimum capital requirement of €730,000. The regime also applies to financial holding companies (or mixed financial holding companies) that are incorporated in the United Kingdom, and certain other UK group companies.

² Bank of England (2018) 'The Bank of England's approach to setting a minimum requirement for own funds and eligible liabilities (MREL)' available at: <https://www.bankofengland.co.uk/paper/2018/boes-approach-to-setting-mrel-2018>

³ The Bank's statutory obligations in relation to its requirements to annual assess resolvability and prepare resolution plans is set out in the Banking Act and associated secondary legislation, including the No. 2 Order) 2014 No. 2 Order.

⁴ Bank of England (2018) 'International banks: the Prudential Regulation Authority's approach to branch authorisation and supervision' PRA Supervisory Statement SS1/18 available at: <https://www.bankofengland.co.uk/prudential-regulation/publication/2018/international-banks-pras-approach-to-branch-authorisation-and-supervision-ss>.

⁵ Firms in scope of the draft Resolution Assessment Part of the PRA Rulebook are UK banks and building societies with retail deposits greater than or equal to £50 billion on an individual or consolidated basis as at the date of their most recent annual accounts ('major UK firms').

3 Application to different types of firm in scope

Types of firm

Firms with a preferred resolution strategy of Bank-led bail-in or partial-transfer

3.1 The Bank sets resolution strategies following one of three broad approaches: bail-in, partial-transfer or insolvency in line with its statutory resolution objectives. Where the Bank has set a bail-in or partial-transfer resolution strategy, it has done so on the basis that it is in the public interest to resolve the firm using stabilisation powers.

3.2 From a financial stability perspective, the Bank's and PRA's immediate priority for the RAF is firms with retail deposits equal to or more than £50 billion. This is a proportionate approach that is consistent with that taken in implementing the leverage ratio framework in 2015. These firms have been identified as the most systemically important in terms of size and critical services provided to the UK economy, whose individual failure could cause adverse effects on the stability of the UK financial system.¹ Accordingly, the proposed Rules in the accompanying PRA CP do not require other firms to complete assessments or submit reports to the PRA.

3.3 However, an assessment process could also bring similar benefits on resolvability for other firms with Bank-led bail-in or partial-transfer resolution strategies. The PRA, in consultation with the Bank, may therefore consider whether and how to apply the assessment and reporting requirements to these firms at a later date. In preparing their approach, the PRA and the Bank expect to use feedback from this consultation process to inform a proportionate approach.

3.4 In the meantime, the Bank will continue to engage with all firms with Bank-led bail-in or partial-transfer resolution strategies (and not just those who are in scope of the proposed Resolution Assessment Part of the PRA Rulebook) on resolution planning and resolvability assessments, in line with its current practices. This includes ensuring that these firms comply with relevant policy requirements (such as MREL) and achieve the outcomes set out in this CP for their resolution strategy to be feasible and credible.

3.5 The Bank intends to be proportionate in the way that it assesses firms' resolvability, whether in scope of the proposed Resolution Assessment Part of the PRA Rulebook or not. While the actions firms would need to take to facilitate resolution should be met by all firms, the depth and type of capabilities required to remove barriers to resolvability will depend on the nature of a firm's business model. For example, firms with a simpler business model are likely to have simpler funding models, fewer critical functions, and fewer FMI or FMI intermediary relationships. Therefore, the capabilities they should develop will be commensurate with their business activity.

Hosted firms

3.6 The underlying focus of this CP and the stylised resolution timeline in Chapter 4 in particular is on the Bank's use of its stabilisation powers. However, for hosted firms, the Bank generally does not intend to use stabilisation powers unilaterally and would instead support resolution actions by the home

¹ Bank of England (2015) 'Implementing a UK leverage ratio framework' PRA Policy Statement PS27/15 available at: <https://www.bankofengland.co.uk/prudential-regulation/publication/2015/implementing-a-uk-leverage-ratio-framework>

authorities. In those circumstances the resolvability of the hosted firm cannot be considered in isolation from that of its internationally-headquartered banking group.

3.7 The Bank will assess resolvability for hosted firms in the first instance through its engagement with international counterparts within the relevant fora, such as Crisis Management Groups and Resolution Colleges. The Bank will engage with the relevant home authorities to ensure that they are working to deliver a broadly comparable level of progress on resolvability to that set out in this CP.

3.8 In doing so the Bank will consider the outcomes described in this CP when assessing hosted firms' resolvability. This will mean focussing only on those capabilities and resources that are necessary to support a resolution led by the relevant home authority. Some of the capabilities proposed in this CP are therefore unlikely to be directly applicable to these firms, for example those in the section concerning management, governance and communications.

Resolution Strategy Implications

3.9 Firms' resolution strategies have implications for the capabilities they need to be resolvable. The focus of this CP and the stylised resolution timeline in Chapter 4 is, in particular, Single Point of Entry (SPE) bail-in. Under a SPE strategy, the home authority would be expected to apply resolution tools to a single legal entity within the group (termed the 'resolution entity').

3.10 There are two main alternatives to SPE bail-in that may be the preferred resolution strategy for firms in scope of this CP: Multiple Point of Entry (MPE) bail-in and partial-transfer to a private sector purchaser (partial-transfer).

MPE bail-in

3.11 Under a MPE strategy, certain host authorities may apply resolution powers to entities under their control within a consolidated group, in coordination with the home authority. Separation within the consolidated group could occur at or in close proximity to the point of resolution. Each entity to which resolution powers would be applied is a resolution entity. Each resolution entity, together with its subsidiaries that are not themselves resolution entities, form a 'resolution group'.¹

3.12 In assessing resolvability for all MPE firms, the Bank will take into account any factors relevant to the MPE strategy for the firm, including how resolution groups in other jurisdictions would be resolved, any interdependencies between the UK resolution group and resolution groups in other jurisdictions, and any resulting barriers to resolution. This would be likely to include considering the degree of financial and operational separability of its UK resolution group, for instance related to booking and risk-management practices or access to critical FMIs, and relevant structural issues, for instance arising from inter-resolution group exposures.

3.13 For MPE firms where the Bank is the home Resolution Authority, the Bank is responsible for applying stabilisation powers to the UK resolution group. The Bank would therefore assess the resolvability of the UK resolution group in a similar manner to SPE firms. The Bank is also responsible for the overall coordination of the resolution process, and will therefore assess how such firms' capabilities enable the resolution of the whole group to occur in a coordinated way.

3.14 However, the Bank does not intend to assess the implementation or effectiveness of policies employed by host jurisdictions for their respective resolution groups. The Bank may, in forming its views on resolvability, consider the views of host authorities in so far as they pertain to the overall implementation and coordination of the resolution at group level.

¹ A resolution entity, together with its subsidiaries that are not themselves resolution entities.

3.15 For MPE firms where the Bank is the host Resolution Authority, the Bank is responsible for using stabilisation powers in respect of the UK resolution group. As such, the Bank will look for the UK resolution group to meet all of the proposals set out in this CP in the same way as domestic firms.

Partial-transfer

3.16 The Bank considers that the measures in this CP could apply to firms with a partial-transfer resolution strategy and will take into account the difference between partial-transfer and bail-in when assessing their resolvability. The Bank and PRA will engage with such firms directly to discuss the implications of their preferred resolution strategy. This may involve consultation at a later date on how the capabilities proposed in this CP could need to be adapted as a result.

Questions

2. Do you agree with the proposal for how the Bank's Policy Statement on the Resolvability Assessment Framework will apply to different types of firm?

4 A stylised resolution timeline

4.1 This chapter provides an illustration of how the Bank sees resolution being carried out in practice to help firms understand the capabilities and arrangements they will need to have in place in business-as-usual. It complements the Purple Book. The Bank is not consulting on this chapter, though welcomes views on the capabilities that would be needed to support the decisions and actions set out therein.

4.2 The stylised resolution timeline is designed around the bail-in tool.¹ As such, it is structured around the bail-in mechanic described in Annex 2 of the Purple Book, rather than the broader resolution phases covered in Part 2 of that document.²

4.3 The stylised resolution timeline consists of three phases: (i) the pre-resolution contingency planning period; (ii) the 'resolution weekend'; and, (iii) the bail-in period. The Bank will endeavour to ensure that the duration of each of these phases is sufficient to make resolution effective. However, the duration of each phase cannot be known in advance, and will depend on the circumstances of the failure at hand. Firms should develop the capabilities proposed in this CP in BAU in advance of resolution, so that the firm and the Bank are able to act quickly.

4.4 When implementing a bail-in, the Bank must act in accordance with the special resolution objectives³ but is empowered to do so without the consent of shareholders, creditors or the senior management of the firm. This recognises that the firm has failed and is designed to ensure that action can be taken quickly and effectively to protect financial stability. Where the bail-in tool is used, the Bank's direct involvement as resolution authority will end following the return of a sufficient majority of the equity to the new shareholders.

4.5 The description of the resolution timeline in this chapter focuses on the key actions and decisions that would need to be taken during the resolution process. It does not include every decision or action that may need to be taken. The specific aspects of what could be needed during each phase are covered further in Chapters 6-8 of this CP. Throughout the process the Bank would expect to engage with supervisors, advisers and other relevant authorities around these actions and decisions as appropriate.

4.6 Firms whose preferred resolution strategy is Bank-led bail-in should use this chapter to consider what capabilities, resources and arrangements they will need to have in place to achieve the outcomes of resolvability. Firms should consider how their specific business model may complicate the application of bail-in, whether there may be additional barriers to resolvability beyond those elaborated in Chapter 6-8 of this CP, and how these barriers should be removed. This should feed into firms' assessments of resolvability where required by the Resolution Assessment Part of the PRA Rulebook proposed in the PRA CP.

4.7 Firms in scope of this CP whose resolution strategy is not Bank-led bail-in should also consider this chapter. These firms should have regard to the decisions and actions that would also apply in the case of their preferred resolution strategy, including those that are not set out in this chapter

¹ This is the preferred resolution strategy for the largest and most complex UK firms and the majority of other firms to which stabilisation powers would likely be applied. Firms whose preferred resolution strategy does not involve Bank-led bail-in should consider what aspects of this timeline may still be relevant to their case.

² These phases are the 'stabilisation phase', the 'restructuring phase' and 'exit from resolution and implementation of restructuring'. In a bail-in, the 'stabilisation phase' covers the 'resolution weekend' and the first part of the bail-in period. The 'restructuring phase' would likely start during the bail-in period, once the firm is stabilised. 'Exit from resolution' would occur at the end of the bail-in period. 'Implementation of restructuring' would likely continue after the end of bail-in period (i.e. after 'exit from resolution').

³ Section 4 Banking Act (2009).

4.8 In considering their resolvability, firms should **not** make assumptions around the following matters, which are not considered in the timeline:

- (a) *The cause of the firm's failure or the prevailing macroeconomic context.* The Bank expects firms' capabilities to be robust regardless of the nature of the original issue that has caused a financial loss. As such, the Bank would not expect firms to plan for a particular scenario or cause of failure.
- (b) *The deployment of recovery actions prior to resolution.* Prior to resolution, supervisors will engage with the firm on a more intensive basis in recovery.¹ In considering their resolvability, firms should demonstrate an awareness of the interactions between recovery and resolution. While there are some overlaps between the phases described here and the recovery process, firms should not assess on the basis of having taken any specific recovery action prior to resolution.

Pre-resolution contingency planning period

4.9 The first phase covers the pre-resolution contingency planning period. Pre-resolution contingency planning is a counterpart to actions taken by firms to implement their recovery plans and heightened supervision undertaken by supervisors. The Bank would expect to intensify its contingency planning for a resolution when there is a heightened risk to the firm's viability, as captured by the firm's position in the PRA's Proactive Intervention Framework.²

4.10 The Bank aims for contingency planning for resolution to be possible over the course of three months. The Bank will endeavour to ensure that sufficient time is available. In practice, however, the amount of time available for contingency planning will vary — for example, depending on the nature of the difficulties being experienced and the actions to recover being taken by the firm.³

4.11 In this phase, preparations will be undertaken to deliver an orderly resolution. There will be heightened, intensive engagement between the firm, regulatory authorities (the Bank, PRA and Financial Conduct Authority (FCA), as well as with authorities in other relevant jurisdictions), and the Bank's advisers (including an independent valuer).

4.12 The first aim of these preparations is to enable the Bank (and other relevant authorities) to make effective decisions around the application of stabilisation powers. This includes assessing:

- (a) *Whether the preferred resolution strategy is feasible.* To review the feasibility of the preferred resolution strategy, the Bank will need more assurance around the firm's resolvability. This includes assessing the eight barriers to resolvability discussed in the next section of the CP. The Bank will also need to consider any other potential issues or challenges that may complicate the resolution.
- (b) *Whether there is a reasonable prospect that long-term viability will be restored through the resolution and restructuring.* For the Bank to use the bail-in tool, it will need to consider there to be a reasonable prospect that bail-in, together with other measures including any business reorganisation measures, will restore the firm to financial soundness and long-term viability. Prior to bail-in it will be necessary to obtain robust valuations of the firm, assess the extent of loss-absorbing capital available, and assess the options for restructuring the firm following resolution. The ability to analyse these options during the contingency planning phase will be crucial for making detailed decisions on how the bail-in transaction will be executed.

¹ See Bank of England (2017) 'Recovery planning', PRA Supervisory Statement SS9/17 available at: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/supervisory-statement/2017/ss917.pdf>.

² For more information on the Proactive Intervention Framework, Bank of England (2018) 'The Prudential Regulation Authority's approach to supervision': <https://www.bankofengland.co.uk/prudential-regulation/publication/2018/pru-approach-documents-2018>.

³ See page 31 of the Purple Book.

- (c) *What instruments and liabilities are potentially in scope of bail-in.* The Bank will need to confirm what instruments and liabilities are available to bail-in. It will also need valuation analysis to inform what the recapitalisation needs are for the firm's material subsidiaries, and for the group as a whole.
- (d) *Whether the conditions for a firm being placed into resolution are met.* Four statutory conditions must be met before a firm can be placed into resolution. This includes that the firm is deemed 'failing or likely to fail', and that it is not reasonably likely that action will be taken outside resolution that will result in the firm no longer failing or being likely to fail.¹

4.13 The second aim of preparations during this phase is to identify and plan for additional actions that will need to be taken in resolution to achieve the outcomes for resolvability. The recapitalisation will not, in and of itself, be enough to achieve these outcomes. The firm, authorities, and relevant advisers will therefore need to consider what other actions might be needed, and how these would be carried out, drawing upon capabilities the firm maintains in business-as-usual. This includes actions by firms and authorities to support the firm's financial soundness (eg liquidity), the firm's continuity (eg continuity of financial contracts, access to financial market infrastructure, provision of outsourced services) and the co-ordination of the resolution process (eg communications and disclosures, retention and replacement of key staff, regulatory approvals and operationalising the bail-in transaction itself). These actions are summarised in Figure 1 below, with further detail provided in Chapters 6-8 of this CP.

The 'resolution weekend'

4.14 The second phase begins at the point that the Bank determines that the firm has met the conditions for resolution, and that the relevant resolution entity will be placed into resolution. The phase ends the next business day when relevant markets open. The Bank will endeavour to ensure that this phase takes place over a weekend, with the resolution decision taking place on a Friday once relevant financial markets have closed. In exceptional circumstances resolution may need to take place mid-week.

4.15 Once the Bank has decided² to place a firm into resolution, it will make a resolution instrument. This will give effect to the resolution, and specify the instruments and liabilities subject to the bail-in. This will be accompanied by a public announcement by the Bank. The Bank will coordinate with the relevant listing authorities (including the FCA) to suspend the trading of listed instruments subject to the bail-in. Settlement will be blocked by relevant central securities depositaries (CSDs).

4.16 In addition, the resolution instrument may:

- appoint a bail-in administrator (BIA) to control the voting rights of all shares in the firm during the bail-in period. The resolution instrument would also provide the BIA with additional powers, and impose objectives, constraints, and reporting arrangements, as the Bank saw fit;
- require the firm to issue Certificates of Entitlement (CEs) representing the potential right of bailed-in creditors to a future claim in the resolved firm.³ CEs will be credited into the accounts of bailed-in creditors, the process for which will commence at the 'resolution weekend';
- transfer the legal title of existing shares to a third-party depositary bank appointed by the Bank. These shares would be held on trust on behalf of the CE holders who will be the future owners of the firm;
- remove or replace directors and/or senior managers of the firm, and/or vary their service contracts;

¹ The general conditions for the use of stabilisation tools are set out in Section 7 of the Banking Act. Further detail on the conditions assessment process is set out in the Purple Book.

² This decision would be made in consultation with the PRA, FCA and HM Treasury.

³ CEs would also carry the rights of bailed-in creditors to potential compensation under the NCWO safeguard.

- require the BIA or the firms' directors to submit a business reorganisation plan to the Bank within a specified time period;¹ and/or
- apply any other relevant powers under the Banking Act 2009 (and associated legislation), if the Bank considered this necessary to achieving its resolution objectives.²

4.17 During this phase, the firm will need to communicate essential information about the Bank's resolution action to its key stakeholders, including counterparties, investors, customers and suppliers. The firm and the Bank will work together to reassure these stakeholders and retain their confidence, helping to ensure that the firm can continue operating post-resolution. It will be crucial that, as the 'resolution weekend' ends, the firm will be able to continue performing the banking services and critical functions it normally provides to its customers and the wider financial market.

4.18 Firms may also need to support the mechanics of the bail-in transaction. This could include issuing instructions to support the blocking (and un-blocking) of settlement of instruments in relevant CSDs and issuing CEs to the holders of instruments subject to the bail-in. In doing so, firms will need to consider the implications of the relevant securities law or listing rules that may apply, and seek to ensure that these requirements do not frustrate the bail-in transaction.

Bail-in period

4.19 The third phase covers the period between the 'resolution weekend' and when the firm returns to private control. The Bank aims for this period to last no more than three to six months. In practice, however, this period would last as long as necessary until the Bank could accurately calibrate the final terms of the bail-in and safely return the firm to private control.

4.20 Throughout this phase, the firm will be expected to continue providing its usual banking services and critical functions. This will be supported by preparatory work before resolution, though ongoing actions may be needed to stabilise the firm and achieve the outcomes for resolvability (see Figure 1, as well as Chapters 6-8 of this CP for further detail).

4.21 During the bail-in period, the BIA will work with the firm's management to further develop and submit a credible business reorganisation plan. This plan may involve some parts of the business being wound down or sold as well as a possible restructuring of the remaining business. Work undertaken in the contingency planning period and the firm's recovery plan, as well as the specific circumstances of the firm's failure, will all be used to form the basis of this plan.

4.22 This plan will need to be approved by the Bank, in consultation with the PRA and the FCA, who will need to be satisfied that the plan is credible (i.e. the arrangements in the plan would, if implemented, be reasonably likely to restore the firm to long-term viability). Once the plan has been approved, further consideration may need to be given to the specific steps needed to implement the plan.

4.23 Further valuation work (supported by the independent valuer) will also be needed to inform and reflect the business reorganisation plan. Once final valuations have been completed, the Bank will determine and announce the rate(s) at which different classes of CEs will be exchanged for securities in the resolved firm. CE holders will be asked to come forward and identify their beneficial ownership.

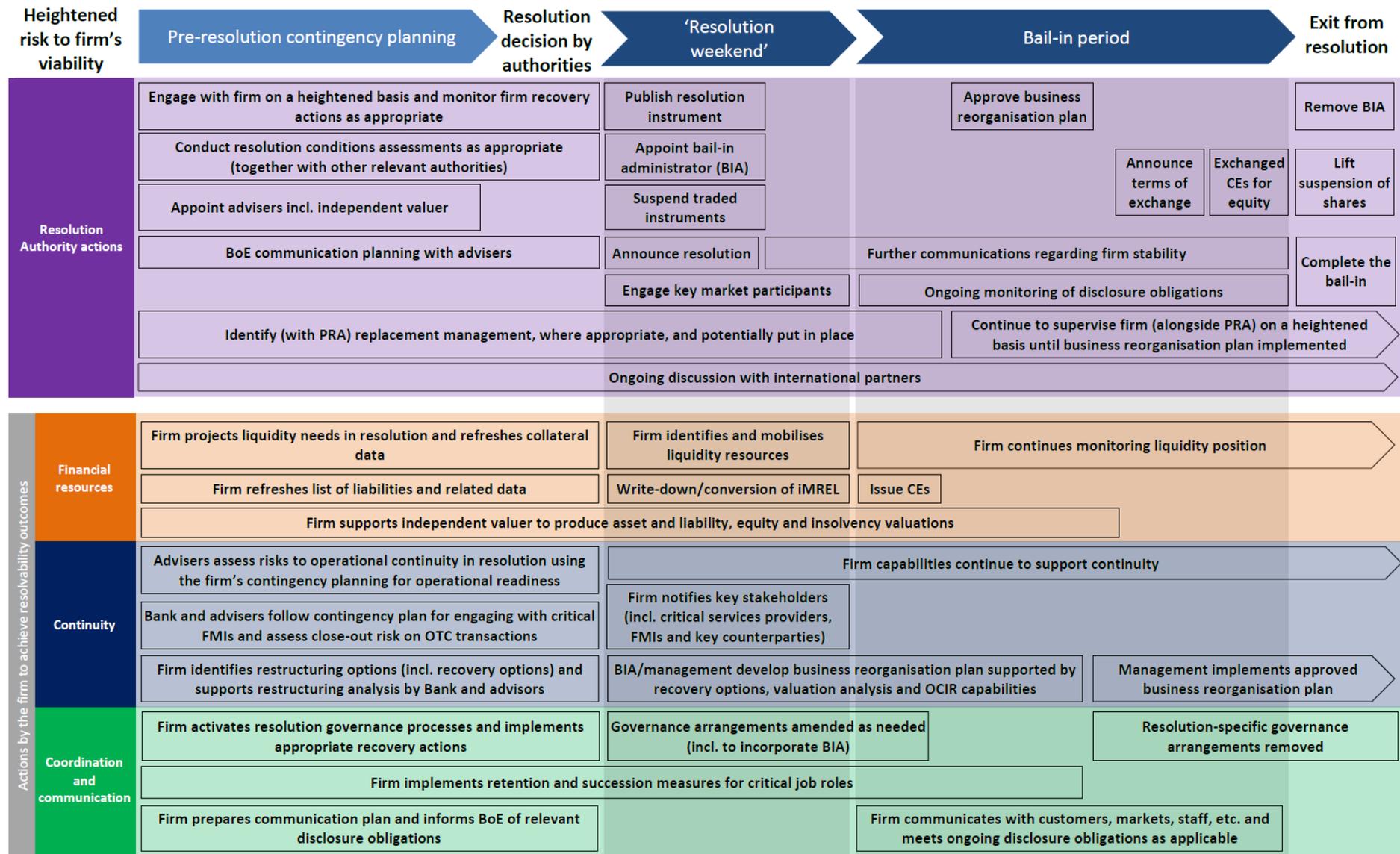
¹ Under Article 52 of the Bank Recovery and Resolution Directive (2014/59/EU) (BRRD), the plan would need to be provided within one month of the resolution date. In exceptional circumstances, this may be extended up to a maximum of two months.

² This could include, but is not limited to: amending the contractual terms of securities issued by the firm, discontinuing or suspending the listing of securities issued by the firm, requiring one or more of the firm's directors to comply with directions, and requiring continuity of relevant processes after the resolution date.

4.24 Exit from resolution will take place once an adequate proportion of CE holders have come forward. The depository bank will transfer shares to the relevant accounts of CE holders, and the BIA will no longer control the associated voting rights. This will complete the bail-in transaction and return the firm to private control. The suspension of trading of the firm's shares would subsequently be lifted, and the BIA would be removed.

4.25 The firm will be expected to commence implementing its business reorganisation plan as soon as possible once the firm has been stabilised and the plan agreed. Implementation of the plan is likely to start during bail-in period and extend beyond the point at which the firm has exited from resolution. However, the timing of the restructuring will reflect the specific case at hand. Where restructuring does continue post resolution, this will be completed by the new management and board under the supervision of the PRA and/or FCA.

Figure 1: Illustration of the stylised resolution timeline



5 Achieving resolvability

5.1 The Bank has identified three key outcomes that it proposes firms will need to achieve in order to be considered resolvable. These outcomes should be reflected in the assessments undertaken by firms under the proposed Resolution Assessment Part of the PRA Rulebook and will form part of the Bank's public statement concerning firms' resolvability. The Bank anticipates that these outcomes will be achieved in a large part by removing the eight barriers to resolvability that are identified in this consultation paper. This chapter explains what the Bank considers is needed to ensure firms have suitably addressed each of these barriers.

5.2 The barriers identified here are generic in nature and relevant to all firms. They should not be considered a 'check-list' that, if met, would necessarily result in a firm being considered resolvable. The Bank proposes that in order to achieve the three overarching outcomes and be considered resolvable, firms will also need to consider their specific business model and whether there are any additional barriers that are relevant.

Box 2: Outcomes of resolvability

To be considered resolvable, a firm must, as a minimum, be able to achieve these outcomes:

(iii) Have adequate financial resources in the context of resolution:¹

Ensure that it has the resolution-ready financial resources available to absorb losses and recapitalise without exposing public funds to loss. This includes resources to meet its financial obligations in resolution. This is necessary to allow the authorities to keep the firm operating as described below. This means that firms must:

- meet the 'minimum requirements for eligible liabilities' (MREL) appropriately distributed across its business,
- be able to support a timely assessment of its capital position and recapitalisation needs; and
- be able to analyse and mobilise liquidity in resolution.

(iv) Be able to continue to do business through resolution and restructuring:

Ensure that the firm's activities can continue while the authorities take charge and begin to restructure the firm in such a way that the business can be reshaped, including any parts of it being sold or wound down (as appropriate). This includes ensuring that the resolution does not result in the firm's financial and operational contracts being materially disrupted or terminated and that direct or indirect access to services delivered by financial market intermediaries is maintained. This is essential to having a continuing business that can be returned to long-term viability through restructuring. It also means building on recovery planning work so that the operational and support services needed for a viable business can be identified, separated and reorganised to support restructuring options.

(v) Be able to coordinate and communicate effectively within the firm and with the authorities and markets so that resolution and subsequent restructuring are orderly.

¹ Appropriate minimum levels will be determined by the relevant authorities.

How each barrier should be addressed

5.3 The following chapters describe the capabilities the Bank proposes that firms should have in order to address each barrier and achieve the outcomes of resolvability. They will follow the below structure:

- *Objective*: what the Bank is seeking to achieve through the removal of the barrier.
- *Policy background*: existing legislation, Bank and PRA policy, and FSB or other guidance that should be considered when reading the rest of the section. Relevant existing policy is summarised in figure 2. The proposals in this CP do not amend or replace existing Bank or PRA policy. Instead these principles should be seen as bringing policy together and asking firms to consider their application in the context of achieving the three resolvability outcomes. Firms should be guided by the scope and application as set out in the underlying policy unless otherwise stated in this CP.
- *Actions required during the stylised resolution timeline*: details of the policy-specific actions that the Bank considers the firms will need to take or support across the stylised resolution timeline. This is to make clear what the Bank proposes firms' capabilities and arrangements would need to deliver in practice to ensure effective resolution.
- *What is needed from firms in business-as-usual to support resolvability*: the existing and proposed policies that firms' capabilities and arrangements would need to meet on an ongoing basis in order to remove the barrier and ensure they can achieve the outcomes of resolvability.

5.4 When considering what they need to have in place, the Bank proposes that firms should consider the outcomes the Bank is seeking to achieve, taking into account their resolution strategy and business model. In some cases, firms may consider that some of the capabilities identified by the Bank, outside of those that are requirements under existing policies, are not relevant to their resolution strategy or business model. In these cases firms should be able to demonstrate why this is consistent with the Bank's objective for that barrier and the overarching outcome of resolvability.

Overarching issues for all barriers

5.5 For some barriers the Bank does not currently have existing policy, although there is relevant FSB guidance. While FSB guidance is typically directed at authorities and global systemically important banks (G-SIBs), the Bank considers that it can be applied in a proportionate way to all firms and the Bank is therefore consulting in this document on how it intends to apply the relevant sub-set of FSB guidance.

5.6 Where the Bank proposes new policy, the proposed policy wording is set out in the Appendix to this CP. The Bank may further develop policy thinking through engagement with firms, so this does not preclude the Bank from publishing additional policy on any of the barriers covered in this CP as resolution thinking further develops both domestically and internationally.

5.7 The content of this Appendix is in conformity with FSB guidance that was published between 2016 and 2018.¹ The Bank therefore considers that firms will already be aware of the underlying guidance concerning: Funding in Resolution; Continuity of Access to FMs; and Management, Governance and

¹ FSB (2018) 'Guiding principles on the temporary funding needed to support the orderly resolution of a global systemically important bank' available at: <http://www.fsb.org/wp-content/uploads/Guiding-principles-on-the-temporary-funding-needed-to-support-the-orderly-resolution-of-a-global-systemically-important-bank-“G-SIB”.pdf>, FSB (2018) 'Principles on Bail-In Execution' available at: <http://www.fsb.org/2018/06/principles-on-bail-in-execution-2/>, FSB (2017) 'Guidance on Continuity of Access to Financial Market Infrastructures ('FMs') for a Firm in Resolution' available at: <http://www.fsb.org/wp-content/uploads/P060717-2.pdf>, FSB (2018) 'Funding Strategy Elements of an Implementable Resolution Plan' <http://www.fsb.org/wp-content/uploads/P210618-3.pdf>

Communications. The proposed Restructuring policy is closely based upon measures firms will already have taken with regards to recovery planning;¹ therefore the Bank considers much of it will be familiar to firms.

5.8 Where new capabilities are needed, the Bank envisages that firms may, in some cases, be able to leverage existing capabilities to comply. The Bank welcomes views on the likely extent of changes required.

5.9 The Bank expects to take an iterative process with firms with regards to the development of the proposed capabilities to meet the outcomes set out for barriers where it is setting out policy for the first time to ensure firms are on track to reach full resolvability by 2022. This will be reflected in the approach the Bank takes to assurance as stated in Chapter 9.

Questions

3. Do you consider there to be any additional generic barriers that will need to be removed in order for firms to be considered resolvable?
4. The Bank will apply the measures within the CP in a proportionate way. Are there any specific areas of new policy that would be unduly burdensome or unnecessary for certain types of firms to implement?

¹ Bank of England (2017) 'Recovery planning', PRA Supervisory Statement SS9/17 available at: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/supervisory-statement/2017/ss917.pdf>

6 Outcome: Financial Resources

The minimum requirement for own funds and eligible liabilities (MREL)

Objective: Firms maintain a sufficient amount of resources that can credibly and feasibly be used to absorb losses and recapitalise them to a level that enables them to continue to comply with the conditions for regulatory authorisation and sustains market confidence.¹

6.1 This section sets out some actions that firms may need to take to support their resolvability. It does not amend, replace or seek to re-consult on the Bank's approach to setting MREL,² but it underlines a number of matters which firms should already be considering in relation to their MREL resources under the Bank's MREL SoP (as defined below). It provides further detail on what the Bank proposes firms should do to show that their MREL resources are sufficient and available in resolution.

Policy background

6.2 The Bank published a SoP on its approach to setting MREL for the resolution entity in a group (referred to as external MREL) in November 2016 (the MREL SoP). The MREL SoP was updated in June 2018 to include the Bank's policy on how MREL resources should be maintained by material subsidiaries that are not themselves resolution entities (internal MREL).

6.3 MREL must be set in line with the provisions of the Banking Act 2009, the Bank Recovery and Resolution (No. 2 Order) 2014, the BRRD and the European Commission Delegated Regulation (EU) 2016/1450 (the MREL RTS). The Bank also considers the FSB's total loss-absorbing capacity (TLAC) standard ('FSB TLAC standard') when setting MREL.

6.4 The MREL SoP sets out the framework used by the Bank for setting MREL, including calibration, the eligibility criteria for MREL-eligible liabilities, how the Bank takes the preferred resolution strategy of a firm into account and how MREL is applied in the context of groups. It also specifies interim and end-state compliance dates for MREL.

6.5 The PRA Supervisory Statement (SS) 16/16 'The minimum requirement for own funds and eligible liabilities (MREL) - buffers and Threshold Conditions' (as updated in December 2017) sets out PRA expectations regarding the interaction between MREL, the capital framework and the PRA Threshold Conditions.³

6.6 In addition to this, in June 2018 the PRA set out its expectations on MREL reporting by updating SS19/13 'Resolution planning' and providing templates and guidance for firms whose MREL is in excess of regulatory capital requirements.⁴ Other information that is relevant to MREL, in addition to the templates, may also be requested from firms pursuant to the Bank's statutory information gathering powers.

Actions required during the stylised resolution timeline

6.7 In a period of stress, the MREL position of a firm is likely to deteriorate. The Bank considers that it and the PRA may need additional, or more up-to-date, information, possibly at a short notice, during

¹ For firms with a partial-transfer resolution strategy, recapitalisation may be limited to the level that (i) ensures that the transfer does not undermine the capital position of a private sector purchaser or (ii) enables a new bridge bank to be adequately capitalised.

² As set out in the Bank of England's approach to setting a minimum requirement for own funds and eligible liabilities (the MREL SoP)

³ Bank of England (2018) 'The Bank of England's approach to setting a minimum requirement for own funds and eligible liabilities (MREL)' available at: <https://www.bankofengland.co.uk/paper/2018/boes-approach-to-setting-mrel-2018>.

⁴ Bank of England (2015) 'Resolution Planning: MREL reporting' PS11/18 available at <https://www.bankofengland.co.uk/prudential-regulation/publication/2018/resolution-planning-mrel-reporting>

the pre-resolution contingency planning phase. The information requested will depend on the specific circumstances of each firm.

6.8 As stated in PRA SS 16/16, the PRA expects firms not to double count common equity Tier 1 capital (CET1) towards both MREL and the amount reflecting the risk-weighted capital and leverage buffers. In addition, a firm breaching, or likely to breach, its external or internal MREL should also expect the PRA to investigate whether the firm is also failing, or likely to fail, to satisfy the Threshold Conditions.¹

6.9 Over the 'resolution weekend', the Bank will make a resolution instrument, specifying the liabilities, including MREL resources, subject to the bail-in.

What is needed from firms in business-as-usual to support resolvability

6.10 Firms are required to meet their external and/or internal MRELS, as applicable, at all times, and to do so with resources that satisfy the eligibility criteria set out in the MREL SoP. Firms are also expected to submit information to the PRA to facilitate resolution planning, such as the data articulated in SS19/13,² as well as any other information requested by the PRA and/or the Bank, in accordance with their statutory information-gathering powers. To support resolvability, and complementary to the MREL SoP,³ the Bank proposes that firms should also take actions, according to the principles set out below:

Principle 1: Loss-absorbing resources and monitoring

6.11 Firms need to have arrangements and systems in place to monitor their MREL position appropriately, including to allow them to comply with their obligations in SS 19/13. When monitoring their MREL position, the Bank proposes that firms should have particular regard to the:

- (a) current and projected stock of MREL resources and, where applicable, their maturities; and
- (b) contractual provisions and features of individual instruments and issuances of instruments, especially in relation to eligibility criteria set out in the MREL SoP.

6.12 In monitoring their stock of MREL resources, the Bank proposes that firms should consider whether loss-absorbing instruments issued by entities within their group comply with the relevant requirements in non-European Economic Area (EEA) jurisdictions, as set by the relevant overseas authorities (for example, the amount of any such requirement and relevant eligibility criteria), where applicable. In particular, the Bank proposes that firms with an MPE resolution strategy should assess their current and future consolidated external MREL resources in the context of that strategy, taking into account the sum of requirements relating to each of their resolution groups and entities or sub-groups located outside those resolution groups.⁴

6.13 As articulated in paragraph 6.4 of the MREL SoP, the Bank expects that MREL surplus, that is the difference between external MREL and the sum of what must be issued to the resolution entity as internal loss-absorbing resources (to meet internal MREL or other equivalent loss-absorbing capacity requirements), if any, should be readily available to recapitalise any direct or indirect subsidiary, as necessary to support the execution of the resolution strategy and there should be no legal or operational barriers to this. The Bank is still developing its policy on surplus MREL in consultation with other authorities in crisis management groups but will, in time, expect firms to have the capabilities to monitor the surplus resources that can be made readily available.

¹ However, a breach or likely breach by a firm of its MREL does not automatically mean that the PRA will consider the firm is failing, or likely to fail, to satisfy Threshold Conditions.

² Bank of England (2015) 'Resolution Planning: MREL reporting' PS11/18 available at <https://www.bankofengland.co.uk/prudential-regulation/publication/2018/resolution-planning-mrel-reporting>

³ Nothing in this CP should be read as changing or amending the obligations set out in the MREL SoP.

⁴ The Bank requirements on group consolidated MREL for MPE groups are set out in paragraphs 6.8 and 6.9 of the MREL SoP.

6.14 Furthermore, the Bank proposes that firms should also ensure that their plans for creating future MREL resources are achievable with reasonable confidence and consistent with their business plans and expected market issuance conditions for MREL instruments. In this regard, firms should consider whether their assessment or plans would change following or during a period of idiosyncratic stress and/or broader financial instability.

Principle 2: Write-down and/or conversion of external and internal MREL instruments in resolution

6.15 As noted in paragraphs 5.12 and 8.12 of the MREL SoP, the responsibility for ensuring that liabilities, including own funds instruments, are eligible to meet MREL rests with institutions. As noted in paragraph 5.1 of the MREL SoP, in order for MREL resources to fulfil their intended purpose, it must be practically straightforward for the Bank to apply its stabilisation powers to them, including the bail-in stabilisation power.

6.16 Firms need to assess their MREL resources against the provisions of the MREL SoP. In addition, specific examples are provided in the MREL SoP where firms are expected to assess carefully any difficulties that may arise in writing down and/or converting MREL resources in resolution, as a result of the specific features that some of those resources may have:

- as explained in paragraph 5.10 of the MREL SoP, firms should consider cases (either outside or in the course of resolution proceedings) where it is not possible to write down and/or convert any non-CET1 own funds instruments to CET1 using statutory powers;
- as mentioned in paragraph 5.11 of the MREL SoP, firms should consider the challenges to resolvability from having non-CET1 own funds instruments issued from non-resolution entity subsidiaries to holders outside their group after 1 January 2022;
- firms should ensure that contractual triggers in internal MREL instruments meet the requirements set out in paragraphs 8.8 and 8.9 of the MREL SoP. Where a contractual trigger provides for write-down only or conversion only, firms need to be able to demonstrate that this credibly supports the group resolution strategy and the passing of losses and recapitalisation needs to the resolution entity; and
- firms should also consider whether the absence in any non-CET1 own funds instruments, of such contractual triggers, covering the circumstances described in paragraph 8.8(b) of the MREL SoP, could create difficulties for resolution.

6.17 In addition to the examples above, the Bank proposes that firms should assess carefully any difficulties that may arise in writing down and/or converting MREL instruments in resolution, as a result of the specific features that some of those instruments may have.

Principle 3: The Role of internal MREL in supporting the resolution strategy

6.18 As described in paragraph 8.4 of the MREL SoP, firms should ensure that the issuance of internal MREL by a material subsidiary or sub-group credibly supports the resolution strategy and the passing of losses and recapitalisation needs to the resolution entity. In cases of direct or indirect issuance to the resolution entity that is not along the chain of ownership, therefore, firms need to assess circumstances in which writing down or converting internal MREL-eligible resources could result in a change of control of the subsidiary or subgroup, or whether there would be significant governance, accounting, legal or tax issues as a result.

6.19 As explained in paragraph 8.13 of the MREL SoP, firms also need to consider whether there could be any impact on their resolvability, caused by differences in form— such as equity or debt, maturity, currency, interest rate, and other terms and covenants — between internal MREL resources of a material subsidiary and MREL issued externally from the resolution entity.

Principle 4: Clean holding company

6.20 Firms that issue external MREL from a resolution entity that is a holding company should consider whether the assets and liabilities held by that resolution entity present challenges to the resolution strategy. Such firms should have particular regard to on-balance sheet and off-balance sheet liabilities that may rank *pari passu* with any MREL resources, as mentioned in paragraph 6.3 of the MREL SoP, noting that the sum of liabilities that do not qualify as MREL should not exceed 5% of the overall external MREL resources of the resolution entity or 10% of the resolution entity's MREL resources in the same creditor class.

Principle 5: Documentation and internal policies

6.21 The Bank proposes that the documentation that is relevant to a firm's MREL position should be maintained in a way that can be made easily available to the Bank, when requested. This includes, where appropriate, independent legal advice that the firm received in relation to the eligibility of instruments for MREL purposes, for instance (but not limited to):

- (a) in order to determine whether a decision by the Bank to direct the write-down and/or conversion of instruments issued under third-country law would be effective and enforceable; and
- (b) where the firm considered it was impracticable to include contractual recognition of bail-in terms in liabilities issued under third-country law, in accordance with the Contractual Recognition of Bail-in part of the PRA Rules.

6.22 The Bank proposes that firms should develop robust internal policies detailing, for example, targets in terms of issuance of external and/or internal MREL resources and any actions that may be taken if those targets are not met. Those policies may take the form of risk appetite statements and should specify the processes to be followed when issues are identified, the governance bodies and/or senior managers who are accountable for decision-making, and the timing of any remedial actions.

Box 3: Additional considerations regarding MREL

Legislative context

The European Commission has proposed a package of amendments to legislation that is relevant to MREL, including amendments to the BRRD and the Capital Requirements Regulation (575/2013) (CRR). At the time of publication, this package remains under negotiation. The final outcome of any amendments and the timing of their implementation are therefore uncertain. The Bank will assess as necessary whether to make any changes to its MREL framework as a result of such amendments. The Bank is also committed to, before the end of 2020, reviewing the calibration of MREL, and the final compliance date, prior to setting end-state MRELS. In doing so, the Bank will have regard to any intervening changes in the UK regulatory framework due to the revision of BRRD and CRR, as well as firms' experience in issuing liabilities to meet their interim MRELS.

MREL cross-holdings

Where a firm has invested in loss-absorbing resources of another firm, in the event the issuing firm experienced loss, the investing firm could also incur losses, which could cause it to fail. The Basel Committee on Banking Supervision (BCBS) has published a TLAC holdings standard,¹ setting out that internationally active banks should deduct, from their Tier 2 capital, holdings of non-capital TLAC issued by G-SIBs. In the European Union, the European Commission has proposed amendments to the Capital Requirements Regulation (575/2013) (CRR), which would require EU G-SIBs to deduct MREL they hold issued by other G-SIBs from their own MREL resources. Though narrower in scope, this is intended to implement the BCBS standard. The Bank expects to clarify its policy proposals for deductions of MREL cross-holdings, once there is greater clarity as to the timing and final content of the EU proposals. In the

1 Basel Committee on Banking Supervision (2016) 'Standard TLAC holdings' available at: <https://www.bis.org/bcbs/publ/d387.pdf>

meantime, firms are expected to submit information on MREL cross-holdings to the PRA on a best effort basis, as articulated in SS19/13.

Disclosure

Adequate and timely disclosure of MREL resources provides transparency for investors on the overall loss-absorbing capacity of a firm and its distribution in a group. The BCBS published Pillar 3 disclosure standards, which provide for the disclosure of TLAC resources by G-SIBs.¹ The European Commission intends to introduce MREL disclosure requirements through amendments to the CRR (for G-SIBs) and the BRRD (for other firms). The timing and scope of the amendments are uncertain. The Bank, therefore, expects to set out its policy on MREL disclosure once there is greater clarity on the EU proposals. In the meantime, the Bank is exploring the scope for voluntary disclosure by UK G-SIBs and D-SIBs, in line with the BCBS Pillar 3 standard, with the expectation that these would take place from 2019.

Questions

5. Do you agree that the measures proposed in the CP are appropriate to enable firms to show that they have adequate loss-absorbing resources to support resolvability?

¹ Basel Committee on Banking Supervision (2017) 'Standard Pillar 3 disclosure requirements – consolidated and enhanced framework' available at: <https://www.bis.org/bcbs/publ/d400.pdf>.

Valuations

Objective: Firms' valuation capabilities enable a valuer to carry out sufficiently timely and robust valuations to support effective resolution (including by informing entry into resolution, the choice of resolution tools, the terms of the resolution, and the No Creditor Worse Off (NCWO) risks around this).

6.23 The purpose of this section is to set out what firms will need regarding their valuation capabilities in order to support their resolvability. It does not include any new policy proposals.

Policy background

6.24 In June 2018, the Bank published its policy on valuation capabilities to support resolvability (the 'Valuations SoP').¹ The compliance deadline for this policy is Friday 1 January 2021.

6.25 The policy sets out the Bank's overall objectives for the timeliness and robustness of resolution valuations. The policy also sets out seven principles for the capabilities that certain firms² should have in place to support these objectives. These principles relate to the data and models firms should have in place to support resolution valuations, as well as the governance, documentation, and assurance arrangements around these.

6.26 The Bank recently wrote to firms in scope of the Valuations SoP³ to provide firms with guidance on valuation capabilities to support resolvability.⁴ This guidance is non-binding. It aims to support implementation of the Valuation SoP by illustrating what may be needed to support timely and robust resolution valuations.

6.27 The Bank's policy is consistent with the FSB principles on bail-in execution published in June 2018.⁵ The Bank contributed to the development of these principles and has in turn sought to reflect them in its policy design. In particular, the policy has reflected that:

- (a) firms will need to have systems in place to support timely valuations;
- (b) the specific assumptions and methodologies applied in resolution valuations should ultimately be at the discretion of an independent valuer; and
- (c) in cross-border resolutions, valuations should be led by the home authority, with input from host authorities where relevant.

Actions required during the stylised resolution timeline

6.28 The Bank will require valuations to inform its decisions around resolution. This includes decisions made during all three phases within the resolution timeline:

- (a) During pre-resolution contingency planning, the key purpose of valuations is to inform the Bank's decisions around:
 - whether the conditions for placing a firm into resolution are met,
 - what stabilisation power to apply (eg by assessing the adequacy of resources required for resolution); and

¹ Bank of England (2018) 'The Bank of England's policy on valuation capabilities to support resolvability': available at <https://www.bankofengland.co.uk/paper/2018/the-boes-policy-on-valuation-capabilities-to-support-resolvability>

² The Scope of this policy is set out in paragraph 2.1. of the Valuations SoP.

³ Where multiple firms in the same group were in scope of the Valuations SoP, the letter was only sent to the relevant UK resolution entity.

⁴ Bank of England (2018) 'Guidance on valuation capabilities to support resolvability': available at

<https://www.bankofengland.co.uk/letter/2018/guidance-on-valuation-capabilities-to-support-resolvability>

⁵ FSB (2018) 'Principles on Bail-In Execution' available at: <http://www.fsb.org/2018/06/principles-on-bail-in-execution-2/>

- the extent of resolution action required (eg the amount by which different classes of liabilities are written down in a bail-in).¹

In line with its statutory obligations, the Bank will appoint an independent valuer to carry out the necessary valuations working closely with the firm. The firm will need to be able to support the valuer by providing timely access to the relevant data and information, models (or model outputs), documentation, and personnel. These valuations will need to comply with the specifications set out in the Banking Act and the European Banking Authority (EBA) Regulatory Technical Standard (RTS) on valuations before resolution.²

- (b) During the bail in period, valuations serve a number of purposes. First, they inform the assessment of restructuring options and the resources required to deliver the firm's reorganisation plan. Second, they enable the Bank to assess resources needed to deliver restructuring. Third, they inform what exchange ratios the Bank will set to distribute the firm's equity to CE holders. This analysis will also be led by the Bank-appointed independent valuer. Firms will need to support the valuer by providing detailed business forecasts, valuations of disposal options, and other relevant analysis.
- (c) After the firm has returned to private control, the purpose of valuations is to determine what NCWO compensation is to be paid (if any). These valuations will be carried out by a valuer appointed separately by HM Treasury. The Bank will require preliminary estimates of these valuations prior to and during resolution to assess the potential risks around its decisions. Firms will again need to provide relevant information and analysis to support these estimates.

6.29 These resolution valuations will likely be subject to significant uncertainty. The valuer will need to exercise their professional expert judgement in carrying out the valuations. In all stages of resolution, valuers may need to consider a range of different assumptions and sensitivities in forming their views. Valuers may also need to take into account rapidly evolving information on the resolution and restructuring actions envisaged and on the condition of the firm and the market more broadly. The valuations process is therefore likely to be highly iterative. Firms will need to support this process by providing relevant information to the valuer. If necessary, firms will also need to produce relevant valuation analysis based on assumptions and overlays specified by the valuer.

What is needed from firms in business-as-usual to support resolvability

6.30 As set out in the Valuations SoP, firms need to have capabilities in place in business-as-usual to ensure that a valuer could carry out timely and robust resolution valuations if needed.³ These capabilities should comply with the principles set out in the Valuations SoP. In meeting these principles, firms are encouraged to leverage capabilities in place for other purposes, such as risk management, financial reporting, and regulatory compliance.

6.31 In summary the principles in the Valuations SoP cover:⁴

- (i) Data and information: Firms should ensure that their underlying data and information is complete and accurate, and that relevant data and information would be readily available to a valuer.
- (ii) Models: As necessary to meet the timeliness and robustness objectives, firms should have models available to be tested and used by a valuer on a timely basis in carrying out the valuation analysis needed for resolution.

1 This also includes the value of any consideration for any transfers. The Bank must ensure that the full extent of any losses on the assets of the firm are appreciated at the time the Bank uses a resolution tool.

2 Commission Delegated Regulation 2018/345

3 Firms also need to ensure that capabilities are in place in respect of subsidiaries that are considered significant for valuation purposes.

4 The wording of these summaries has been taken from the Valuation SoP as the headline paragraph of each of the seven principles. Readers should consult the Valuations SoP to see the principles in full.

- (iii) Methodologies: Valuation models should use methodologies that are consistent with the methodologies a valuer could reasonably be expected to apply in producing valuations that meet the robustness objective.¹
- (iv) Assumptions: Firms should have processes that support the use of realistic valuation assumptions, and should enable a valuer to review and revise, and demonstrate sensitivity to these assumptions if necessary.
- (v) Governance: Firms should apply sound governance arrangements and processes to ensure that valuation capabilities compliant with these principles are maintained in business-as-usual and available prior to and during resolution.
- (vi) Documentation: Firms should clearly and concisely document their valuation capabilities and how these could be relied upon to produce timely and robust resolution valuations.
- (vii) Assurance: Firms should periodically review and evaluate their valuation capabilities with regard to these principles, and should facilitate reviews undertaken by the Bank or a third party to test compliance.

6.32 Firms should consider how, in complying with the Valuations SoP, they are supporting their overall resolvability. In particular, firms should consider how their capabilities would support the actions and decisions needed within the stylised resolution timeline by enabling a valuer to produce timely and robust valuations. This includes by having regard to the need:

- for a firm to coordinate effectively around the valuations process (including through the provision of data, operation of models, and engagement with the valuer);
- for a valuer to be able to rapidly assess a firm's capabilities so that they can reasonably be relied upon (including through the review of testing and oversight already undertaken by the firm); and
- to carry out multiple iterations of the valuations in order to assess sensitivities, to reflect the valuer's independent expert judgement and to reflect the resolution and restructuring actions being considered.

Questions

6. This CP does not propose any additional policy or guidance on valuations capabilities to that set out already. Are there any areas where you think additional clarity would be required on the valuation capabilities that firms will need to achieve the outcomes of resolvability?

¹ The robustness objective is set out in paragraph 3.3 of the Valuations SoP

Funding in resolution

Objective: In order to ensure they continue to meet their obligations as they fall due, firms are able to estimate, anticipate and monitor their potential liquidity resources and needs and mobilise liquidity resources in the approach to and throughout resolution.

6.33 The purpose of this section, and the policy proposed in the Appendix, is to set out the liquidity management capabilities that the Bank proposes firms require in order to achieve the outcomes of resolvability. The Bank proposes principles for how firms should approach assessing and meeting their funding needs in resolution.

6.34 These principles, which are consistent with FSB guidance, are new Bank proposals. As a result, this section contains detailed explanation to communicate the new proposals as clearly as possible and encourage respondents' views. In particular, for consultation purposes, proposed policy wording is set out in the Appendix.

Policy background

6.35 Both a firm's liquidity position in resolution and the availability of funding sources are inherently uncertain prior to the firm entering resolution. However, establishing this with as much clarity as possible is a priority, because doubts about the ability of the firm to pay its obligations as they fall due could be self-fulfilling, compromising the success of the resolution.

6.36 In August 2016 the FSB recognised this issue and issued its first publication specifically covering funding in resolution.¹ This outlines a set of guiding principles covering temporary funding to support the execution of the resolution strategy of a G-SIB. The principles set out that private markets should be the preferred source of funding in resolution, and detail ways to encourage and maintain this. To the extent such funding is not available or sufficient, the principles cover the role and types of public sector backstop funding mechanisms, and how such mechanisms can be designed to minimise moral hazard.

6.37 In line with the FSB guidance, the Bank has developed the Resolution Liquidity Framework ('RLF'). A firm in resolution would have access to the Bank's published facilities, as set out in the 'The Bank of England's Sterling Monetary Framework' (the Red Book),² subject to meeting the necessary eligibility criteria. The RLF acts as a supplement to the Bank's existing liquidity facilities, and provides the tools to lend to banks, building societies or investment firms subject to stabilisation powers, where the entity or its holding company is in a Bank-led resolution.

6.38 In June 2018 the FSB published further guidance for authorities developing funding plans to ensure that a firm will have sufficient liquidity in resolution.³ This identifies a number of key strategic elements for authorities to consider, as well as stating that authorities should ensure firms have:

- a methodology for estimating the liquidity needs of a firm to facilitate the successful execution of its resolution strategy;
- processes for monitoring and reporting liquidity needs, liquidity sources, and the positioning of liquidity within the firm that would be available in resolution within an adequate timeframe; and

1 FSB (2018) 'Guiding principles on the temporary funding needed to support the orderly resolution of a global systemically important bank' available at: <http://www.fsb.org/wp-content/uploads/Guiding-principles-on-the-temporary-funding-needed-to-support-the-orderly-resolution-of-a-global-systemically-important-bank-G-SIB.pdf>

2 Bank of England (2015) 'The Bank of England's Sterling Monetary Framework' available at: <https://www.bankofengland.co.uk/-/media/boe/files/markets/sterling-monetary-framework/red-book>

3 FSB (2018) 'Funding Strategy Elements of an Implementable Resolution Plan' available at <http://www.fsb.org/wp-content/uploads/P210618-3.pdf>

- processes for monitoring asset encumbrance and for identifying assets that can be mobilised as collateral across the group.

6.39 Moreover, a number of going-concern policy standards developed by the Bank or the PRA align with the guidance contained in the FSB publications:

- as set out in SS9/17,¹ by Sunday 30 June 2019, firms will need to model their capital and liquidity profiles in various stressed scenarios where the firm is implementing recovery actions, including by detailing their currency needs by jurisdiction (where appropriate); and
- for the purposes of the Individual Liquidity Adequacy Assessment (ILAA),² firms need to develop an effective liquidity contingency plan. Additionally, firms need to undertake regular liquidity stress testing and analysis of possible future liquidity stresses, as well as maintaining adequate liquidity resources at all times in going concern, and actively managing their liquidity risk exposures.

6.40 The below section is consistent with the requirements on firms under these policy standards.

Actions required during the stylised resolution timeline

6.41 Throughout the stylised resolution timeline, the Bank considers that firms will need to manage their available liquidity. This requires estimating, anticipating and monitoring their potential liquidity needs in resolution, and estimating, anticipating and monitoring prospective liquidity resources, including data on the quality and availability of collateral. Such actions will enable firms to assess how they might be able to mobilise their liquidity resources to meet their obligations as they fall due in resolution. Firms will need to anticipate and adjust to the specific circumstances that might occur prior to, or during, resolution, which should include consideration of the responses of counterparties.

6.42 In a period of stress, including the contingency planning period, the liquidity position of firms is likely to deteriorate. The Bank considers that firms will need to adjust their assessment of liquidity risk, specifically considering resolution liquidity needs, based on these stressed conditions and their evolving liquidity position. Firms will need to understand what actions, if any, they may have to take ahead of the resolution weekend. Building on the analysis performed in recovery planning, firms will need to more actively assess their potential liquidity needs in resolution, versus potential sources of liquidity. Firms may have to draw on central bank facilities as and when required. Firms will need to report and escalate the risk to appropriate governance forums.

6.43 During the contingency planning period firms should anticipate that the Bank and the PRA will require additional, or more up-to-date, information on liquidity, possibly at short notice, in order to facilitate their contingency planning.

6.44 During the contingency planning period and the bail in period, the Bank considers that firms will need to have updated information on their actual and projected liquidity outflows to understand their obligations over the resolution weekend and immediately afterwards. Firms will need to ensure that robust and timely information is available to support authorities in ensuring a resolution funding plan can be implemented effectively.

What is needed in business-as-usual to support resolvability

6.45 Firms have an ongoing obligation to meet supervisory expectations around liquidity in going-concern, which will in turn support their resolvability.

¹ Bank of England (2017) 'Recovery planning', PRA Supervisory Statement SS9/17 available at: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/supervisory-statement/2017/ss917.pdf>

² Bank of England (2015) 'Internal Liquidity Adequacy Assessment' PRA 2015/49 Appendix 1A available at: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2015/ps1115>

6.46 To support resolvability, the Bank proposes that firms should have the capabilities to estimate, anticipate, monitor and mobilise the liquidity necessary to ensure their resolution strategies can be successfully executed, and that liquidity risks in resolution are managed. These capabilities should meet the principles described below. Firms may have already developed these capabilities for going-concern purposes, either as a result of current policies, or based on their internal risk appetites.

Principle 1: Overview of liquidity analysis

Firms should be able to perform liquidity analysis on a timely basis at the level of material entities and for material currencies

6.47 To support resolvability, the Bank proposes that firms should identify the entities and currencies which it considers material on the grounds of liquidity, and consider and identify the potential locations of liquidity risk within these. The Bank therefore proposes that firms should define and justify the range of entities and currencies which they consider to be in and out of scope.

6.48 The Bank proposes that, at a minimum, the scope of firms' material entities should include those already defined as material for the purposes of internal MREL.¹ However, the Bank proposes that firms should also identify additional entities that are material for liquidity management purposes. The Bank proposes that firms should also consider entities within a liquidity subgroup² when identifying material entities.

6.49 The Bank proposes, at a minimum, firms' assessment of material currencies should consider the denominated currency of assets, liabilities, and contingent liabilities held by each material entity. The Bank proposes that material currencies should include, at a minimum, each currency (which may include the reporting currency) that represents 5% or more of the total liabilities of each material entity. The Bank proposes that firms should also identify additional currencies which are material for the purposes of liquidity at each material entity, or the group as a whole, taking into particular consideration the currency of obligations that are likely to arise in resolution.

6.50 The Bank proposes that firms should develop capabilities to perform liquidity analysis at the level of the material entities, both for currencies which are deemed to be material for that material entity, and for currencies which are deemed to be material for the group. The Bank also proposes that firms should have the capabilities to perform liquidity analysis at the level of the group for currencies which are deemed to be material to the group. This will help increase the visibility of obligations throughout the group in resolution, and ensure that adequate management information is available to reduce liquidity risks in resolution.

6.51 For entities and currencies that are not deemed to be material, the Bank proposes that firms may choose to conduct less granular analysis. At a minimum, for those entities that are not material, the Bank proposes that firms should be able to use existing systems to confirm that the liquidity needs of each non-material entity, and the obligations arising in each non-material currency, do not represent a risk to the liquidity position of the firm in resolution.

6.52 The Bank proposes that firms should be able to refresh the relevant liquidity analysis as necessary, at the level of material entities, and deliver this information in a timely manner. Firms should be able to make the core part of the liquidity analysis available on a T+1 basis, or more rapidly if both necessary and appropriate. This is in line with the considerations described in the PRA's approach to supervising liquidity and funding risks³ with regards to the appropriate frequency of PRA 110⁴ submissions by large

¹ Bank of England (2018) 'The Bank of England's approach to setting a minimum requirement for own funds and eligible liabilities (MREL)' available at: <https://www.bankofengland.co.uk/paper/2018/boes-approach-to-setting-mrel-2018>.

² 'Liquidity sub-group' as described by Article 8 of the Capital Requirements Directive (Regulation (EU) No 575/2013)

³ Bank of England (2015 updated 2016) 'The PRA's approach to supervising liquidity and funding risk' available at: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/supervisory-statement/2015/ss2415>

⁴ Instructions for completing the PRA 110, and the PRA 110 template, are available at: <https://www.bankofengland.co.uk/prudential-regulation/regulatory-reporting/regulatory-reporting-banking-sector>

firms during a stress. The mechanisms for collecting and compiling information should be robust and compliant with the relevant data quality processes within the firm, such as those set out in BCBS 239¹. In developing analysis, the Bank proposes that firms may choose to develop information using consistent fields to those in reporting requirements, such as the PRA 110, where possible. The Bank proposes that the liquidity analysis should be sufficiently adaptable so that it can be readily adjusted to reflect the circumstances of a stress.

6.53 In the remainder of this section, the Bank proposes the range of liquidity analysis capabilities which it considers firms should have, and describes the characteristics of these capabilities. These proposals should be read as applying to the scope of the analysis described in paragraph 6.50.

Principle 2: Liquidity needs

Firms should be able to develop estimates of, and assess, liquidity needs in resolution

6.54 To support resolvability, the Bank proposes that firms should have the capability to estimate their liquidity needs in resolution based on their current balance sheet, and based on a future estimated balance sheet. This will ensure firms can assess how their liquidity needs in resolution may change if they were to enter resolution immediately, or at a point in the future. In addition, the Bank proposes that firms should be able to estimate their liquidity needs in resolution if they were to enter resolution, either immediately, or at any point over a period of prolonged stress (consistent with the stylised resolution timeline), and should also be able to project their subsequent liquidity needs for at least 90 days from this point of entry. These proposed capabilities should be sufficiently flexible such that firms' projections of liquidity needs can reflect the different circumstances that firms might face in resolution and the different ways counterparties to the firm might behave in these circumstances. The Bank proposes that firms should be able to perform sensitivity analysis, and identify the key drivers of liquidity needs at the level of the group and material entities.

6.55 The Bank proposes that firms should design and document methodologies to estimate their liquidity needs in resolution. Firms' methodologies should consider the types and potential severity of outflows in resolution, and record the behavioural assumptions used to support cash flow forecasts. In addition to the maintenance of robust methodologies and modelling capabilities, the Bank views the identification of drivers of liquidity needs in resolution as a key output of this analysis.

6.56 When estimating their liquidity needs in resolution, the Bank proposes that firms should be able to estimate and detail the liquid assets they will be required to hold for operational reasons, such as minimum amounts in central bank reserve accounts, payment systems, initial margin on market transactions, and legal tender held in physical form. Meeting these minimum operational needs is vital for the firm to continue operating in resolution.

6.57 In particular, the Bank proposes that firms should be able to estimate their likely intra-day liquidity needs in resolution based on current and estimated future exposures, and taking account of how their peak needs may evolve in resolution. Firms should engage relevant counterparties in business-as-usual to understand the likely implications of resolution on their intra-day liquidity needs. The ability of a firm to continue to meet its substantive obligations to FMIs and other counterparties that may demand intra-day liquidity is a crucial component for maintaining continuity of access to FMIs.

6.58 The Bank proposes that firms should also consider intra-group funding needs when estimating their liquidity needs in resolution, possibly incorporating similar assumptions to those used in recovery planning. The Bank proposes that firms should be able to estimate the impact of intra-group funding needs on their liquidity needs in resolution. In particular, firms should consider how their preferred resolution strategy would influence the movement of liquidity throughout the group.

¹ Basel Committee on Banking Supervision (2013) 'Standard 239 Principles for effective risk data aggregation and risk reporting' available at: <https://www.bis.org/publ/bcbs239.pdf>

Principle 3: Liquidity sources

Firms should be able to monitor and mobilise liquidity sources in resolution

6.59 To support resolvability, the Bank proposes that firms should have the ability to estimate the liquidity resources available to them in resolution, both if they were to enter resolution immediately, or at any point during a period of prolonged stress. When estimating the liquidity resources available to them, firms should take into account the impact of prevailing market conditions on the method and timing of asset monetisation.

6.60 The Bank proposes that firms should be able to identify unencumbered collateral¹ on a spot basis and project collateral balances, including how they evolve in a stress, building on work undertaken as part of recovery planning. The Bank proposes that firms should be able to identify important information relating to the availability of collateral, such as currency, asset class, eligibility for central bank facilities, and whether the collateral is pre-positioned or has become unencumbered as a consequence of the stress. They should also identify any legal and operational features that impact the management of collateral, including for transferring collateral across jurisdictions and across the ring-fence.² Reliable information on collateral will support the potential for firms to access secured funding.

6.61 The Bank proposes that firms should account for the assumptions made regarding intra-group liquidity needs, and for restrictions in transferring collateral across the ring-fence, in considering the resources available to be moved around the group. The assumptions around transferability are expected to be consistent with firms' preferred resolution strategy, and should remain sufficiently flexible.

Principle 4: Third-party facilities

Firms should be able to project access to, and usage of, third-party facilities

6.62 To support resolvability, the Bank proposes that firms should be able to project access to, and usage of, third-party facilities including central banks. Firms should consider the principles described by the FSB when conducting this analysis.

6.63 The Bank proposes that firms should consider their need, and ability, to monetise a wide range of collateral with third parties, including any potential need or ability to request liquidity from central banks. This should include an assessment of the timing of, and collateral suitable for, borrowing, and the availability of information a third-party would require to risk manage their exposures.

6.64 The Bank proposes that firms should be able to demonstrate that, subject to the agreement of third parties, if they were to be unable to meet their liquidity needs utilising their own resources, there is a reasonable likelihood that alternative facilities could be used in resolution.

Principle 5: Governance

Firms should embed the outcome of their analysis into their internal governance frameworks

6.65 The Bank proposes that firms' internal governance frameworks should facilitate effective and timely decision-making throughout the stylised resolution timeline, and should also support firms' existing management of liquidity risk.

¹ As referred to in Article 7.2 of Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013: an asset shall be deemed to be unencumbered where the credit institution is not subject to any legal, contractual, regulatory or other restriction preventing it from liquidating, selling, transferring, assigning or, generally, disposing of such asset via active outright sale or repurchase agreement within the following 30 calendar days. The following assets shall be deemed to be unencumbered: (a) assets included in a pool which are available for immediate use as collateral to obtain additional funding under committed but not yet funded credit lines available to the credit institution. This shall include assets placed by a credit institution with the central institution in a cooperative network or institutional protection scheme. Credit institutions shall assume that assets in the pool are encumbered in order of increasing liquidity on the basis of the liquidity classification set out in Chapter 2, starting with assets ineligible for the liquidity buffer; (b) assets that the credit institution has received as collateral for credit risk mitigation purposes in reverse repo or securities financing transactions and that the credit institution may dispose of.

² For firms in scope of ring-fencing, as set out in The Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) Order 2014.

6.66 To improve their resolvability, the Bank proposes that firms should integrate their capabilities for managing liquidity risk in resolution into their existing comprehensive liquidity management framework, alongside any existing legal entity-specific liquidity requirements, and internal stress tests.

6.67 The Bank proposes that firms should have internal governance arrangements in place for reporting liquidity risks in resolution to senior management, appropriate risk committees, and relevant authorities. The Bank proposes that firms should consider quantitative and qualitative indicators for such reporting. These indicators should ensure senior management are informed of firms' liquidity risks in resolution on a sufficiently forward-looking basis. Firms' consideration of appropriate indicators should take into account the sensitivities and key drivers of risk identified through the analysis described earlier in this section.

6.68 The Bank proposes that firms should consider the appropriate frequency with which they estimate and report their projected liquidity needs and resources to senior management. Specifically the Bank proposes that firms should have the ability and processes to increase the frequency of reporting in a period of stress.

Principle 6: Testing

Firms should participate in, and provide information for, tests of the above capabilities

6.69 The Bank proposes that firms should test the capabilities and governance arrangements set out in the previous five principles on a regular basis. The Bank proposes that firms should document the outcomes of these tests and review them, which may involve internal audit or third-party assurance providers. The tests should be conducted in a way that facilitates assurance by the Bank, the PRA, or a third party.

Questions

7. Do you agree with the objectives and principles set out in this section?
8. Do you agree with the proposed approach to determining which entities and currencies are considered material, and the proposed scope of analysis?
9. To what extent do you consider that firms' existing capabilities and arrangements already meet the proposed principles? Where are significant gaps likely to exist?
10. What do you consider the practical obstacles which firms would need to overcome in order to implement the proposed principles?
11. Are there any further liquidity risks or additional considerations which may arise in resolution which are not covered in this section? What approaches would firms take to mitigate the impact of these?
12. Do you consider that the proposed policy and appendix provide sufficient clarity on what is expected of firms?

7 Outcome: Continuity

Continuity of financial contracts in resolution (stays)

Objective: Firms suitably address the risk of early termination of financial contracts upon entry into resolution to limit any impact on their stability and the wider financial system (eg market contagion) that may otherwise occur as a result of resolution.

7.1 The purpose of this section is to set out the principles the Bank proposes firms should follow regarding their financial contracts in order to support their resolvability. It does not amend or replace the existing PRA Stay in Resolution rules (PRA Stay Rules).¹

Policy background

7.2 Consistent with the FSB's Key Attributes of Effective Resolution Regimes, the Banking Act includes provisions to ensure a firm's entry into resolution does not, by itself, trigger contractual early termination rights or other rights under the contract normally triggered by an 'event of default'. This general stay lasts as long as the firm in resolution continues to perform its substantive obligations under the contract. The Bank, as Resolution Authority, also has the power to suspend temporarily the failed firm's payment and delivery obligations, including preventing counterparties from terminating their contracts with the firm or enforcing security interests created by the firm (together 'termination'). This power can only apply for a short period – up to the end of the first business day following the day on which the instrument imposing a suspension is published – with any obligations which would have been due during the period of suspension due upon its expiry.

7.3 The Banking Act general² and temporary stay³ (jointly referred to as 'stay') powers apply to contracts governed by UK and EEA laws but may not be effective in relation to contracts governed by third country laws, as the courts in those countries may not recognise a stay imposed under UK legislation. Preventing third country law financial contracts being terminated when a firm enters resolution is therefore an important aspect of resolvability. The FSB issued guidance in 2015 to highlight the benefits of contractual and regulatory measures that ensure such third-country law contracts are not terminated on entry into resolution.

7.4 The PRA published the PRA Stay Rules in November 2015 requiring certain types of new financial contracts⁴ that are governed by the laws of third countries, and include termination rights or a security interest, to contain contractual terms requiring the counterparty to recognise the application of a stay imposed under the UK resolution regime. The PRA Stay Rules apply to all firms subject to the Stay in Resolution part of the PRA Rulebook.⁵ The Rules also apply in respect of non-UK subsidiaries of these firms if the subsidiary enters into financial contracts containing termination rights that are guaranteed or otherwise supported by a parent subject to the PRA Stay Rules. The Rules have been phased in and apply to all relevant third country law financial contracts entered into since 1 January 2017. As such, firms already have an obligation to satisfy themselves that they have addressed the risk of cross-border termination of these contracts as well as to maintain records of their financial contracts and to be able to make these available to the Resolution Authority on demand.

¹ 'PRA Stay Rules' refers to final rules contained in Bank of England (2015) 'Contractual stays in financial contracts governed by third-country law' PS25/15, available: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2015/ps2515>, and in the Stay in Resolution part of the PRA Rulebook

² S.48Z Banking Act 2009

³ S.70A – 70D Banking Act 2009

⁴ For the purposes of this chapter, references to 'financial contracts' should be understood to mean 'financial arrangement' as defined by the Stay in Resolution part of the PRA Rulebook.

⁵ CRR firms in the UK (banks, building societies and designated investment firms), UK financial holding companies and mixed financial holding companies in the UK.

7.5 Public sector action in relation to stays has been aided by private sector initiatives, led by the International Swaps and Derivatives Association (ISDA). This has included the development of protocols, including the ISDA 2015 Universal Resolution Stay Protocol (the ISDA Stay Protocol), under which the largest global firms have entered into a contractual commitment to respect a stay imposed by the home Resolution Authority of another adhering party on its entry into resolution, no matter the governing law of the contract. ISDA has also developed a separate ISDA Resolution Stay Jurisdictional Modular Protocol, providing market participants with a standardised means of complying with stay requirements as they are implemented. This provides for jurisdiction-specific Modules to be adopted in each relevant jurisdiction. Through these, the application of a stay can have a cross-border effect. A UK module to the Jurisdictional Modular Protocol was published in 2016 to help firms achieve compliance with the PRA Stay Rules.

Actions required during the stylised resolution timeline

7.6 The Bank considers that a credible resolution strategy requires that, once a firm enters resolution, its counterparties in financial contracts will not terminate their positions solely as a result of the firm's entry into resolution. It will therefore be important to ensure that the financial contracts a firm has entered into will not be terminated by their counterparties during resolution.

7.7 During pre-resolution contingency planning the Bank will need a clear understanding of the firm's exposure to financial market counterparties and the risk of early termination of financial contracts. This information will be used to assess the risks of implementing the resolution strategy (eg risk of disruption to the firm's trading book and potential avenues of contagion). In particular, in the contingency planning period, the firm may need to:

- (a) communicate to the Bank information about its main financial market counterparties;¹
- (b) provide assurance that financial contracts in scope of the PRA Stay Rules contain enforceable terms under which the counterparty agrees to respect a stay under the UK resolution regime;² and
- (c) communicate with financial market counterparties (as necessary) in the event counterparties receive information about the stress and/or the firm receives queries from counterparties about any risks to their contracts.

7.8 It will be critical that, during the 'resolution weekend', counterparties under financial contracts that are within scope of either the Banking Act stay or the PRA Stay Rules respect a stay under the UK resolution regime. This is to allow for successful execution of the bail-in and to reduce the likelihood of contagion. In particular, the firm will need to be able to:

- (a) communicate with counterparties regarding the general and any temporary stay; and
- (b) explain to counterparties that the consequence of resolution is that the operating company to which they are a counterparty will be stabilised and continue to operate, whilst resolution action is taken at the level of the resolution entity.

What is needed from firms in business-as-usual to support resolvability

7.9 In order to prepare for the above, firms need to meet the policy requirements for stays as articulated in the PRA Stay Rules. In particular, firms subject to the PRA Stay Rules are prohibited from creating a new obligation or materially amending an existing obligation within the scope of the Rules

1 The Bank notes that this is in line with the principle underpinning the EBA RTS on detailed records of financial contracts. The Bank also has the power under Article 58 of the Bank Recovery and Resolution No. 2 Order to require relevant persons to maintain records of financial contracts.

2 Ensuring financial contracts contain these terms, as described, is a requirement of the Stay in Resolution part of the PRA Rulebook and PS25/15.

unless the counterparty has agreed, in an enforceable manner, to abide by the UK's stay in resolution regime.

7.10 In assessing their resolvability, the Bank proposes that firms should also take into account the following principles. The Bank expects that firms will already have many of these capabilities in place already.

Principle 1: Compliance and Monitoring capabilities

7.11 The BRRD empowers resolution authorities to require a firm to maintain detailed records of financial contracts.¹ This is further specified by Commission Delegated Regulation (EU) 2016/1712.² At a minimum, firms should be able to quickly identify their main counterparties across their legal entities and gather key information about their financial contracts, including contract values (both notional and market).

Principle 2: Legal capabilities

7.12 As explained in SS42/15,³ firms are expected to satisfy themselves that they (and relevant subsidiaries) are in compliance with the PRA Stay Rules. Firms should therefore be able to demonstrate compliance with the PRA Stay Rules on demand by the Bank. For financial contracts in scope of the Rules that are remediated bilaterally in a bespoke manner (i.e. without using standard market protocols), firms should be able to demonstrate to the Bank that the counterparty has agreed in an enforceable manner that they will recognise a stay under the UK resolution regime.

Principle 3: Communication capabilities

7.13 Firms will need to be able to ensure a general or temporary stay is effective in order to support resolvability. Firms should therefore have feasible plans outlining how they would communicate effectively with counterparties both during pre-resolution contingency planning period (if necessary) and during resolution, in order to minimise the risk of early termination. In this regard the Bank proposes that :

- (a) firms should have a communications plan that can be used in pre-resolution contingency planning, **if necessary**, to assure counterparties that the firm will continue to meet its financial obligations towards them during the stress. This should be consistent with the communication plan included in the firm's recovery plan (See SS9/17 paragraph 2.85 and 2.86); and
- (b) firms should also have a communications plan that can be used once resolution has been declared and during the bail-in period. This plan should be both **proactive and reactive** to (i) inform counterparties that a general or temporary stay on early termination and security enforcement rights has been imposed and (ii) explain that the consequence of resolution is that the operating company to which they are a counterparty will be stabilised and continue to operate, while the terms of the resolution are finalised at the level of the resolution entity.

Principle 4: Understanding of the risk of early termination across a group

7.14 Groups may have financial contracts that are not governed by EEA law or subject to the PRA Stay Rules. To support resolvability, the Bank proposes that firms should have a clear understanding of any risk of early termination of these 'out of scope' financial contracts. This understanding is important in order for firms to know the full risk of early termination for their business and the implications of this for group resolution. The Bank proposes that firms should therefore be able to identify these financial contracts (including the notional and market amounts) and assess the risk of early termination. This

¹ Article 71(7) BRRD

² [Commission Delegated Regulation \(EU\) 2016/1712 of 7 June 2016 specifying a minimum set of the information on financial contracts that should be contained in the detailed records and the circumstances in which the requirement should be imposed](#)

³ Bank of England (2015) 'Contractual stays in financial contracts governed by third-country law', PRA Supervisory Statement 42/15 available at: <https://www.bankofengland.co.uk/prudential-regulation/publication/2015/contractual-stays-in-financial-contracts-governed-by-third-country-law-ss>.

applies with respect to financial contracts entered into by any entity subject to consolidated supervision by the PRA.

Principle 5: Governance and assurance

7.15 For resolvability purposes, the Bank proposes that firms should be able to explain to the Bank how their internal governance and assurance/testing ensures that they satisfy the PRA Stay Rules and the principles above.

Questions

13. Do you think that the proposed principles regarding the early termination of financial contracts are appropriate?

Operational continuity in resolution (OCIR)

Objective: Firms' operational continuity arrangements ensure continuity at the point of entry into resolution and permit post-stabilisation restructuring, to ensure the continuity of banking services and critical functions.

7.16 The purpose of this section is to set out the capabilities and arrangements that firms will need in respect of their operational continuity to support resolvability. It sets out the Bank's current thinking on OCIR in the context of achieving the outcomes of resolvability. The current thinking builds upon existing PRA requirements and supervisory expectations on operational continuity. This covers both: (1) the scope of functions included within OCIR arrangements (discussed in box 4 below); and (2) the expectations set out in SS9/16 in the context of the stylised resolution timeline. The PRA intends to review its existing OCIR policy in light of this thinking.

Policy background

7.17 The FSB 'Guidance on Arrangements to support operational continuity in resolution' published in August 2016 describes the concept of operational continuity as the means of supporting continuity of the critical shared services that are necessary to maintain the provision, or facilitate the orderly wind-down, of a firm's critical functions in resolution.¹

7.18 In the UK, OCIR is addressed by the Operational Continuity Part of the PRA Rulebook, and PRA SS9/16 (collectively the 'PRA OCIR Policy').² The PRA Rules require firms to ensure its operational structure facilitates effective recovery and resolution planning. The SS includes expectations for firms to ensure its operational arrangements facilitate recovery actions, orderly resolution and post-resolution restructuring within a reasonable time.

7.19 Box 4 outlines how the Bank is likely to consider firms' approach to OCIR in the future.

Box 4: Scope of operational continuity arrangements in the context of achieving the outcomes for resolvability.

Firms' compliance with PRA OCIR Policy is an important foundation for operational continuity in resolution and represents a significant step towards resolvability. These arrangements should be maintained and embedded in business-as-usual.

Since publication of the PRA rule and Supervisory Statement on Operational Continuity in Resolution in 2016, the Bank has developed its expected approach to use of the bail-in power. Where the bail-in power is used to stabilise a firm, authorities must ensure that, through restructuring, there is a reasonable prospect of returning the firm to long-term viability.

The Bank considers that the surest way to deliver the continuity objective described in this document is for most or all functions to continue through the resolution weekend and the bail-in period, and for there to be continuity to allow post-resolution restructuring. In addition to critical functions, other business lines may need to continue to support the franchise and future viability. Furthermore, the disruption of banking services to customers and counterparties may undermine the process of restoring viability, even if these banking services are not themselves critical functions (for instance, due to loss of confidence or customer attrition). Given the cause of failure or the wider economic circumstances cannot be known in advance, the Bank cannot foresee the best way to restructure the firm to deliver a viable business that protects the critical functions required for financial stability and to meet the Bank's objectives.

¹ FSB (2016) 'Guidance on Arrangements to Support Operational Continuity in Resolution' available at: <http://www.fsb.org/2016/08/guidance-on-arrangements-to-support-operational-continuity-in-resolution/>

² Bank of England (2016) 'Ensuring operational continuity in resolution' PRA Supervisory Statement SS9/16 available at: <https://www.bankofengland.co.uk/prudential-regulation/publication/2016/ensuring-operational-continuity-in-resolution-ss>

To achieve the outcomes of resolvability, firms may need to ensure that the scope of operational continuity arrangements supports the execution of their resolution strategy over the resolution weekend and facilitates post-resolution restructuring. For UK firms whose preferred resolution strategy is bail-in, this may mean that the scope of operational continuity arrangements would need to support continuity of most or all functions in order to ensure continuity of critical functions and support restructuring. This may require arrangements to ensure continuity of a broader set of functions than solely those identified as critical.

In addition, given the Bank's responsibility as a home resolution authority for UK-based international banking groups, the Bank may need to ensure firms' operations would be able to continue in other material jurisdictions without destabilising the group resolution strategy.

Under the Operational Continuity Part of the PRA Rulebook, firms are required to ensure operational arrangements for continuity of critical services. As noted in the PRA CP, the PRA is intending to review the PRA OCIR Policy, and in doing so will consider the Bank's current thinking as set out above, as well as experience from firms' implementation. The outcome of the PRA's review cannot be known in advance, and would be subject to usual processes including consultation.

In the RAF cycle in 2020, firms will be assessed, and should assess themselves against, how their compliance with current PRA OCIR Policy is helping them towards ensuring continuity in resolution. The Bank would welcome firms' engagement and comments on their readiness to deliver a broader scope of operational continuity than the existing PRA OCIR policy, in line with the stated continuity outcome, but this will not be a formal part of the Bank's assessment in 2020. Clarification of how the Bank will assess firms' submissions beyond 2020 will be communicated following the review of PRA OCIR policy.

Actions required during the resolution timeline

7.20 This section discusses the expectations set out in SS9/16 in the context of the stylised resolution timeline described in Chapter 4, and BAU implementation of OCIR arrangements, in line with the SS, to deliver this.

7.21 During the pre-resolution contingency planning phase, planning will be needed to ensure there will be minimal change to a firm's operations over the 'resolution weekend'.

- (a) Pre-resolution contingency planning: As part of contingency planning, firms will need to confirm operational readiness for the 'resolution weekend'. This includes, but is not limited to, providing:
- detailed, robust, and readily available information on the firm's operational arrangements, including staff required to ensure continuity;
 - a plan for the firm's communications to their stakeholders; and
 - an overview of key risks to operational continuity and potential mitigating actions.
- (b) Bail-in period: During this time, the firm will need to ensure continuity of critical services as planned, including uninterrupted service provision from both internal and external parties, and people. Communications with key stakeholders and suppliers will be important in delivering this, and accessing pre-positioned liquid resources may be needed for the payment of services. The firm will also need to provide information on a timely basis to support the development of the business reorganisation plan.
- (c) Post-resolution restructuring: As described above, firms will need to ensure continuity of critical services and adequate information to support restructuring throughout the implementation of the business reorganisation plan. This may include identifying operational interdependencies and providing robust information on cost arrangements and service level agreements.

What is needed from firms in business-as-usual to support resolvability

7.22 Under the PRA OCIR Policy, firms are already required to implement and maintain capabilities to ensure operational continuity in line with the expectations set out in the OCIR Supervisory Statement.¹ As set out in SS9/16, this includes the PRA expectations in relation to:

- facilitating recovery and resolution;
- outsourcing;
- financial resilience;
- operational resilience;
- contractual service provisions;
- service-level agreements;
- access to operational assets;
- charging structures;
- governance arrangements; and
- the prevention of preferential treatment.

7.23 In particular, the Bank proposes to focus on the following ways in which a firm's OCIR arrangements support resolvability:

- providing rapid access to the information needed to identify potential risks resulting from entry into resolution, and to develop the firm's business reorganisation plan. The service catalogue is the means by which the information mapped by firms is gathered and can be accessed reliably in a stressed scenario for resolution planning purposes.² This could be achieved through a dynamic and searchable service catalogue so that information is readily available. It will also be important that information is kept up to date. Firms should also ensure the catalogue includes the information above for all functions and services captured in the mapping;
- helping to facilitate timely divestments of entities or business lines as part of post-resolution resolution restructuring. To support resolvability, it may be important that a firm's OCIR arrangements enable the timely provision of information or documentation to a potential acquirer. It will also be important that the firm can develop transitional service agreements at short notice (as expected under paragraph 10.1 of the SS);
- ensuring that divestments do not unduly disrupt the viability of the rest of the business. This includes operational disruptions, as well as financial disruptions. To support resolvability, it will be important that adequate financial resources are available to fund service provision throughout resolution and restructuring, in line with PRA expectations on financial resilience.

Questions

14. In order to be resolvable, what broader set of functions and services should operational continuity apply to?

15. What capabilities do firms need in respect of operational continuity to deliver resolvability?

¹ Ring-fenced banks also need to consider Section 9 of the Ring-fencing rulebook and Chapter 8 of SS 8/16 to ensure continuity of core services.

² Such mapping is part of meeting the expectations on facilitating recovery and resolution under SS 9/16.

Continuity of access to Financial Market Infrastructures (FMIs)

Objective: Firms are able to take all reasonable steps available to maintain continued access to clearing, payment, settlement, and custody services in order to keep functioning in resolution (recognising that providers of these services may retain a degree of discretion over their ability to terminate a firm's membership).

7.24 The purpose of this section, and the policy proposed in the Appendix, is to set out what the Bank proposes firms will need to do to ensure that they are able to maintain access to FMIs in resolution to be considered resolvable. It includes principles on the capabilities the Bank proposes that firms will need to have in place, which are consistent with the FSB Guidance on Continuity of Access to FMIs.¹ While these principles have not been consulted on previously by the Bank, the Bank expects that firms' existing capabilities will deliver much of what is required.

7.25 For consultation purposes, proposed policy wording is set out in the Appendix.

Policy background

7.26 The FSB Guidance on Continuity of Access to FMIs was published on 6 July 2017. The Guidance sets out the measures and arrangements that FMI service providers, firms and authorities should consider in order to support continuity of access to FMI services in resolution.

7.27 In general terms, BRRD² prevents EU FMIs from using resolution as an automatic event of default which can be used as a ground for terminating a firm's membership. The same is true of some other jurisdictions, although a foreign jurisdiction's resolution actions may or may not be recognised. In either case, FMIs typically maintain discretion over increasing requirements on members both in the lead-up to and during the execution of a resolution strategy. Discretion is important for maintaining the stability of the FMI; but it is also important that firms engage with FMIs to understand how each individual FMI is likely to exercise their discretion.

7.28 While the Bank is proposing specific policy standards for ensuring continuity of access to FMIs for the first time in this CP, it has asked some firms (where appropriate) to consider how they can implement the FSB guidance as part of the annual resolution planning process. Moreover, the recently released UK authorities' joint discussion paper³ on operational resilience also includes relevant considerations for firms when they consider what might hinder maintaining continued access to FMIs in resolution.

7.29 The FSB guidance also requires actions by FMIs and FMI intermediaries. While implementation of the FSB guidance is ongoing with FMIs and FMI intermediaries globally, if an FMI or FMI intermediary the firm uses does not yet follow the FSB guidance, the Bank considers that it should still be possible for the firm to develop a reasonable understanding of how the relevant FMI might exercise its discretion (for example by increasing margin requirements or frequency of reporting). This should include an understanding of how firms could expect to be treated by the FMI and whether there are any measures they could take to maintain access during resolution.

7.30 There are firms within the scope of this CP that also act as FMI intermediaries to other firms. This CP does not cover the measures and arrangements that FMI intermediaries should take to help facilitate FMI service users' continued access to FMI services should they become subject to resolution

1 FSB (2017) 'Guidance on Continuity of Access to Financial Market Infrastructures ('FMIs') for a Firm in Resolution' available at: <http://www.fsb.org/wp-content/uploads/P060717-2.pdf>

2 Article 68 of the Bank Recovery and Resolution Directive (2014/59/EU) (BRRD)

3 Bank of England, Financial Conduct authority (2018) 'Building the UK financial sector's operational resilience, PRA Discussion Paper 1/18, FCA Discussion Paper 18/04 available at: <https://www.bankofengland.co.uk/prudential-regulation/publication/2015/contractual-stays-in-financial-contracts-governed-by-third-country-law-ss>

actions. However firms acting in that capacity should be aware of the FSB guidance and the Bank will seek alternative ways of addressing this.

Actions required during the stylised resolution timeline

7.31 Throughout the stylised resolution timeline there are a number of actions that could be impeded, should access to FMIs not be maintained. For example, the ability to wind down a trading book may rely upon access to a derivative CCP.¹ In addition, access to a payment system may be necessary to allow firms to make payments to their customers, creditors and staff.

7.32 To achieve this, the Bank considers that firms will need to understand the specific requirements that FMIs may place upon them as part of resolution planning and in contingency planning ahead of, and during, resolution. Firms will need to understand what communication, reporting requirements or additional collateral or liquidity may be required by different FMIs at different points in the resolution timeline. This will vary across FMIs and there may be different degrees of certainty around precisely what actions FMIs may take. However the Bank considers that it is important for firms to be aware of additional requirements that may be placed upon them and have systems in place that can interact with FMIs at the appropriate frequency to maintain access to FMIs.

7.33 This information may also need to be provided to the Bank during the contingency planning phase (and the Bail in Administrator once appointed) so that the relevant overseas authorities can be contacted, should contractual recognition of resolution actions not be provided for. This information may also be needed to inform decisions that are necessary, as part of restructuring the firm, following resolution.

What is needed from firms in business-as-usual to support resolvability

7.34 To support their resolvability, the Bank proposes that firms will need to have capabilities in line with the following principles. The depth and type of capabilities the Bank proposes are required to maintain access to FMIs will depend on the nature of a firm's business model. Firms with a simpler business model are likely to have fewer FMI or FMI intermediary relationships and, therefore, the capabilities the Bank proposes that they develop will be commensurate with their business activity. In many cases, the capabilities described in this section also form part of firms' existing risk management practices or business as usual interactions with FMIs.

Principle 1: Identifying FMI relationships

7.35 In business-as-usual the Bank proposes that firms should be able to identify all of the relationships they have with FMIs, including those that are maintained via an intermediary.

7.36 It is common for FMIs to include cross-default clauses in their contractual terms, therefore a firm breaching the contractual or membership terms of any FMI may trigger wider access problems to other FMIs. The Bank therefore considers that identifying all FMI relationships and interdependencies will be important for addressing this barrier to resolvability.

7.37 The Bank proposes that firms should know the membership requirements (including operational, financial and capital requirements) for all of the identified FMIs, and how these may change, when the firm comes under financial stress, and specifically if it were subsequently put into resolution. This should include knowledge of how to communicate with each FMI at a time of financial stress and ensuring that the firm is able to meet any additional information requirements that may be required to maintain access to that FMI.

¹ The PRA does not yet have a specific policy on solvent wind-down; however, the PRA and Bank are developing proposals for capabilities to execute a solvent wind-down, including through solvent wind-down exercises with a number of UK banks and G-SIBs with operations in the UK.

Principle 2: Identifying FMIs that provide critical FMI services

7.38 The Bank proposes that firms should develop a methodology to determine which of the previously identified FMIs and FMI intermediaries provide critical FMI services to them.

Box 5: FSB description of 'critical FMI services'

Clearing, payment, securities settlement and custody activities, functions or services, the discontinuation of which could lead to the collapse of (or present a serious impediment to the performance of) one or more of the firm's critical functions. They include related activities, functions or services whose on-going performance is necessary to enable the continuation of the clearing, payment, securities settlement or custody activities, functions or services. Critical FMI services are identified in the course of the resolution planning for a firm and may be provided to a firm either by an FMI, or through an FMI intermediary.

7.39 For resolvability purposes, the Bank proposes that firms should be able to identify all FMIs and FMI intermediaries that provide critical FMI services to them and describe for each FMI and FMI intermediary:

- (a) the critical FMI service provided;
- (b) whether the access is direct or indirect;
- (c) the jurisdiction where the critical FMI service provider is incorporated; and
- (d) the governing law under which the legal relationship between the firm and the FMI operates and whether this framework supports recognition of the Bank's resolution regime.

Principle 3: Mapping and Assessment of FMI relationships

7.40 For the purposes of resolvability, the Bank proposes that firms should map relationships with critical FMI service providers to:

- critical functions;¹
- critical services;² (where the firm provides access to FMIs or FMI intermediaries as a service to other legal entities within the group)
- business lines;
- legal entities; and
- supervisory, resolution or any other competent authorities for the FMI by jurisdiction.

7.41 Where a firm assesses that the contractual relationship with the critical FMI service provider may not facilitate continuity of access during resolution; the Bank considers that the firm should, if appropriate, consider putting in place arrangements with an alternative provider. Where this decision has been made, the Bank proposes that firms should be able to provide an assessment of how credible the alternative arrangement is.

¹ 'Critical functions' has the meaning in section 3(1) and (2) of the Banking Act 2009

² As referred to in Commission Delegated Regulation 2016/778: Critical services should be the underlying operations, activities and services performed for one (dedicated services) or more business units or legal entities (shared services) within the group which are needed to provide one or more critical functions. Critical services can be performed by one or more entities (such as a separate legal entity or an internal unit) within the group (internal service) or be outsourced to an external provider (external service). A service should be considered critical where its disruption can present a serious impediment to, or completely prevent, the performance of critical functions as they are intrinsically linked to the critical functions that an institution performs for third parties. Their identification follows the identification of a critical function.

7.42 In addition to measures to maintain access to FMIs in resolution for the identified critical FMI service providers, the Bank proposes that firms maintain an inventory of the actions that providers of critical FMI services may take to terminate or suspend access, should the membership requirements not be met, and the consequences of those actions for the firm in resolution. Where possible, following discussion with the critical FMI service provider, the Bank proposes that firms should consider the likelihood and circumstances in which these actions may be taken.

Principle 4: Usage of FMIs and FMI Intermediaries

7.43 The Bank proposes that firms should maintain a record of transaction data that details their relevant positions and usage of FMIs and FMI intermediaries. These records should be provided to the Bank during pre-resolution contingency planning to assist the Bank to understand firms' obligations to and patterns of usage at the FMI or FMI intermediaries.¹

7.44 The Bank proposes that firms should consider how relevant information could be provided to the Bank or BIA upon request, including but not limited to:

- (a) collateral pledges;
- (b) types of collateral accepted by each FMI;
- (c) historical daily values of margin required at applicable FMIs;
- (d) historical daily values of gross payments sent/received; and
- (e) an inventory of material upcoming settlement and delivery obligations by value and type of asset.

7.45 The Bank proposes that firms should be able to assess the anticipated extended collateral or liquidity requirements that providers of critical FMI services or other providers may place on them and how they would expect to meet those requirements, building on existing risk management systems. This should inform the assessment of potential liquidity requirements referred to in the 'Funding in Resolution' section of this chapter and the associated SoP in the Appendix.

7.46 In estimating these anticipated extended requirements (including on an intra-day basis and taking into account potential prefunding requirements), the Bank proposes that firms should be able to consider the aggregated volume of business or activity that they would expect to maintain with each critical FMI service provider over the course of the stylised resolution timeline set out in Chapter 4. Firms should consider, in particular, the potential impact of their clients' behaviour in determining this amount.

Principle 5: Contingency planning

7.47 The Bank proposes that firms should use the information collected according to Principles 1-4, following engagement with FMIs, to draw up and update a contingency plan describing how they would maintain access to critical FMI service providers throughout the stylised resolution timeline. This should include a list based upon a full range of plausible actions that could be taken by each critical FMI service provider, and the defensive actions the firm has identified for mitigating them. For example the firm's capacity to:

- preposition liquidity to meet an expected increase in membership requirements at a particular payment system;

¹ The maintenance and provision of such records must be performed in accordance with applicable law.

- wind down their own activities¹ or client services to reduce liquidity requirements to a particular CCP;
- provision for higher margin requirements at a CCP, should the firm be placed in resolution; and
- meet heightened reporting or monitoring requirements for specific payment systems.

Questions

16. Do you agree with the proposal that firms should engage with all of their providers of critical FMI services to understand how those FMIs and FMI intermediaries will use discretion in resolution? If not, please explain what limitations firms may face in doing so.
17. Should firms put in place back up providers of critical FMI services as a matter of course? What can a firm do in order to ensure that such relationships would be a credible alternative in resolution?
18. Do you consider that firms have enough information to meet Principle 4 and make credible predictions about client behaviour should the firm enter resolution?
19. Is it sufficient for firms to only consider defensive actions against a full range of plausible actions that providers of critical FMI services may take should the firm enter resolution? Or should firm's contingency plans extend to all possible measures critical FMIs would be able to take?
20. To what extent do firms' existing capabilities and arrangements already meet the proposed principles? Where in particular are significant gaps likely to exist?
21. Do you consider that the proposed policy and appendix provide sufficient clarity on what is expected of firms?

¹ The PRA does not yet have a specific policy on solvent wind-down; however, the PRA and Bank are developing proposals for capabilities to execute a solvent wind-down, including through solvent wind-down exercises with a number of UK banks and G-SIBs with operations in the UK.

Restructuring

Objective: Firms are able to identify, develop and execute post-stabilisation restructuring options on a timely basis to ensure that, following entry into resolution, they can (i) return to fulfilling relevant regulatory requirements on a forward-looking basis, and (ii) return to a viable business model that is sustainable in the long-term.

7.48 The purpose of this section, and the policy proposed in the Appendix, is to set out the restructuring capabilities that the Bank proposes certain firms should have to support resolvability. It includes proposed new principles on what will be needed for resolvability, though these draw heavily on existing policies published elsewhere. Restructuring is only relevant to firms following the application of bail-in tools. Accordingly, the Bank proposes that this section, and the new principles included in it, only applies to firms whose preferred resolution strategy is bail-in.

7.49 For consultation purposes proposed policy wording is set out in the Appendix.

Policy background

7.50 The FSB has identified post-stabilisation restructuring as a key aspect of resolution planning in its Key Attributes of Effective Resolution Regimes for Financial Institutions.¹ In its guidance on arrangements to support operational continuity in resolution,² the FSB defines 'restructuring' as the period in which a firm is restructured to create a viable business model, for example, by divesting or winding down legal entities or business lines.

7.51 The Banking Act reflects the importance of post-stabilisation restructuring. A firm's directors (or a BIA appointed by the Bank) will be required to draw up and submit a business reorganisation plan within a specified period of time. This business reorganisation plan must include measures aiming to restore the long-term viability of the firm within a reasonable timescale, and a timetable for the implementation of those measures. It must meet the requirements set out in Commission Delegated Regulation (EU) 2016/1400,³ which specifies that a successful reorganisation strategy should follow a comprehensive analysis of the firm to be reorganised, its strengths and weaknesses, as well as the relevant markets where that firm operates and the risks and opportunities they present. The EBA has also published Guidelines on the minimum criteria to be fulfilled by a business reorganisation plan.⁴

7.52 The Bank has not published specific policy on post-stabilisation restructuring. But there are a number of policies and initiatives in the UK that require firms to undertake actions in business-as-usual to support authorities in the restructuring objective.

7.53 Ring-fencing is one such policy. Certain UK banking groups are required to ring-fence their core activities under the Financial Services and Markets Act 2000 (FSMA) as amended by the Financial Services (Banking Reform) Act (2013). Ring-fencing mandates the structural separation of the ring-fenced bank from the non-ring-fenced bank. While the Bank envisages that the bail-in tool will be applied to a single entity within a group, and in general that entity would be the top financial holding company of the group, ring-fencing would facilitate the reorganisation of a firm by providing resolution authorities with additional options to minimise any disruption to the continuity of core services in the United Kingdom.

7.54 In addition to ring-fencing, the set of existing relevant policies include:

1 FSB (2014) 'Key Attributes of Effective Resolution Regimes for Financial Institutions' available at: http://www.fsb.org/wp-content/uploads/r_141015.pdf

2 Bank of England (2016) 'Ensuring operational continuity in resolution' PRA Supervisory Statement SS9/16 available at: <https://www.bankofengland.co.uk/prudential-regulation/publication/2016/ensuring-operational-continuity-in-resolution-ss>

3 Commission Delegated Regulation (EU) 2016/1400

4 Draft Regulatory Technical Standards and Guidelines on business reorganisation plans under Directive 2014/59/EU (BRRD). These relate to: awareness and commitment; credibility; appropriateness of the reorganisation strategy and measures; consistency; and monitoring and verification. The guidelines also cover coordination between resolution authorities and competent authorities.

- (a) *Recovery planning*. This is addressed in the UK by PRA SS9/17 'Recovery Planning', published in December 2017,¹ and the Recovery Planning Part of the PRA Rulebook. Work done by firms on recovery and resolution should be consistent and viewed as complementary. As part of their recovery planning, firms should have developed a number of recovery options, and should maintain and test their recovery plans. Governance of firms' recovery plans should be clearly defined and firms should have effective processes to identify and report the risks affecting their ability to recover. Some recovery options developed for PRA recovery planning, such as a sale of assets, may be available as restructuring options for a firm in resolution.
- (b) *Operational Continuity in Resolution*. This is addressed in the UK in the PRA's OCIR policy. Firms' arrangements to meet OCIR requirements should facilitate and can inform post-stabilisation restructuring, such as objective service level agreements that help identify operational interdependencies and clear and transparent charging structures that aid decision-making in restructuring. As part of OCIR, firms are expected to structure themselves so that they can execute post-stabilisation restructuring within a reasonable time (see Chapter 7).
- (c) *Valuation capabilities*. This is addressed in the UK by the Bank's Valuation SoP and the accompanying guidance, published in November 2018.² To ensure that the valuations take proper account of all losses, firms should have data and information on post-stabilisation restructuring options to enable the financial implications of these to be assessed through the valuation process (see Chapter 6).

7.55 A further relevant initiative is solvent wind-down. The PRA does not yet have a specific policy on solvent wind-down. However, it is an important part of recovery and resolution planning as it may represent a recovery option or post-stabilisation restructuring option for firms with derivative or other trading book businesses. The PRA (together with the Bank) is developing proposals for capabilities to execute a solvent wind-down, including through solvent wind-down exercises with a number of UK banks and non-UK G-SIBs with operations in the UK. The PRA will communicate these proposals in due course.

Actions required during the stylised resolution timeline

7.56 During pre-resolution contingency planning:

- (a) the Bank will need an initial evaluation of what restructuring the firm would undergo should it enter resolution. There are two key reasons for this. First, in assessing whether a bail-in resolution strategy is feasible, the Bank must consider whether, following a bail-in, a firm can be restructured in a way that returns it to long term viability.³ Second, the intended restructuring of the firm will inform the assessment of recapitalisation needs of the firm and its material subsidiaries. This will in turn inform the extent of resolution action needed, as well as the use of internal MREL resources; and
- (b) the firm would need to support this initial evaluation by providing relevant information and analysis on a timely basis. This could include analysis of the firm's recovery options, mapping and documentation of service provision in the firm and – where relevant – the firm's plans to carry out a solvent wind-down of its trading activities. It could also include information and analysis to support the valuations carried out by an independent valuer.

7.57 During the bail-in period:

¹ Bank of England (2017) 'Recovery planning', PRA Supervisory Statement SS9/17 available at: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/supervisory-statement/2017/ss917.pdf>

² Bank of England (2018) 'Guidance on valuation capabilities to support resolvability': available at <https://www.bankofengland.co.uk/letter/2018/guidance-on-valuation-capabilities-to-support-resolvability>

³ Banking Act 2009 (and associated legislation)

- (a) reflecting statutory requirements, the bail-in administrator or the directors of the firm will be required to draw up and submit a business reorganisation plan within a specified period of time. The Bank envisages that this plan would draw on the firm's work on post-stabilisation restructuring carried out during pre-resolution contingency planning;
- (b) after the business reorganisation plan is submitted, firms would also need to continue providing information and analysis to support the assessment of the business reorganisation plan and any further development of restructuring planning needed to implement post-stabilisation restructuring; and
- (c) if the business reorganisation plan is approved by the Bank (in agreement with the PRA and FCA), the bail-in administrator, or the directors of the firm, would be expected to commence implementation of the business reorganisation plan as soon as possible. While the timing of the restructuring process cannot be known in advance, it is likely that restructuring would continue once the bail-in period is complete.

What is needed from firms in business-as-usual to support resolvability

7.58 To support resolvability, the Bank proposes that firms should have the capability to restructure on a timely basis after any bail-in resolution. Firms should provide assurance in part by leveraging any relevant work done on recovery planning and solvent wind-down. A broad range of restructuring options and a wide and comprehensive set of capabilities to execute them will be needed because the exact restructuring needs for a firm in resolution will not be known beforehand.

Principle 1: identifying restructuring options

7.59 The Bank proposes that firms should be able to identify options for post-stabilisation restructuring. Some recovery options developed to meet PRA recovery planning requirements may be also available as post-stabilisation restructuring options for a firm in resolution. Firms' identification of options for post-stabilisation restructuring should be in addition to the identified recovery options they submit for recovery planning. For example, some options that could not be used in recovery, as the expected benefits would not be realised in a sufficiently short period of time, may be available in restructuring.

7.60 The Bank proposes that firms should identify options for post-stabilisation restructuring using the same criteria as that for identifying recovery options as set out in SS9/17, but applying it to the context of post-stabilisation restructuring, and with the following additions:

- (a) firms should be able to consider the circumstances under which certain recovery options identified under the PRA's recovery planning requirements will or will not be available in resolution. For example, some recovery options would be undertaken in any attempt to recover and so would no longer be available once the firm is in resolution; and
- (b) firms should be able to identify whether the recovery options identified under the PRA's recovery planning requirements would be appropriate as restructuring options in resolution. For example, some recovery options could not address issues that may arise in the event of a resolution. As part of this analysis, firms should be able to identify whether solvent wind-down could represent a recovery option or a restructuring option in resolution or both.

7.61 The Bank proposes that firms should be able to support the Bank in assessing their restructuring options during resolution or pre-resolution contingency planning. Firms should consider how capabilities developed for other purposes (such as recovery planning, valuations, OCIR and – where relevant – solvent wind-down) would be used for this purpose.

Principle 2: capabilities to execute restructuring options

7.62 To support resolvability, the Bank proposes that firms should be able to describe their capabilities for executing the identified post-stabilisation restructuring options and set out the types of firm failure for which these options would be appropriate. Firms should be able to describe capabilities for executing post-stabilisation restructuring options using the same criteria as that for describing and developing preparations for executing recovery options as set out in SS9/17, but applying it to the context of post-stabilisation restructuring. The abilities described above should have scope to go beyond what is needed for to the description of their preparations for executing recovery options that that they submit for recovery planning.

7.63 The Bank proposes that firms should be able to assess whether they have developed capabilities necessary to execute the restructuring options identified. Firms should undertake testing of their capabilities for executing restructuring options using the same criteria as that for firms' assessment of capabilities for executing recovery options as set out in SS9/17, but applying it to the context of post-stabilisation restructuring.

Questions

22. This CP does not propose for firms to identify restructuring options and develop associated capabilities beyond what is expected under the PRA's Supervisory Statement on recovery planning. Are there situations where it might be appropriate for restructuring options and associated capabilities to go beyond what is expected under the PRA's Supervisory Statement on recovery planning?
23. To what extent do firms' existing capabilities and arrangements already meet the proposed principles? Where in particular are gaps likely to exist?
24. Do you consider that the proposed policy and appendix provide sufficient clarity on what is expected of firms?

8 Outcome: Coordination and Communication

Management, governance and communications

Objective: Firms are able to – during the execution of a resolution – ensure that their key roles are adequately staffed and incentivised, that their governance arrangements provide effective oversight and decision making, and that they deliver timely and effective communications.

8.1 The purpose of this section, and the policy proposed in the Appendix, is to set out the capabilities that the Bank proposes firms will need with respect to management, governance and communications to support resolvability. It includes proposals on the capabilities and arrangements firms should have in place to operationalise effective management, governance and communications in resolution. This section does not amend or supersede relevant existing PRA policies and standards, which should be assumed to continue to apply in resolution. Instead, it proposes principles for firms' capabilities to address the specific challenges that resolution may present.

8.2 The Appendix to this CP sets out proposed policy wording for consultation purposes.

Policy background

8.3 Effective management, governance, and communications are crucial to enable an effective resolution. Inclusion of these matters into the Bank's resolvability assessment and resolution plans is consistent with existing legal obligations.¹

8.4 In June 2018, the FSB published 'Principles on Bail-in Execution'.² This is the first set of international standards on the subject of management, governance and communications in resolution. The principles are addressed primarily to resolution authorities rather than firms, though for the Bank to implement these principles effectively it will need firms to have adequate capabilities and arrangements in place. The FSB principles have therefore informed the proposals set out below.

8.5 Many of the policies that apply to firms in going-concern regarding management, governance and communications will also largely apply in resolution. The Bank considers that the following PRA Rules and expectations will be of particular relevance:

- (a) the PRA's Fundamental Rules, which, among other areas, require firms to organise and control their affairs responsibly;
- (b) the PRA's Senior Managers and Certification Regime (SM&CR), which provides a framework for identifying key decision-makers in a firm, allocating clear responsibilities to them, and holding them accountable;³
- (c) the PRA's Remuneration Rules, which seek to align incentives with performance and prudent risk-taking;⁴

¹ Part 6 of the No.2 Order

² FSB (2018) 'Principles on Bail-In Execution' available at: <http://www.fsb.org/2018/06/principles-on-bail-in-execution-2/>

³ Bank of England (2018) 'Strengthening individual accountability in banking' PRA Supervisory Statement SS28/15 available at: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/supervisory-statement/2018/ss2815update>

⁴ www.praRulebook.co.uk/Rulebook/Content/Part/292166/25-07-2018

- (d) the PRA's Ring-fencing Rules which require a ring-fenced body to, in carrying on its business, ensure that it is able to take decisions independently of other members of its group;¹
- (e) PRA SS 5/16 'Corporate governance: Board responsibilities' which sets out the PRA's expectations for boards;²
- (f) the PRA's OCIR Policy, which cover the need for continuity of governance and staff involved in the provision of critical services; and
- (g) other PRA Rules dealing with systems and controls, including business continuity, contingency planning,³ and outsourcing.⁴

Actions required during the stylised resolution timeline

8.6 Once a firm is placed into resolution, the Bank and any bail-in administrator (BIA) it appoints will have a bespoke role in the management of the firm, its decision making, and its communications. Certain key decisions will likely be reserved for the BIA and/or Bank. The Bank and the BIA will however need to rely heavily on the firm's arrangements and capabilities with respect to management, governance, and communications.

Management in resolution

8.7 Management will be important to ensuring that the firm is run effectively in resolution. This includes running the firm's ongoing business-as-usual activities as needed, as well as carrying out actions specific to resolution and restructuring (such as preparing a business reorganisation plan). Some key decision makers (including individuals performing Senior Management Functions (SMFs) and key certification functions) may have left or been replaced in the lead-up to resolution. Entry into resolution itself may also prompt further departures, or entail the removal of certain individuals deemed culpable or accountable for the firm's failure.⁵ Furthermore, the existing incentive structures of key employees may not be aligned with the objectives of the resolution. Authorities, and the firm itself, may therefore need to take steps prior to and during resolution to ensure that the firm's boards, SMFs and other critical job roles are adequately staffed and incentivised.⁶

Governance in resolution

8.8 Effective governance (i.e. decision-making and oversight arrangements) will be crucial to ensuring that the firm is run appropriately in resolution. Where such arrangements had proven ineffective, they may need to be amended or replaced in resolution, potentially including more direct involvement from authorities and/or a BIA. Decision making and conflict resolution may need to be expedited and streamlined depending on the urgency of the situation at hand. Decision making would need to have due regard to the Bank's statutory resolution objectives, involving the BIA and authorities as necessary. Furthermore, relevant information would need to be escalated through the organisation (including to the BIA and authorities where relevant) in order to support effective oversight and decision making.

Communications in resolution

8.9 Effective communications will be crucial to promoting confidence and reducing uncertainty during resolution and any subsequent restructuring. While authorities will have a part to play in delivering and co-ordinating their own communications, there remains a significant role for the firm in delivering clear,

¹ Certain UK banking groups are required to ring-fence their core activities under the Financial Services and Markets Act 2000 (FSMA) as amended by the Financial Services (Banking Reform) Act (2013)

² Bank of England (2018) 'Corporate governance: Board responsibilities' PRA Supervisory Statement SS5/16 available at: <https://www.bankofengland.co.uk/prudential-regulation/publication/2016/corporate-governance-board-responsibilities-ss>.

³ <https://www.praRulebook.co.uk/Rulebook/Content/Chapter/214138/25-07-2018>

⁴ <https://www.praRulebook.co.uk/Rulebook/Content/Part/214147/25-07-2018>

⁵ The Bank has the power to remove and appoint directors at the point of bail-in under section 48N of the Banking Act.

⁶ The Bank has the power to vary or terminate the service contract of a director or senior manager under section 48N(1) of the Banking Act. The Bank may delegate this power to a BIA. Note that the PRA's 'early intervention powers' also enable it to (among other things) require members of senior management to be removed.

targeted communications. The firm's responsibilities will include communications to internal stakeholders (including staff and contractors) and external stakeholders (including customers, counterparties and investors). To promote confidence, it will be important that these communications are delivered on a timely basis, using effective communications channels, and containing relevant and consistent content.

What is needed from firms in business-as-usual to support resolvability

8.10 The Bank proposes that firms will need to have capabilities in place in business-as-usual that meet the principles set out below. Capabilities should be in place across a firm's group wherever they would be needed to ensure the orderly resolution of the group as a whole.

8.11 Firms are encouraged to draw upon the arrangements they have in place for other purposes, including the PRA Rules mentioned above. Consideration should be given to the specific challenges that may arise in resolution, including the depth and breadth of the stress event, the urgency for effective decision making, the increased demands on managerial resource, the heightened risk of loss of confidence in the firm, and the heightened role of authorities.

8.12 The principles proposed here are only applicable to firms insofar as they are relevant to firms' preferred resolution strategy. In particular, aspects of the principle regarding the role of the Bank and a BIA in the management and oversight of a firm are only relevant to firms whose preferred resolution strategy is Bank-led bail-in.

Principle 1: Management in resolution

8.13 The Bank proposes that firms should have capabilities to ensure that critical job roles would be suitably staffed and incentivised in resolution.

8.14 Firms should identify in business-as-usual the job roles that are likely to be critical in any resolution situation. Firms should also have a process for identifying, during pre-resolution contingency planning, further job roles that would be critical based on the particular circumstances at hand. For resolvability purposes, critical job roles are those roles where a vacancy in resolution may have a material negative impact on the firm's decision-making, restructuring and valuations capabilities, and the continuity of critical services. A role may be deemed critical because of the responsibilities ascribed to that role, or because it entails expertise or institutional knowledge that may be otherwise unavailable to the firm.

8.15 Firms' approaches to identifying critical job roles should link to or draw upon other policies and processes such as resolution packs, SM&CR, OCIR, business continuity, succession planning, and remuneration (eg the identification of Material Risk Takers).¹ Particular focus should be given to identifying critical job roles in resolution that are not considered under these other policies and processes, such as those related to restructuring and valuations capabilities.

8.16 Firms should maintain a list of critical job roles. This list should summarise the responsibilities and expertise associated with each role. Firms should also be able to rapidly compile during pre-resolution contingency planning, relevant information on these and other identified critical job roles. This includes, but is not limited to, information on salaries, notice periods, succession plans, regulatory approvals (both UK and overseas), and the assessed impact risks of staff loss.

8.17 Firms should have a retention framework in place for retaining staff in critical job roles in resolution should retention be necessary. This framework should include measures that could be taken in a stress or resolution scenario to retain staff where needed. For critical job roles, firms should, to the extent consistent with relevant legal and regulatory requirements, seek to avoid any terms (such as

¹ As required under the Remuneration part of the PRA Rulebook.

release clauses) in relevant employment contracts that would enable the employee to leave the role at short notice as a result of entry into resolution.

8.18 Firms should have a succession framework in place for those individuals performing critical job roles where it is reasonably foreseeable that a suitable external replacement could not be found at short notice. This framework should seek to ensure that adequate skills and knowledge would be available to perform a given critical job role if the incumbent were to leave or be removed in resolution. This framework could include succession planning carried out in business-as-usual (including for existing purposes). For individuals that do not have succession plans in business-as-usual, this framework may rely on robust processes for identifying and preparing potential successors during pre-resolution contingency planning. As a fall-back, firms should also consider how these critical job roles would be performed where a suitable internal or external replacement was not available in resolution.

8.19 Firms should have processes in place for rapidly familiarising any new management (including a BIA where relevant) appointed throughout the resolution process. These processes should seek to ensure that these individuals are able to carry out their roles effectively as soon as possible after their appointment.

8.20 Firms should be able to rapidly amend and/or introduce relevant accountabilities and incentives as necessary and appropriate in resolution. This includes, but is not limited to, changes to job descriptions, SMF statements of responsibility, and remuneration structures. Firms should ensure that any such changes would be consistent with relevant legal and regulatory requirements where applicable.

8.21 Firms should identify what regulatory approvals would be needed for any changes to management personnel, management responsibilities, and remuneration structures in resolution. Firms should be able to make timely and complete applications for these approvals, including in urgent situations. This could include approvals needed in the UK and overseas.

Principle 2: Governance in resolution

8.22 The Bank proposes that firms should have capabilities to ensure that effective decision-making and oversight arrangements will be in place in resolution.

8.23 Firms should ensure that the Bank's resolution objectives would be appropriately reflected in their governance arrangements upon entry into resolution. This could include changes to the firm's articles of association where appropriate, and the terms of reference of relevant boards and committees. This may or may not involve changes to a firm's governance documentation in business-as-usual.

8.24 Firms should be able to establish new committees, or amend existing committees at short notice where needed to support resolution and any associated restructuring. Firms should consider:

- what committees may be required;
- what the responsibilities of these committees would be;
- what membership such committees would need to ensure that there is sufficient expertise, seniority, and challenge for the committee to discharge its responsibilities effectively; and
- how to ensure that committee members would have adequate time available to discharge their duties effectively.

8.25 Firms should ensure that decisions are escalated to, and taken at the appropriate level, including the level of the BIA and/or the Bank where relevant. Firms should consider how they would clarify

ownership, authority and accountability for specific decisions in resolution. An amended Management Responsibilities Map¹ may be an effective tool for describing these arrangements.

8.26 Firms should have processes in place to ensure that relevant boards, committees and management (including the Bank and/or BIA where relevant) will receive the information they need to effectively discharge their decision-making and oversight responsibilities in resolution.

8.27 Firms should identify a team of staff to be responsible for supporting a BIA in carrying out their role. This could include, but is not limited to, staff to support administrative matters, technology and data access, liaison with other areas of the firm, communications, and understanding of the firm's resolution strategy. Firms should consider how cover could be provided for these staff if needed to enable them to support the BIA effectively.

8.28 Firms should be able to expedite decision-making in resolution where necessary depending on the urgency of the situation at hand. Expedited processes should appropriately balance the need for rapid decision making with the need for relevant challenge and oversight. Decisions should be appropriately recorded, even when made on an expedited basis.

8.29 Firms should ensure that dispute-resolution measures will be available in resolution to address potential conflicts between the firm's decision-making bodies. This includes, but is not limited to, the boards of the firm and its subsidiaries (including, where relevant, ring-fenced and non-ring-fenced banks, overseas subsidiaries, and non-bank subsidiaries). Where relevant, firms should consider the role a BIA may be given to adjudicate on conflicts in resolution.

8.30 Firms should identify what regulatory approvals would be needed for any changes to their governance arrangements in resolution. Firms should be able to make timely and complete applications for these approvals, including in urgent situations. This could include approvals required in the UK and overseas.

Principle 3: Communications in resolution

8.31 The Bank proposes that firms should have capabilities to plan and deliver effective communications in resolution.

8.32 Firms should identify any market communications that may be required under applicable national disclosure regimes. Processes should be in place to ensure these disclosures are made in line with applicable requirements, and to proactively inform relevant authorities (including the Bank) where disclosures may unduly impact financial stability or market confidence.

8.33 Firms should identify groups of relevant stakeholders where communications would be necessary or desirable in resolution. This should include external stakeholders (such as customers, counterparties, investors, FMIs, and providers of critical outsourced services) as well as internal stakeholders (such as staff and contractors).

8.34 Firms should ensure that resolution communication plans could be developed on a timely basis in the lead-up to resolution. For each stakeholder group, firms should identify the:

- (a) level of communications that would likely be required;
- (b) key messages they would need to communicate to promote that group's confidence in the firm and its resolution; and
- (c) communication channels and infrastructure they expect to use to deliver these communications.

¹ This refers to the management responsibility maps required under the Allocation of Responsibilities part of the PRA Rulebook.

8.35 Firms should seek to ensure that sufficient communication infrastructure would be available in resolution. This could include infrastructure that is available in business-as-usual as well as additional infrastructure arranged in the lead up to resolution as needed. This infrastructure should be able to deal with any reasonably foreseeable increases in usage resulting from entry into resolution (such as increased call volumes to call centres).

8.36 Firms should determine who would be responsible for delivering various communications and what sign-off arrangements would apply. These sign-off arrangements should be flexible to incorporate the Bank and/or BIA where relevant.

Principle 4: Documentation

8.37 The Bank proposes that firms should clearly and concisely document their capabilities to ensure effective management, governance and communications in resolution.

8.38 Firms should produce operational documentation illustrating how their capabilities would be used in a resolution scenario. Documentation should describe:

- (a) the processes, frameworks and arrangements in place to meet the principles above;
- (b) roles and responsibilities for deploying these processes and frameworks; and
- (c) the timeframes in which this could take place if needed.

8.39 Firms should test and review their operational documentation where appropriate to ensure that it is credible and effective.

8.40 Firms should maintain centrally the documentation that may be needed to demonstrate or deploy the capabilities set out above (including documentation held for other purposes where relevant). This could include, but is not limited to, the documentation of:

- (a) expected critical job roles in resolution, including a summary of the responsibilities and expertise associated with each role;
- (b) retention and succession frameworks for critical job roles where relevant;
- (c) governance arrangements (including those in place in business-as-usual and those that may be introduced specifically in resolution);
- (d) management responsibilities (including those responsibilities that may be introduced in the event of resolution); and
- (e) communications content and channels prepared for use in resolution; and

8.41 These documents should be readily available. Documents should be written in a clear and concise manner to enable users to rapidly familiarise themselves with a firm's capabilities and arrangements.

Questions

25. What are your views on whether the proposed principles included cover what is needed to achieve the desired resolvability outcomes? Are there any other measures that should be included?
26. To what extent do firms' existing capabilities and arrangements already meet the proposed principles? Where in particular are significant gaps likely to exist?
27. Do you consider that the proposed policy and appendix provide sufficient clarity on what is expected of firms?

Figure 2: Sources for additional information relating to the eight barriers to resolvability

All capabilities associated with the barriers to resolvability below support the [Financial Stability Board \(FSB\) 'Key Attributes for Effective Resolution Regimes for Financial Institutions'](#)

Barrier to resolvability		UK Sources	International Sources
Financial resources	The minimum requirements for own funds and eligible liabilities (MREL)	Bank Statement of Policy 'The Bank of England's approach to setting a minimum requirement for own funds and eligible liabilities (MREL)' , June 2018 PRA Policy Statement 11/18 'Resolution planning: MREL reporting' , June 2018 The Bank of England's Indicative 2020 and 2022 MREs (2017)	FSB 'Total Loss-Absorbing Capacity (TLAC) standard for global systemically important banks (G-SIBs)' , November 2015 FSB 'Guiding Principles on the Internal Total Loss-Absorbing Capacity of G-SIBs ('Internal TLAC)' , July 2017
	Valuations	Bank Statement of Policy 'The Bank of England's policy on valuation capabilities to support resolvability' , June 2018 Bank Guidance on valuation capabilities to support resolvability, November 2018	FSB 'Principles on Bail-in Execution' , June 2018
	Funding in resolution	PRA Policy Statement 29/17 'Recovery planning' , December 2017 Internal Liquidity Adequacy Assessment (ILAAP) Part of the PRA Rulebook	FSB 'Guiding principles on the temporary funding needed to support the orderly resolution of a global systemically important bank ('G-SIB)' , August 2016 FSB 'Funding Strategy Elements of an Implementable Resolution Plan' , June 2018
Continuity	Continuity of financial contracts in resolution (stays)	PRA Policy Statement 25/15 'Contractual stays in financial contracts governed by third-country law' , November 2015 Stay in Resolution Part of the PRA Rulebook	
	Operational continuity in resolution (OCIR)	PRA Policy Statement 21/16 'Ensuring operational continuity in resolution' , July 2016 Operational Continuity Part of the PRA Rulebook	FSB 'Guidance on Arrangements to Support Operational Continuity in Resolution' , August 2016
	Continuity of access to Financial Market Infrastructures (FMIs)	Bank, PRA and Financial Conduct Authority Discussion Paper 'Building the UK financial sector's operational resilience' , July 2018	FSB 'Guidance on Continuity of Access to Financial Market Infrastructures (FMIs) for a Firm in Resolution' , July 2017
	Restructuring	PRA Policy Statement 29/17 'Recovery planning, December 2017 PRA Policy Statement 21/16 'Ensuring operational continuity in resolution, July 2016 Bank Statement of Policy 'The Bank of England's policy on valuation capabilities to support resolvability' , June 2018	FSB 'Guidance on Arrangements to Support Operational Continuity in Resolution' , August 2016
Coordination and Communication	Fundamental Rules Part of the PRA Rulebook Operational Continuity Part of the PRA Rulebook The Senior Managers Regime Part of the PRA Rulebook Remuneration Part of the PRA Rulebook General Organisational Requirements Part of the PRA Rulebook' including business continuity, contingency planning , and outsourcing	FSB 'Principles on Bail-in Execution' , June 2018	

9 Assurance of firms' resolvability

9.1 The Bank considers a key benefit of the RAF is that it will provide greater assurance over the resolvability of firms. This chapter explains how the Bank plans to gain assurance that firms can deliver the proposed outcomes necessary for achieving resolvability.

9.2 When conducting assurance, the Bank proposes to consider:

- (a) the capabilities, resources, and arrangements firms have in place for satisfying relevant policies¹ and how this achieves the outcomes for resolvability;
- (b) the effectiveness of firms' plans to implement measures to observe relevant policies;
- (c) the governance, communications and assurance arrangements firms use to ensure the effectiveness of their approach or method for complying with the relevant policy and how these achieve the outcomes for resolvability; and
- (d) how firms assess and oversee their ongoing performance in observing the relevant policies.

9.3 In many cases, the Bank will have already engaged with firms on their work to support resolvability as part of its annual resolvability assessment. This engagement will provide a natural starting point for the Bank's assurance.

9.4 The Bank proposes that firms should have achieved the outcomes for resolvability by 2022. The level and type of assurance to be undertaken by the Bank will reflect the deadline by which firms must satisfy individual policies. The Bank recognises that some policies proposed in this CP are new. A proportionate approach will therefore be taken in respect of assurance of firms' capabilities in these areas to reflect this. Where certain policies have earlier implementation dates, firms should comply with them.

Assurance by firms

9.5 In the first instance, the Bank proposes that firms should apply their own arrangements to ensure they have the necessary measures in place to support resolvability. In carrying out its resolvability assessments, the Bank will consider the effectiveness of these arrangements. This is likely to include:

- Ongoing testing and review. The Bank intends to consider how the firm has tested and reviewed whether its capabilities and arrangements operate in a way that meets the principles and outcomes set out in Chapters 6-8 of this document. The Bank will consider whether this testing and review has involved a suitably rigorous method and an appropriate level of expertise, independence and senior management engagement, as set out in the PRA CP. The Bank will also consider how the firm has incorporated the outcome of its testing and review into its plans to maintain and enhance its resolvability; and
- Business-as-usual governance and oversight. The Bank intends to consider how the firm has apportioned responsibilities within the firm for approving and monitoring the capabilities, resources, and arrangements necessary to support resolvability. The Bank will consider the extent to which these responsibilities sit with suitably senior individuals or committees that have the skills and capacity necessary to fulfil these responsibilities effectively. This includes whether there is an appropriate level of oversight by the firm's board and senior management in line with the

¹ This includes policies covered in Figure 2 of this CP.

responsibilities proposed in the PRA CP. The Bank will also consider how firms integrate these governance and oversight arrangements into existing business-as-usual arrangements to help embed consideration of resolvability as a focus within the firm.

9.6 The Bank recognises that these arrangements should reflect the nature of each specific barrier, including whether the measures needed are discreet and measurable (eg contractual arrangements, MREL resources), or capability-based (eg ability to provide data and information). For some barriers, these arrangements should also meet specific principles set out in Chapters 6-8 above.

Consideration of firms' reports

9.7 Under the draft Resolution Assessment Part of the PRA Rulebook, firms are required to assess their preparations for resolution, and provide a report of their assessments to the PRA. These reports will be shared with the Bank to support its consideration of firms' resolvability. The proposed senior management responsibilities and publically disclosed summaries of these reports will provide a degree of assurance to the Bank that the statements therein are realistic.

9.8 To support the Bank's assurance, the Bank may ask firms to explain aspects of their report in further detail, including with regards to the specific capabilities and outcomes proposed in the previous chapters. The Bank considers that such engagement will be important for ensuring that firms have achieved the outcomes of resolvability, and that firms' work aligns with the Bank's desired outcomes.

9.9 The Bank also intends to continue engaging with firms between RAF cycles to ensure that firms continue to make progress on their stated future work plans.

Additional evidence from firms

9.10 To gain further assurance of firms' resolvability, the Bank intends to ask firms for additional evidence to support the statements in firms' reports of their assessments. The Bank will not ask firms for evidence of all parts of each barrier in each cycle of the RAF. Instead, the Bank will consider what is included in firms' individual assessments, and ask for evidence on an ad-hoc basis as it deems necessary. At the same time, the Bank may ask for a particular piece of evidence on a particular capability from all firms in a given RAF cycle in order to undertake sector-wide analysis of a particular barrier.

9.11 Where firms have already provided relevant information as part of resolution packs¹ and the EBA Implementing Technical Standard (ITS) on the provision of information for the purpose of resolution plans,² the Bank will consider this prior to requesting additional materials.

9.12 Broadly speaking, the Bank proposes that the additional evidence it may ask for could include (but is not limited to):

- (i) Data or information:³ for a number of barriers, firms will need to maintain certain data and information, and be able to provide this upon request. The Bank may ask for this specific data and information as part of its ongoing assessments of resolvability (eg information on MREL issuance, close-out risks for financial contracts, and FMI membership). This could also cover examples of the contractual language the firm has adopted to comply with a given policy (eg for stays in financial contracts, MREL instruments and service provision).

¹ Article 56 No. 2 Order requires that the competent authority must provide the Bank with all information contained in the resolution pack prepared by a relevant person in accordance with Rules made by the regulator under FSMA.

² EBA Implementing standards on the provision of information for the purpose of resolution plans <https://eur-lex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:32018R1624&from=EN>

³ Please see Chapter 12 for full explanation of which information gathering powers that the Bank will use.

(ii) Documentation: The Bank may ask firms to provide documentation containing detailed information of their underlying capabilities and arrangements. This could include:

- documentation regarding the firm's compliance with relevant policies (eg MREL flightpaths, statements of compliance, expert advice);
- operational documentation describing how underlying capabilities would be deployed in a resolution scenario (eg processes for supporting an independent valuation, retaining key staff and communicating with key stakeholders);
- descriptions of capabilities and arrangements themselves, such as how systems or processes operate, what methodologies have been applied (eg for valuing assets, cost-charging, or identifying critical job roles);
- summaries of the testing carried out by the firm, including detail about the design and planning of the test, how the exercise unfolded, the team or individuals involved and the lessons learnt (as discussed above);
- descriptions of the oversight and review arrangements that given capabilities and arrangements are subject to (as discussed above); and/or
- documentation of the assumptions used when complying with the policies and principles set out above (eg assumptions underpinning MREL issuance plans, input assumptions for valuation models and assumptions around scenarios for projecting funding needs).

(iii) Live evidence: Certain capabilities involve process and systems that will need to be deployed in a resolution scenario. The Bank may ask firms to demonstrate these capabilities directly to the Bank to gain assurance that they would work as intended in practice. This could include:

- live testing of whether a firm's capabilities operate as stated in a scenario specified by the Bank (eg providing data for valuations, projecting potential liquidity needs and executing restructuring options); and
- live demonstrations to the Bank of specific systems or processes (eg OCIR service catalogue demonstrations).

Box 6: Example of additional evidence for MREL

Each barrier will differ in terms of the evidence that may be asked for. As part of assessing firms' resolvability in respect to their MREL resources, the Bank may ask for information on:

- any assumptions underpinning a firm's planned MREL issuance schedule and whether those assumptions are consistent with the firm's business plans and the expected market demand for MREL instruments;
- whether the form and location of MREL surplus within a group may support the recapitalisation of direct or indirect subsidiaries or, conversely, if any legal or operational barriers to its timely deployment may arise before and in resolution;
- the breakdown of the instruments referred to in Principle 2 of the MREL section per maturity, legal entity, governing law and creditor class and whether those instruments may create challenges for resolution;

- the structure of any direct or indirect issuance of internal MREL instruments to the resolution entity and whether the write-down or conversion of those instruments may trigger a change in control of the subsidiary or subgroup and/or originate tax, accounting or legal issues;
- whether any mismatch of external and internal MREL may pose risks to the resilience and resolvability of a group;
- the quantity, maturity and allocation within a group of any holdings of MREL in another firm;
- any documentation that is relevant to a firm's MREL position, in particular independent legal advice, where appropriate, that the firm received in relation to the MREL-eligibility of instruments it issued;
- (for firms subject to structural subordination) liabilities held by the resolution entity on an individual basis, as requested by the Bank, in particular their breakdown by maturity, creditor class and whether they are current, future or contingent; and/or
- (for firms with a MPE resolution strategy) whether the current and future stock of their MREL resources is appropriate by considering the current and future stock of loss-absorbing capacity resources at the level of each resolution group and other entities. The Bank will consider this in close co-ordination with the relevant host authorities.

9.13 As part of its assurance process, depending on the progress made by firms, the Bank may also consider using its statutory powers to gain assurance and ensure progress around a firm's resolvability, following usual processes. This could include requiring the firm to provide certain information, a skilled persons report, or directing a firm to address identified impediments to resolvability.

Questions

28. Do you agree with the Bank's proposed approach to assurance?
29. Are there any additional measures that the Bank could reasonably use to gain assurance around a firm's resolvability (other than those covered above)?

10 The Bank's public statement concerning resolvability

10.1 This chapter sets out how the Bank proposes to make its public statement concerning firms' resolvability. The Bank believes that further transparency around the progress made by individual firms towards being considered resolvable will foster greater and more widespread understanding of its resolution regime. It should also incentivise firms to take steps to embed changes to enhance their resolvability.

10.2 In the accompanying PRA CP, the PRA proposes requiring firms in scope of the draft Resolution Assessment Part of the PRA Rulebook to assess their preparations for resolution, submit a report of their assessment to the PRA, and publish a summary of their assessment. The Bank also proposes to make a public statement concerning the resolvability of each of these firms. These public statements would explain the extent to which the Bank considers whether any barriers to the firms' resolvability could impede the Bank from executing the firms' preferred resolution strategy, without resort to public funds, while avoiding any significant adverse effect on the financial system or the continuity of banking services and critical functions.

10.3 The Bank invites respondents' views on the Bank's proposal for making a public statement concerning firms' resolvability, the level of detail that would be most useful, and any other disclosure-related issues that the Bank has not identified in this CP.

Proposed nature of the Bank's public statement

10.4 Within its public statements, the Bank intends to assess firms' resolvability against the outcomes described in this CP. In doing so, a single pass or fail judgement on each firms' resolvability would not be appropriate. There are two reasons for this:

- On the one hand, if the Bank states that a firm is resolvable (i.e. a 'pass') that may be interpreted as meaning that there are no circumstances in which the firm's failure could put the Bank's resolution objectives at risk. Doing so does not take into account the many different circumstances of a firm's failure. The Bank is not able to foresee the causes of failure or guarantee that losses will never exceed the resources the Bank requires firms to hold. Therefore, the Bank judges that it would be potentially misleading and inappropriate to say publicly that a specific firm is 'resolvable'.
- On the other hand, if the Bank states that a firm is not resolvable (i.e. a 'fail'), this may equally give the misleading impression that any resolution would be bound to fail. If a firm is making inadequate progress on resolvability, it is true that there will be a greater number of scenarios in which a resolution is more likely to be disorderly. However the likelihood and extent that resolution would be disorderly will depend on a number of factors. To judge that a firm has 'failed' to be resolvable would ignore these nuances. It could risk undermining confidence in the firm's resolvability, increasing the likelihood of disorderly resolution. This would be counter-productive.

10.5 The Bank is aware that firms have made progress on resolvability since the crisis. In some cases, firms must already meet a policy standard (such as MREL or contractual stays). The Bank will use the first RAF cycle to measure progress on a firm-by-firm basis, to identify the gap towards meeting end-state resolvability, and to identify best practice. The Bank anticipates that firms will make steady progress over time and considers that firms should not attempt to backload development of their capabilities into 2021 and 2022.

10.6 Therefore the Bank expects that its first public statement, following firms' completion of their first assessment in 2020, will focus on assessing the progress firms have made so far and their plans for becoming fully resolvable by 2022. In assessing firms' plans, the Bank expects to assess both how far they would ensure that firms can achieve the resolvability outcomes and how credible they are.

10.7 In its second public statement, following firms' reports in 2022, the Bank expects to assess firms' progress against their plans, whether that progress is sufficient to achieve the resolvability outcomes, and, if not, what further work remains. In subsequent years (from 2024 onwards) the Bank expects that the focus of its public statements will shift. It expects to assess how far firms maintain their resolvability as their business models evolve and their progress in addressing any further issues that they or the Bank have identified.

10.8 In producing its public statement, the Bank will be mindful of any applicable laws and regulations governing the use and disclosure of confidential information.

10.9 The Bank welcomes respondents' views on the level of detail it should include in its public statements concerning firms' resolvability, in particular regarding: whether there is information firms would consider sensitive; how much information market participants would consider useful; and how much information generalist stakeholders would need to enable them to engage with firms' progress on resolvability.

Sequencing of firms' and the Bank's publications

10.10 The Bank intends that its public statement concerning firm's resolvability will take account of firms' own public disclosures as detailed in the PRA CP. While the firms summarise their reports of their assessments of preparations for resolution, the Bank assesses how far those preparations would support its execution of an orderly resolution. The Bank therefore proposes to publish each statement at the same time as, or as soon as possible after, the relevant firm's publication. If the Bank were to publish significantly later than the firm, market participants would have an incomplete view of the firm's resolvability until the Bank made its public statement. This could increase the uncertainty around resolvability.

10.11 The Bank intends that it would publish all of its statements for firms in scope of the proposed PRA Rules at the same time. This would avoid favouring some firms over others in the timing of its publication and helps to ensure that it is straightforward for market participants and other readers to compare the Bank's statements across firms.

10.12 In light of the above considerations, the Bank's preferred approach would be for it and firms within the scope of the draft Resolution Assessment Part of the PRA Rulebook to publish on the same day. This would ensure that market participants and other readers could see each firm's published summary in context of both its peers' public disclosures and the Bank's public statement. The expectation is that the Bank will coordinate with the PRA and firms on a suitable date for publication.

10.13 The Bank may seek to consult with firms on aspects of its public statements ahead of publication, if appropriate. Notwithstanding this, firms should take ownership of their published summaries and independently determine their contents. If consulting with firms, the Bank would look to manage the risk of inadvertently triggering disclosure obligations on firms ahead of the planned publication date. The Bank welcomes respondents' views on the implications of the Bank and firms publishing their statements and summaries (respectively) on the same day.

10.14 Another way to implement this proposal would be for firms and the Bank to publish within a short time of each other. The Bank would not publish at the same time as firms but would still expect to disclose its public statements for all firms at the same time, after they had made their disclosures.

10.15 Under this option, the Bank would be able to share its public statement with firms in draft form without prejudicing their published summaries.

10.16 The Bank welcomes respondents' views on this option, in particular whether a gap, albeit a short one, between firms' and the Bank's publication dates would create any additional challenges.

Questions

30. How much detail should the Bank's public statement concerning firms' resolvability contain?
31. Are there any examples of information that may be sensitive that the Bank should not disclose?
Why would such information be considered sensitive?
32. What are your views on the Bank's preferred option for firms and the Bank to publish their summaries and statement (respectively) on the same day, including how it could be implemented?
33. What are your views on the alternative option, whereby there would be a short gap between firms' publication date and that of the Bank?

11 Preliminary Impact Assessment

11.1 This section sets out the Bank's preliminary assessment of the costs and benefits of the proposed policy contained within this CP. The Bank intends to undertake a more detailed impact assessment before finalising its approach and welcomes views from firms on the scale of the potential impacts of the proposed policy.

Expected benefits

11.2 The proposed policy has two key benefits. First, the policy helps to reduce the costs and risks to the wider economy of resolving a failed institution by ensuring that firms have the capabilities necessary to achieve the resolvability outcomes. This allows for more timely and predictable resolutions, reducing the uncertainty around a failing firm and minimising any disruption to the functions it provides.

11.3 Second, the policy helps to make resolution credible without public capital support and therefore helps to end the problem of 'too big to fail'. In part, the Bank does this by requiring firms to hold adequate loss-absorbing capacity, as set out in the MREL SoPs. But while loss-absorbing capacity, via MREL, is necessary to deliver a credible resolution regime, its effectiveness is predicated on firms having the capabilities necessary to remove other barriers to resolution. This proposed policy therefore helps to realise the benefits of MREL in ensuring credible resolution.

11.4 Based on the approach set out in Brooke et al. (2015),¹ as per the December 2015 MREL CP, the Bank estimated that the annual gross benefits of credible resolution were likely to be between 0.3% and 0.9% of annual GDP.

11.5 Benefits may also arise to the extent that improved resolution capabilities carry benefits for firms' recovery options too. This helps to reduce the likelihood that statutory resolution options will be applicable.

11.6 Furthermore, the proposed enhanced capabilities for funding in resolution, continuity of access to FMs, management, governance and communications and restructuring described in the Appendix may provide benefits in business-as-usual. For example, they may increase the quality and availability of management information, improving firms' abilities to monitor and manage risks, consider and execute changes to their business structure, or allocate resources across business areas. The proposed capabilities may also reduce the time and effort firms need to produce information necessary for supervisory purposes. To gain further clarity on the potential benefits of its proposed policy, the Bank may survey firms to better understand any commercial benefits that might be associated with it.

Expected costs

11.7 It is expected that the costs associated with developing the proposed capabilities will be mostly on a one-off operational basis, rather than on an ongoing basis. Firms may need to undertake a number of changes at the outset, prior to the policy coming into force, following which firms will need to ensure and demonstrate ongoing compliance. In some cases, the costs may be minimal because firms already have the capabilities in place. The Bank does not expect that firms should start again: it expects firms to use existing capabilities as much as possible.

¹ Brooke et al. (2015) 'Measuring the macroeconomic costs and benefits of higher UK bank capital requirements', available at: http://www.bankofengland.co.uk/financialstability/Pages/fpc/fspapers/fs_paper35.aspx

11.8 Costs are likely to vary between firms depending on the scale and complexity of the firm. Developing the proposed capabilities is expected to be less onerous for smaller or less complex firms where, for example, developing the ability to monitor liquidity needs by entity or mapping key FMIs is likely to be less challenging. This approach helps avoid costs that are not necessary to remove barriers to resolvability.

11.9 Costs are also likely to vary between firms depending on the quality of current capabilities. The Bank expects firms to leverage existing capabilities to comply with the proposed policy. To gain further clarity on the potential costs, the Bank may survey firms to better understand their current capabilities and the expected incremental costs associated with the policy.

11.10 Costs may differ between firms with a resolution entity in the UK and firms that would be resolved as part of the single-point-of-entry bail-in of a larger international group. The Bank expects that the costs for the latter type of firm would be determined in the main by the capabilities that home authorities expect them to develop. The Bank notes that other authorities have set up, or are setting up, broadly comparable frameworks, ensuring that international firms and UK-only firms face comparable costs.

Assessment of net benefit

11.11 The costs and benefits of improved capabilities to remove barriers to resolution are difficult to quantify, and the Bank has not endeavoured to produce a quantitative estimate of the net benefits of its proposed policy at this stage. Our preliminary view is that the incremental costs to firms of developing their capabilities are likely to be small relative to the wider long-run benefits associated with improved resolvability, given the scale of the latter (between 0.3% and 0.9% of annual GDP). Furthermore, firms should already have a number of the capabilities in place, and that where further work is required, developing the capabilities may have material commercial benefits in business-as-usual.

11.12 By adopting an outcomes-based approach, the Bank retains a degree of flexibility around the application of this policy. The Bank will seek to ensure proportionality in applying this policy to avoid imposing unduly burdensome compliance costs. This should ensure that the proposed policy will deliver a positive net benefit.

11.13 The Bank has considered a more prescriptive approach as an alternative to the outcomes-based approach set out in this CP. Such an approach would involve the Bank setting detailed standards on the capabilities that it expects firms to be able to deliver for each barrier to resolution. This would be more costly: it would make it harder for firms to use their existing capabilities to meet the Bank's definition of resolvability, and would make it harder for the Bank to ensure proportionality in how it applies its policy. Furthermore, it is not clear that a prescriptive approach would make firms more resolvable than a principles-based approach: it would fail to account for idiosyncratic issues that firms should address to improve their resolvability.

11.14 The Bank welcomes views on the possible scale of any of the expected costs and benefits outlined above, as well as any other costs and benefits that have not been identified here.

Questions

34. What costs would firms anticipate being incurred to comply with the proposed new policies? Please provide quantitative estimates where possible.
35. What commercial benefits do you consider might arise from improvements made in order to comply with the proposed new policies?

12 The Bank's statutory obligations

12.1 The Bank has a statutory financial stability objective to 'protect and enhance the stability of the financial system of the UK'.¹ This applies to the Bank generally including in relation to its role as the UK's Resolution Authority.

12.2 The Banking Act 2009 (Banking Act) sets out special resolution objectives which 'relevant authorities' (i.e. HM Treasury, the PRA, the FCA and the Bank) need to have regard to when using, or considering use of, stabilisation powers (or bank insolvency/bank administration procedure). The most relevant objectives² are:

- Objective 2 – protect and enhance the stability of the financial system of the UK; and
- Objective 3 – protect and enhance public confidence in the stability of the financial system of the UK.

Resolution Plan and Resolvability Assessment

12.3 The Bank must prepare resolution plans for all UK-incorporated banks, UK-incorporated building societies and those UK-incorporated investment firms that are required to hold initial capital of €730,000, in particular those that deal as principal. References to 'firms' in this CP shall, in general and unless otherwise stated, be taken to also include 'relevant persons' within scope of the special resolution regime.

12.4 As part of resolution planning, the Bank, in consultation with the competent authority (that is, the PRA or the FCA), must assess the extent to which it would be feasible and credible to place the firm into resolution and implement the preferred resolution strategy, while avoiding to the maximum extent possible any significant adverse effect on the financial system of any EEA State or the continuity of the firm's critical functions (that is, the 'resolvability assessment'). The Bank must not assume that the firm will be in receipt of any: extraordinary public financial support; central bank emergency liquidity assistance; or central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms. This resolvability assessment shall be based on the following consecutive stages: (i) assessment of the feasibility and credibility of the liquidation of the firm under normal insolvency proceedings; (ii) selection of a preferred resolution strategy; (iii) assessment of the feasibility of the selected resolution strategy; and (iv) assessment of the credibility of the selected resolution strategy. The resolvability assessment will be conducted annually, unless the Bank determines otherwise in accordance with articles 53 and 54 of the Bank Recovery and Resolution (No. 2) Order 2014 (the No. 2 Order) 3 at the same time as, and for the purposes of, drawing up or updating the resolution plan.

Information Gathering

12.5 The PRA has expectations in place on information that firms should submit in resolution packs to allow the authorities to: identify the appropriate resolution strategy for a firm; work with firms to identify barriers to an optimal resolution plan; and develop the remedial actions for the removal of barriers. The EBA also has in place information gathering requirements to specify procedures and a minimum set of standard forms and templates for the provision of information for resolution planning. Some of the information may be relevant to inform the assurance work that the Bank will do with firms.

1 Section 2A(1) Bank of England Act 1998.

2 Section 4 Banking Act.

Wherever possible, the Bank will consider other information submitted to both the Bank and the PRA to inform what it will request so as to reduce information burden upon firms.

12.6 SS19/13 sets out details on information that firms should submit to the PRA to facilitate resolution planning and applies to firms to which the Resolution Pack Part of the PRA Rulebook applies. This will continue to apply.

12.7 In October 2017, as mandated under Article 11(3) BRRD, the EBA consulted on changes to the ITS on information for resolution planning with the aim of further harmonising data collections and facilitating data exchange within resolution colleges. The ITS were published in the Official Journal of the European Union on 23 October 2018.¹ It stipulates that firms are expected to start reporting using the new templates by the end of May 2019 at the latest. The ITS sets minimum data requirements and will be directly applicable to firms that are not subject to simplified obligations.

12.8 The Bank and the PRA have recognised that the ITS requirements could lead to duplicative reporting and put undue pressure on firms. In light of this, as of August 2018 the PRA decided to delay resolution pack Phase 1 submissions under SS19/13 for these firms until 2020.² During this period, resolution planning information can still be requested from firms under SS19/13 Phase 2 requirements.

12.9 The choice of preferred resolution strategy for any firm is made on the basis of the resolution planning for that firm, based primarily on information supplied by the firm. In business as usual, the PRA and FCA will generally gather the relevant information from firms and provide it to the Bank as Resolution Authority.

Substantive impediments to resolvability

12.10 Following a resolvability assessment, the Bank will inform the firm of any identified substantive impediments to resolvability. The firm will then have four months to make a proposal to remove the identified impediments. If the Bank concludes that the firm's proposal is insufficient or no proposal is received, the Bank must use its power to require the firm to take measures to address impediments to the effective exercise of the stabilisation powers or the winding up of that firm. The firm must propose a plan to achieve the measures required by the Bank, within one month beginning on the date of the direction.

12.11 Please see the Bank's SoP on its power to direct institutions to address impediments to resolvability (December 2015) for further details on the Bank's policy for exercising its power to direct institutions to address impediments to resolvability under Section 3A of the Banking Act 2009 and Part 3 of the Purple Book.

How the RAF fits within the existing framework

12.12 The Bank will continue to complete a formal resolvability assessment and review resolution plans on an annual basis.

12.13 The assessment and report proposed in the PRA CP and the Bank's public statement concerning firms' resolvability (proposed in Chapter 10 of this CP) will not replace the Bank's annual resolvability assessment. It will provide information to the Bank which the Bank will use as part of fulfilling its legal requirement to assess the resolvability of firms.

12.14 When preparing the public statement proposed in Chapter 10, the Bank will ensure that it is consistent with its statutory annual resolvability assessment, which it will continue to discuss with

1 EBA Implementing standards on the provision of information for the purpose of resolution plans <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1624&from=EN>

2 <https://www.bankofengland.co.uk/prudential-regulation/publication/2013/resolution-planning-ss>

international counterparts such as in Resolution Colleges and Crisis Management Groups. The Bank will also ensure that its public statement is consistent with the summary of the resolution plan and resolvability assessment that it is obliged to send to firms annually.

12.15 The Bank will consider information provided by firms as part of resolution planning and required under the EBA ITS¹ to inform the assurance work it undertakes as referred to in Chapter 9 before asking for additional material from firms.

¹ EBA Implementing standards on the provision of information for the purpose of resolution plans.

13 Feedback and Questions

13.1 The Bank encourages readers to respond to the questions posed throughout this CP and provide any other relevant observations by 5 April 2019. Responses and input from a wide range of stakeholders including firms, consumers, industry bodies, auditors, specialist third-party providers, professional advisers and other regulators are welcomed. Contact details are provided on the cover page of this document.

13.2 The consultation questions raised in this CP are as follows:

Scope

1. Do you agree with the proposed scope of the Bank's Policy Statement on the Resolvability Assessment Framework, as set out in paragraphs 2.1-2.5?

Approach to different types of firm in scope

2. Do you agree with the proposal for how the Bank's Policy Statement on the Resolvability Assessment Framework will apply to different types of firm?

Achieving resolvability

3. Do you consider there to be any additional generic barriers that will need to be removed in order for firms to be considered resolvable?
4. The Bank will apply the measures within the CP in a proportionate way. Are there any specific areas of new policy that would be unduly burdensome or unnecessary for certain firms to implement?

The minimum requirements for own funds and eligible liabilities (MREL)

5. Do you agree that the measures proposed in the CP are appropriate to enable firms to show that they have adequate loss-absorbing resources to support resolvability?

Valuations

6. This CP does not propose any additional policy or guidance on valuations capabilities to that set out already. Are there any areas where you think additional clarity would be required on the valuation capabilities that firms will need to achieve the outcomes of resolvability?

Funding in resolution

7. Do you agree with the objectives and principles set out in this section?
8. Do you agree with the proposed approach to determining which entities and currencies are considered material, and the proposed scope of analysis?
9. To what extent do you consider that firms' existing capabilities and arrangements already meet the proposed principles? Where are significant gaps likely to exist?
10. What do you consider the practical obstacles which firms would need to overcome in order to implement the proposed principles?

11. Are there any further liquidity risks or additional considerations which may arise in resolution which are not covered in this section? What approaches would firms take to mitigate the impact of these?
12. Do you consider that the proposed policy and appendix provide sufficient clarity on what is expected of firms?

Continuity of financial contracts in resolution (stays)

13. Do you think that the proposed principles regarding the early termination of financial contracts are appropriate?

Operational continuity in resolution (OCIR)

14. In order to be resolvable, what broader set of functions and services should operational continuity apply?
15. What capabilities do firms need in respect of operational continuity to deliver resolvability?

Continuity of access to FMIs

16. Do you agree with the proposal that firms should engage with all of their providers of critical FMI services to understand how those FMIs and FMI intermediaries will use discretion in resolution? If not, please explain what limitations firms may face in doing so.
17. Should firms put in place back up providers of critical FMI services as a matter of course? What can a firm do in order to ensure that such relationships would be a credible alternative in resolution?
18. Do you consider that firms have enough information to make credible predictions about client behaviour should the firm enter resolution?
19. Is it sufficient for firms to only consider defensive actions against a full range of plausible actions that providers of critical FMI services may take should the firm enter resolution? Or should firm's contingency plans extend to all possible measures critical FMIs would be able to take?
20. To what extent do firms' existing capabilities and arrangements already meet the proposed principles? Where in particular are significant gaps likely to exist?
21. Do you consider that the proposed policy and appendix provide sufficient clarity on what is expected of firms?

Restructuring

22. This CP does not propose for firms to identify restructuring options and develop associated capabilities beyond what is expected under the PRA's Supervisory Statement on recovery planning. Are there situations where it might be appropriate for restructuring options and associated capabilities to go beyond what is expected under the PRA's Supervisory Statement on recovery planning?
23. To what extent do firms' existing capabilities and arrangements already meet the proposed principles? Where in particular are gaps likely to exist?

24. Do you consider that the proposed policy and appendix provide sufficient clarity on what is expected of firms?

Management, governance and communications

25. What are your views on whether the proposed principles included cover what is needed to achieve the desired resolvability outcomes? Are there any other measures that should be included?
26. To what extent do firms' existing capabilities and arrangements already meet the proposed principles? Where in particular are significant gaps likely to exist?
27. Do you consider that the proposed policy and appendix provide sufficient clarity on what is expected of firms?

Assurance of firms' resolvability

28. Do you agree with the Bank's proposed approach to assurance?
29. Are there any additional measures that the Bank could reasonably use to gain assurance around a firm's resolvability (other than those covered above)?

The Bank's public statement concerning firms' resolvability

30. How much detail should the Bank's public assessment of firms' resolvability contain?
31. Are there any examples of information that may be sensitive that the Bank should not disclose? Why would such information be considered sensitive?
32. What are your views on the Bank's preferred option for firms and the Bank to disclose their summaries and statement (respectively) on the same day, including how it could be implemented?
33. What are your views on the alternative option, whereby there would be a short gap between firms' publication date and that of the Bank?

Preliminary impact assessment

34. What costs would firms anticipate being incurred to comply with the proposed new policies? Please provide quantitative estimates where possible.
35. What commercial benefits do you consider might arise from improvements made in order to comply with the proposed new policies?

14 Appendix: Draft Statement of Policy on removing further barriers to resolvability

1 Background and statutory framework

1.1 This SoP is issued by the Bank of England (the Bank), as UK Resolution Authority, in accordance with section 3B(9) of the Banking Act 2009 as amended (the Banking Act). The SoP sets out how the Bank expects to use its power under section 3A(2) of the Banking Act to direct a 'relevant person' to take measures to address impediments to resolvability, specifically in relation to their capabilities and arrangements to support:

- (a) funding in resolution;
- (b) continuity of access to financial market infrastructures (FMIs);
- (c) post-stabilisation restructuring; and
- (d) management, governance and communications in resolution.

1.2 A 'relevant person' means:

- (a) an institution¹ authorised for the purpose of the Financial Services and Markets Act 2000 (FSMA) by the Prudential Regulation Authority (PRA) or Financial Conduct Authority (FCA);²
- (b) a parent of such an institution which (i) is a financial holding company or a mixed financial holding company; and (ii) is established in, or formed under the law of any part of, the UK; or
- (c) a subsidiary of such an institution or of such a parent which (i) is a financial institution³ authorised by the PRA or FCA; and (ii) is established in, or formed under the law of any part of, the United Kingdom.

1.3 The intended process around using this direction power is set out in the Bank's SoP on its power to direct institutions to address impediments to resolvability.⁴ In short, this process involves the Bank:

- (a) determining, following a resolvability assessment, whether specific aspects of an institution's business constitute a substantive impediment to resolvability;
- (b) where a substantive impediment is identified, notifying the institution of the impediment and giving the institution four months to submit proposals for remediating measures; and
- (c) if the Bank remains dissatisfied with the measures proposed by the institution, directing the institution to take specific action to remediate the impediment within a specified time period.

¹ For the purposes of this SoP the term 'institution' means UK-incorporated banks, UK-incorporated building societies and those UK-incorporated investment firms that are required to hold initial capital of €730,000, in particular those that deal as principal. References to 'institution' shall be taken to also include 'relevant persons'.

² The PRA and FCA are the UK competent authorities. According to article 2 of the Bank Recovery and Resolution Directive and article 4 of the Capital Requirements Regulation (EU No. 575/2013), 'competent authority' means a public authority or body officially recognised by national law, which is empowered by national law to supervise institutions as part of the supervisory system in operation in the Member State concerned.

³ The term 'financial institution' has the meaning given by article 4 (1) (26) of Regulation 575/2013/EU.

⁴ Bank of England (2015) 'The Bank of England's power to direct institutions to address impediments to resolvability' available at: <https://www.bankofengland.co.uk/paper/2015/the-boes-power-to-direct-institutions-to-address-impediments-to-resolvability-sop>

2 Policy scope

2.1 This SoP applies to all institutions where the Bank expects that the matters set out in paragraph 1.1(a)-(d) are relevant to the effective execution of the institution's preferred resolution strategy.¹ This includes:

- (a) institutions notified by the Bank that their preferred resolution strategy involves the use of statutory stabilisation powers in the UK; or
- (b) institutions notified by the Bank that they are a 'material subsidiary' of an overseas-based banking group for the purposes of setting internal MREL in the UK, as determined in accordance with the criteria set out in the Bank's MREL SoP.

2.2 Hereafter, references to 'firms' should only be taken to include those institutions that meet the criteria set out in paragraphs 2.1(a) and (b). Further detail is set out below on the application of this SoP to firms, and to entities in firms' groups.²

3 Policy overview

3.1 The overarching objective of this policy is to ensure that firms are resolvable. The Bank considers resolvability as the extent to which it would be feasible and credible to execute a firm's preferred resolution strategy, without resort to public funds, while avoiding any significant adverse effect on the financial system or the continuity of banking services and critical functions.³ To be considered resolvable, a firm must therefore, as a minimum, be able to achieve three outcomes set out in the Bank's Policy Statement on the Resolvability Assessment Framework (RAF).⁴

3.2 Achieving these outcomes involves the removal of barriers to resolvability. The Bank has identified eight generic barriers to resolvability in its Policy Statement on the Resolvability Assessment Framework (RAF). Some of these are already addressed by existing policy. This SoP covers four barriers where the Bank considers further policy to be necessary:⁵

- (a) funding in resolution;
- (b) continuity of access to FMIs;
- (c) post-stabilisation restructuring; and
- (d) management, governance and communications in resolution.

3.3 For each area, this SoP sets out objectives and principles that firms are expected to meet in order to avoid a determination that they have insufficient capabilities and arrangements to support effective resolution and that these constitute an impediment to resolvability.

3.4 Not meeting these objectives and principles may constitute a barrier to resolvability and may result in the Bank directing firms to improve their capabilities to ensure resolvability.

3.5 In considering these objectives and principles, firms should have regard to their size, business model, and preferred resolution strategy.

¹ The Bank will notify a firm of its preferred resolution strategy on an annual basis.

² For the purposes of this SoP, a firm's group should be taken to include the firm and subsidiaries that are directly or indirectly owned by the firm. It does not include the parent entities of the firm or subsidiaries thereof in which the firm does not have an ownership stake.

³ This description is consistent with section 60(4) of The Bank Resolution and Recovery (No. 2) Order 2014.

⁴ This refers to the Policy Statement the Bank will release as a response to this consultation.

⁵ This SoP is not intended to be exhaustive of all further policy that may be needed to support the removal of barriers to resolvability.

4 Funding in resolution

Application to firms

4.1 This section applies to all firms in scope of this SoP. Firms should also ensure that the principles set out in this section are met by all entities in their group depending on how these entities are defined according to paragraphs 4.3, 4.4, and 4.7.

Objective

4.2 In order to ensure they continue to meet their obligations as they fall due, firms are able to estimate, anticipate and monitor their potential liquidity resources and needs, and mobilise liquidity resources, in the approach to and throughout resolution.

Principles

Principle 1: Overview of liquidity analysis

Firms should be able to perform liquidity analysis on a timely basis at the level of material entities and for material currencies.

4.3 Firms should identify the entities and currencies which they consider material on the grounds of liquidity, and consider and identify the potential locations of liquidity risk within these. Firms should define and justify the range of entities and currencies which they consider to be in and out of scope.

4.4 At a minimum, the scope of firms' material entities should include those already defined as material for the purposes of internal MREL. Firms should also identify additional entities that are material for liquidity purposes.

4.5 At a minimum, firms' assessment of material currencies should consider the denominated currency of assets, liabilities, and contingent liabilities held by each material entity. Material currencies should include, at a minimum, each currency (which may include the reporting currency) that represents 5% or more of the total liabilities figure of each material entity. Firms should also identify additional currencies which are material for the purposes of liquidity at each material entity, or the group as a whole, taking into particular consideration the currency of obligations that are likely to arise in resolution.

4.6 Firms should develop capabilities to perform liquidity analysis, at the level of material entities, for currencies which are deemed to be material for that material entity, and for currencies which are deemed to be material for the group. The Bank also proposes that firms should also develop capabilities to perform liquidity analysis at the level of the group for currencies which are deemed to be material to the group.

4.7 For entities and currencies that are not deemed to be material, firms may choose to conduct less granular analysis. At a minimum, firms should be able to use existing systems to confirm that the liquidity needs of each non-material entity, and the obligations arising in each non-material currency, do not represent a risk to the liquidity position of the firm in resolution.

4.8 Firms should be able to refresh the relevant liquidity analysis as necessary, at the level of material entities, and deliver this information in a timely manner. Firms should be able to make the core part of the liquidity analysis available on a T+1 basis, or more rapidly if both necessary and appropriate. The mechanism for collecting and compiling information should be robust and compliant with the relevant data quality processes within the firm. The liquidity analysis should be sufficiently adaptable so that it can be readily adjusted to reflect the circumstances of a stress.

4.9 The range of liquidity analysis capabilities and the characteristics of these capabilities, described in the remainder of this section of the SoP, should be read as applying to the scope of the analysis described in paragraph 4.6.

Principle 2: Liquidity needs

Firms should be able to develop estimates of, and assess, liquidity needs in resolution.

4.10 Firms should have the capability to estimate their liquidity needs in resolution based on their current balance sheet, and based on a future estimated balance sheet. As such, firms should be able to estimate their liquidity needs in resolution if they were to enter resolution, either immediately, or at any point over a period of prolonged stress (consistent with the stylised resolution timeline), and should be able to project their subsequent liquidity needs for at least 90 days from this point of entry.

4.11 These capabilities should be sufficiently flexible such that firms' projections of liquidity needs can reflect the different circumstances that firms might face in resolution, and the different ways counterparties to the firm might behave in these circumstances. Firms should be able to perform sensitivity analysis and identify the key drivers of liquidity needs at the level of material entities.

4.12 Firms should design and document methodologies to estimate their liquidity needs in resolution. Firms' methodologies should consider the types and potential severity of outflows in resolution, record the behavioural assumptions used to support cash flow forecasts, and identify key drivers of liquidity needs in resolution.

4.13 When estimating their liquidity needs in resolution, firms should be able to estimate and detail the liquid assets they will be required to hold for operational reasons, such as minimum amounts in central bank reserve accounts, payment systems, initial margin on market transactions, and legal tender held in physical form.

4.14 In particular, firms should be able to estimate their likely intra-day liquidity needs in resolution based on current and estimated future exposures and taking account of how their peak needs may evolve in resolution. Firms should engage relevant counterparties in business-as-usual to understand the likely implications of resolution on their intra-day liquidity needs.

4.15 Firms should be able to estimate how intra-group funding needs would impact on their liquidity needs in resolution. In particular, firms should consider how their preferred resolution strategy would influence the movement of liquidity throughout the group.

Principle 3: Liquidity sources

Firms should be able to monitor and mobilise liquidity sources in resolution.

4.16 Firms should have the ability to estimate the liquidity resources available to them in resolution, both if they were to enter resolution immediately, or at any point during a period of prolonged stress. When estimating the liquidity resources available to them, firms should take into account the impact of prevailing market conditions on the method and timing of asset monetisation.

4.17 Firms should be able to identify unencumbered collateral¹ on a spot basis and project collateral balances, including how they evolve in a stress. Firms should be able to identify important information relating to the availability of collateral, such as currency, asset class, eligibility for central bank facilities, and whether the collateral is pre-positioned or has become unencumbered as a consequence of the

¹ As referred to in Article 7.2 of Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013: an asset shall be deemed to be unencumbered where the credit institution is not subject to any legal, contractual, regulatory or other restriction preventing it from liquidating, selling, transferring, assigning or, generally, disposing of such asset via active outright sale or repurchase agreement within the following 30 calendar days. The following assets shall be deemed to be unencumbered: (a) assets included in a pool which are available for immediate use as collateral to obtain additional funding under committed but not yet funded credit lines available to the credit institution. This shall include assets placed by a credit institution with the central institution in a cooperative network or institutional protection scheme. Credit institutions shall assume that assets in the pool are encumbered in order of increasing liquidity on the basis of the liquidity classification set out in Chapter 2, starting with assets ineligible for the liquidity buffer; (b) assets that the credit institution has received as collateral for credit risk mitigation purposes in reverse repo or securities financing transactions and that the credit institution may dispose of.

stress. They should also identify any legal and operational features that impact the management of collateral, including the transfer of collateral across jurisdictions and across the ring-fence.¹

4.18 Firms should account for the assumptions made regarding intra-group liquidity needs, and for restrictions in transferring collateral across the ring-fence in considering the resources available to be moved around the group. The assumptions around transferability are expected to be consistent with firms' preferred resolution strategy, and should remain sufficiently flexible.

Principle 4: Third-party facilities

Firms should be able to project access to, and usage of, third-party facilities.

4.19 Firms should be able to project access to, and usage of, third-party facilities, including central banks.

4.20 Firms should consider their need, and ability, to monetise a wide range of collateral with third parties, including any potential need or ability to request liquidity from central banks. This should include an assessment of the timing of, and collateral suitable for, borrowing, and the availability of information a third-party would require to risk manage their exposures.

4.21 Firms should be able to demonstrate that, subject to the agreement of third parties, if they were to be unable to meet their liquidity needs utilising their own resources, there is a reasonable likelihood that alternative facilities could be used in resolution.

Principle 5: Governance

Firms should embed the outcome of their analysis into their internal governance framework.

4.22 Firms' internal governance frameworks should facilitate effective and timely decision-making throughout the stylised resolution timeline, and should also support firms' existing management of liquidity risk.

4.23 Firms should integrate their capabilities for managing liquidity risk in resolution into their existing comprehensive liquidity management framework, alongside any existing legal entity-specific liquidity requirements, and internal stress tests.

4.24 Firms should have internal governance arrangements in place for reporting liquidity risks in resolution to senior management, appropriate risk committees, and relevant authorities. Firms should consider quantitative and qualitative indicators for such reporting. These indicators should ensure senior management are informed of firms' liquidity risks in resolution on a sufficiently forward-looking basis. Firms' consideration of appropriate indicators should take into account the sensitivities and key drivers of risk identified through the analysis described earlier in this section.

4.25 Firms should consider the appropriate frequency with which they estimate and report their projected liquidity needs and resources to senior management. Specifically firms should be able, and have processes, to increase the frequency of reporting in a period of stress.

Principle 6: Testing

Firms should participate in, and provide information for, tests of the above capabilities.

4.26 Firms should test the capabilities and governance arrangements set out in this section of this SoP on a regular basis. Firms should document the outcomes of these tests and review them, which may involve internal audit or third-party assurance providers. The tests should be conducted in a way that facilitates assurance by the Bank, the PRA, or a third party.

¹ For firms in scope of ring-fencing, as set out in The Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) Order 2014.

5 Continuity of access to Financial Market Infrastructure (FMIs)

Application to firms

5.1 This section applies to all firms in scope of this SoP. Firms should also ensure that the principles set out in this section are met in respect of all entities within their group.

Objective

5.2 Firms are able to take all reasonable steps available to maintain continued access to clearing, payment, settlement, and custody services in order to keep functioning in resolution (recognising that providers of these services may retain a degree of discretion over their ability to terminate a firm's membership).

Principles

Principle 1: Identifying FMI relationships

5.3 Firms should identify all of the relationships they have with FMIs, including those that are maintained via an intermediary.

5.4 Firms should know the membership requirements (including operational, financial and capital requirements) for all of the identified FMIs, and how these may change when the firm comes under financial stress, and specifically if it were subsequently put into resolution.

5.5 Firms should know how to communicate with each FMI at a time of financial stress and should ensure that they are able to provide any additional information that may be required by each FMI in order for access to be maintained.

Principle 2: Identifying FMIs that provide critical FMI services¹

5.6 Firms should develop a methodology to determine which of the previously identified FMIs and FMI intermediaries provide critical FMI services to them.

5.7 Firms should be able to identify all FMIs and FMI intermediaries that provide critical FMI services to them, and describe for each FMI or FMI intermediary:

- (a) the critical FMI service provided;
- (b) whether their access to the FMI is direct or indirect;
- (c) the jurisdiction where the critical FMI service provider is incorporated; and
- (d) the governing law under which the legal relationship between the firm and the FMI operates and whether this framework supports recognition of the Bank's resolution regime.

Principle 3: Mapping and Assessment of FMI relationships

5.8 Firms should map relationships with critical FMI service providers to:

- (a) critical functions;²
- (b) critical services¹ (where the firm provides access to FMIs or FMI intermediaries as a service to other legal entities within the group);

1 'Critical FMI services': are clearing, payment, securities settlement and custody activities, functions or services, the discontinuation of which could lead to the collapse of (or present a serious impediment to the performance of) one or more of the firm's critical functions. They include related activities, functions or services whose on-going performance is necessary to enable the continuation of the clearing, payment, securities settlement or custody activities, functions or services. Critical FMI services are identified in the course of the resolution planning for a firm and may be provided to a firm either by an FMI, or through an FMI intermediary.

2 'Critical functions' has the meaning in section 3(1) and (2) of the Banking Act 2009.

- (c) business lines;
- (d) legal entities; and
- (e) supervisory, resolution or any other competent authorities for the FMI by jurisdiction.

5.9 Where a firm assesses that the contractual relationship with the critical FMI service provider may not facilitate continuity of access during resolution, it should, if appropriate, consider putting in place arrangements with an alternative provider. Where this decision has been made, the firm should be able to provide an assessment of how credible the alternative arrangement is.

5.10 Firms should maintain an inventory of the actions that providers of critical FMI services may take to terminate or suspend access, should the membership requirements not be met, and the consequences of those actions for the firm in resolution. Where possible, following discussion with the critical FMI service provider, firms should consider the likelihood and circumstances in which these actions may be taken.

Principle 4: Usage of FMIs and FMI Intermediaries

5.11 Firms should maintain a record of transaction data that details their relevant positions and usage of FMIs and FMI intermediaries. These records should be provided to the Bank during pre-resolution contingency planning to assist the Bank's understanding of firms' obligations to and patterns of usage at FMIs and FMI intermediaries.²

5.12 Firms should consider how to provide to the Bank or bail-in administrator, upon request, any relevant information, including, but not limited to:

- (a) collateral pledges;
- (b) types of collateral accepted by each FMI;
- (c) historical daily values of margin required at applicable FMIs;
- (d) historical daily values of gross payments sent/received; and
- (e) an inventory of material upcoming settlement and delivery obligations by value and type of asset.

5.13 Firms should be able to assess the anticipated extended collateral or liquidity requirements that providers of critical FMI services or other providers may place on them and how they would expect to meet those requirements, building on existing risk management systems.

5.14 In estimating these anticipated extended requirements (including on an intra-day basis and taking into account potential prefunding requirements), firms should consider the aggregated volume of business or activity that they would expect to maintain with each critical FMI service provider during resolution. Firms should also consider the potential impact of their clients' behaviour in determining this amount.

¹ As referred to in Commission Delegated Regulation 2016/778: Critical services should be the underlying operations, activities and services performed for one (dedicated services) or more business units or legal entities (shared services) within the group which are needed to provide one or more critical functions. Critical services can be performed by one or more entities (such as a separate legal entity or an internal unit) within the group (internal service) or be outsourced to an external provider (external service). A service should be considered critical where its disruption can present a serious impediment to, or completely prevent, the performance of critical functions as they are intrinsically linked to the critical functions that an institution performs for third parties. Their identification follows the identification of a critical function.

² The maintenance and provision of such records must be performed in accordance with applicable law.

Principle 5: Contingency planning

5.15 Firms should use the information collected according to Principles 1-4, following engagement with FMIs, to draw up and update a contingency plan describing how they will maintain access to critical FMI service providers in stress and during resolution. The contingency plan should include a list based upon a full range of plausible actions that could be taken by each critical FMI service provider, and the defensive actions the firm has identified for mitigating them.

6 Restructuring

Application to firms

6.1 This section applies to all firms in scope of this SoP whose preferred resolution strategy is bail-in. Firms should consider restructuring options across their group as a whole. For the purposes of this section, capabilities at the level of a firm's subsidiaries should be considered as being in place at the level of the firm itself.

Objective

6.2 Firms are able to identify, develop and execute post-stabilisation restructuring options on a timely basis to ensure that, following entry into resolution, they can:

- (i) return to fulfilling relevant regulatory requirements on a forward-looking basis; and
- (ii) return to a viable business model that is sustainable in the long-term.

Principles

Principle 1: identifying restructuring options

6.3 Firms should be able to identify post-stabilisation restructuring options ('restructuring options'). Firms' identification of options for post-stabilisation restructuring should be in addition to the identified recovery options they submit for recovery planning. Firms should consider whether the recovery options that have been identified in their work to meet PRA Rules and expectations on the content of recovery plans and group recovery plans as set out in the PRA Supervisory Statement (SS) 9/17 'Recovery Planning'¹ ('recovery options'), would represent restructuring options.

6.4 To inform this, firms should consider the potential that some recovery options may be undertaken in any attempt to recover and so may no longer be available once the firm is in resolution. Firms should also consider that potential that some recovery options could not address issues that may arise in the event of a resolution.

6.5 As part of this analysis, firms should be able to identify whether solvent wind-down could represent a recovery option or a restructuring option or both.

6.6 Firms should be able to provide information to support the credibility of their identified restructuring options, considering the information that must be provided to support the credibility of recovery options as set out in the PRA Supervisory Statement 'Recovery Planning' (SS9/17). This includes information to support an assessment of restructuring options in the context of resolution and post-stabilisation restructuring.

Principle 2: Capabilities to execute restructuring options

6.7 Firms should be able to describe and assess their capabilities for executing the identified restructuring options. These abilities should have scope to go beyond what is needed for the description of their preparations for executing recovery options that they submit for recovery planning. To inform this, firms should consider whether:

¹ Bank of England (2017) 'Recovery planning', PRA Supervisory Statement SS9/17 available at: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/supervisory-statement/2017/ss917.pdf>

- (i) the capabilities developed to execute their identified recovery options would represent capabilities to execute the identified restructuring options;
- (ii) their assessment of their capabilities to execute their identified recovery options would represent an assessment of their capabilities to execute their identified restructuring options.

6.8 Firms should be able to document how they would execute restructuring options, including to support the timely development of a business reorganisation plan.

7 Management, governance and communication in resolution

Application to firms

7.1 This section applies to all firms in scope of this SoP. However, the principles set out here are only applicable to firms insofar as they are relevant to firms' preferred resolution strategy. In particular, aspects of the principles regarding the role of the Bank and a bail-in administrator (BIA) in the management and oversight of a firm in resolution are only relevant to firms whose preferred resolution strategy is Bank-led bail-in.

7.2 Firms should ensure that the principles set out in this section are met in respect of all legal entities in their group where co-ordination and communication would be needed to ensure the orderly resolution of the firm's group as a whole.

Objective

7.3 Firms are able to – during the execution of a resolution – ensure that:

- (i) their key roles are adequately staffed and incentivised;
- (ii) their governance arrangements provide effective oversight and decision making; and
- (iii) they deliver timely and effective communications.

Principles

Principle 1: Management in resolution

Firms should have capabilities to ensure that critical job roles would be suitably staffed and incentivised in resolution.

7.4 Firms should identify in business-as-usual the job roles that are likely to be critical in any resolution situation. Firms should also have a process for identifying, during pre-resolution contingency planning, further job roles that would be critical based on the particular circumstances at hand. For resolvability purposes, critical job roles are those roles where a vacancy in resolution may have a material negative impact on the firm's decision-making, restructuring and valuations capabilities, and the continuity of critical services.¹ A role may be deemed critical because of the responsibilities ascribed to that role, or because it entails expertise or institutional knowledge that may be otherwise unavailable to the firm.

7.5 Firms should maintain a list of critical job roles. This list should summarise the responsibilities and expertise associated with each role. Firms should also be able to rapidly compile during pre-resolution contingency planning, relevant information on these and other identified critical job roles. This includes,

¹ As referred to in Commission Delegated Regulation 2016/778: Critical services should be the underlying operations, activities and services performed for one (dedicated services) or more business units or legal entities (shared services) within the group which are needed to provide one or more critical functions. Critical services can be performed by one or more entities (such as a separate legal entity or an internal unit) within the group (internal service) or be outsourced to an external provider (external service). A service should be considered critical where its disruption can present a serious impediment to, or completely prevent, the performance of critical functions as they are intrinsically linked to the critical functions that an institution performs for third parties. Their identification follows the identification of a critical function.

but is not limited to, information on salaries, notice periods, succession plans, regulatory approvals (both UK and overseas), and the assessed impact risks of staff loss.

7.6 Firms should have a retention framework in place for retaining staff in critical job roles in resolution should retention be necessary. This framework should include measures that could be taken in a stress or resolution scenario to retain staff where needed. For critical job roles, firms should, to the extent consistent with relevant legal and regulatory requirements, seek to avoid any terms (such as release clauses) in relevant employment contracts that would enable the employee to leave the role at short notice as a result of entry into resolution.

7.7 Firms should have a succession framework in place for those individuals performing critical job roles where it is reasonably foreseeable that a suitable external replacement could not be found at short notice. This framework should seek to ensure that adequate skills and knowledge would be available to perform a given critical job role if the incumbent were to leave or be removed in resolution. This framework could include succession planning carried out in business-as-usual (including for existing purposes). For individuals that do not have succession plans in business-as-usual, this framework may rely on robust processes for identifying and preparing potential successors during pre-resolution contingency planning. As a fall-back, firms should also consider how these critical job roles would be performed where a suitable internal or external replacement was not available in resolution.

7.8 Firms should have processes in place for rapidly familiarising any new management (including a BIA where relevant) appointed throughout the resolution process. These processes should seek to ensure that these individuals are able to carry out their roles effectively as soon as possible after their appointment.

7.9 Firms should be able to rapidly amend and/or introduce relevant accountabilities and incentives as necessary and appropriate in resolution. This includes, but is not limited to, changes to job descriptions, SMF statements of responsibility, and remuneration structures. Firms should ensure that any such changes would be consistent with relevant legal and regulatory requirements where applicable.

7.10 Firms should identify what regulatory approvals would be needed for any changes to management personnel, management responsibilities, and remuneration structures in resolution. Firms should be able to make timely and complete applications for these approvals, including in urgent situations. This could include approvals needed in the UK and overseas.

Principle 2: Governance in resolution

Firms should have capabilities to ensure that effective decision-making and oversight arrangements will be in place in resolution.

7.11 Firms should ensure that the Bank's resolution objectives would be appropriately reflected in their governance arrangements upon entry into resolution. This could include changes to the firm's articles of association, where appropriate, and the terms of reference of relevant boards and committees. This may or may not involve changes to a firm's governance documentation in business-as-usual.

7.12 Firms should be able to establish new committees, or amend existing committees at short notice where needed to support resolution and any associated restructuring. Firms should consider:

- (a) what committees may be required;
- (b) what the responsibilities of these committees would be;
- (c) what membership such committees would need to ensure that there is sufficient expertise, seniority and challenge for the committee to discharge its responsibilities effectively; and

- (d) how to ensure that committee members would have adequate time available to discharge their duties effectively.

7.13 Firms should ensure that decisions are escalated to and taken at the appropriate level, including the level of the BIA and/or the Bank where relevant. Firms should consider how they would clarify ownership, authority and accountability for specific decisions in resolution. An amended Management Responsibilities Map¹ may be an effective tool for describing these arrangements.

7.14 Firms should have processes in place to ensure that relevant boards, committees and management (including the Bank and/or BIA where relevant) will receive the information they need to effectively discharge their decision-making and oversight responsibilities in resolution.

7.15 Firms should identify a team of staff to be responsible for supporting a BIA in carrying out their role. This could include, but is not limited to, staff to support administrative matters, technology and data access, liaison with other areas of the firm, communications, and understanding of the firm's resolution strategy. Firms should consider how cover could be provided for these staff if needed to enable them to support the BIA effectively.

7.16 Firms should be able to expedite decision-making in resolution where necessary depending on the urgency of the situation at hand. Expedited processes should appropriately balance the need for rapid decision making with the need for relevant challenge and oversight. Decisions should be appropriately recorded, even when made on an expedited basis.

7.17 Firms should ensure that dispute-resolution measures will be available in resolution to address potential conflicts between the firm's decision-making bodies. This includes, but is not limited to, the boards of the firm and its subsidiaries (including, where relevant, ring-fenced and non-ring-fenced banks, overseas subsidiaries, and non-bank subsidiaries). Where relevant, firms should consider the role a BIA may be given to adjudicate on conflicts in resolution.

7.18 Firms should identify what regulatory approvals would be needed for any changes to their governance arrangements in resolution. Firms should be able to make timely and complete applications for these approvals, including in urgent situations. This could include approvals required in the UK and overseas.

Principle 3: Communications in resolution

Firms should have capabilities to plan and deliver effective communications in resolution.

7.19 Firms should identify any market communications that may be required under applicable national disclosure regimes. Processes should be in place to ensure these disclosures are made in line with applicable requirements, and to proactively inform relevant authorities (including the Bank) where disclosures may unduly impact financial stability or market confidence.

7.20 Firms should identify groups of relevant stakeholders where communications would be necessary or desirable in resolution. This should include external stakeholders (such as customers, counterparties, investors, FMIs, and providers of critical outsourced services) as well as internal stakeholders (such as staff and contractors).

7.21 Firms should ensure that resolution communication plans could be developed on a timely basis in the lead-up to resolution. Firms should ensure that resolution communication plans could be developed on a timely basis in the lead-up to resolution. For each stakeholder group, firms should identify:

- (a) level of communications that would likely be required;

¹ This refers to the management responsibility maps required under the Allocation of Responsibilities part of the PRA Rulebook.

- (b) key messages they would need to communicate to promote that group's confidence in the firm and its resolution; and
- (c) communication channels and infrastructure they expect to use to deliver these communications.

7.22 Firms should seek to ensure that sufficient communication infrastructure would be available in resolution. This could include infrastructure that is available in business-as-usual as well as additional infrastructure arranged in the lead up to resolution as needed. This infrastructure should be able to deal with any reasonably foreseeable increases in usage resulting from entry into resolution (such as increased call volumes to call centres).

7.23 Firms should determine who would be responsible for delivering various communications and what sign-off arrangements would apply. These sign-off arrangements should be flexible to incorporate the Bank and/or BIA where relevant.

Principle 4: Documentation

Firms should clearly and concisely document their capabilities to ensure effective management, governance and communications in resolution.

7.24 Firms should produce operational documentation illustrating how their capabilities would be used in a resolution scenario. Documentation should describe:

- (a) the processes, frameworks and arrangements in place to meet the principles above;
- (b) roles and responsibilities for deploying these processes and frameworks; and
- (c) the timeframes in which this could take place if needed.

7.25 Firms should test and review their operational documentation where appropriate to ensure that it is credible and effective.

7.26 Firms should maintain centrally the documentation that may be needed to demonstrate or deploy the capabilities set out above (including documentation held for other purposes where relevant). This could include, but is not limited to, the documentation of:

- (a) expected critical job roles in resolution;
- (b) retention and succession frameworks for critical job roles where relevant;
- (c) governance arrangements (including those in place in business-as-usual and those that may be introduced specifically in resolution);
- (d) management responsibilities (including those responsibilities that may be introduced in the event of resolution); and
- (e) communications content and channels prepared for use in resolution.

7.27 These documents should be readily available to the Bank and a BIA. Documents should be written in a clear and concise manner to enable the Bank or a BIA to rapidly familiarise themselves with a firm's capabilities and arrangements.

8 Timeframe for compliance

8.1 Firms should be compliant with this SoP by 1 January 2022.

8.2 The Bank may on a firm-specific basis set an earlier compliance date, for example where the Bank has concerns about the resolvability of a firm.

8.3 The Bank may also set a firm-specific compliance date where a firm that was not previously within scope becomes within scope of this SoP. This might occur if the resolution strategy applicable to the firm changes, or if the firm becomes 'material' for the purposes of setting internal MREL. In these cases, the Bank will determine the appropriate compliance date on a firm-specific basis, and expects to allow firms at least 18 months for compliance.

Annex: Glossary of terms

Bail-in

A resolution tool that enables shares, debt and other liabilities of a bank to be written down or converted to absorb losses and recapitalise the bank.

Bail-in administrator (BIA)

An individual or body corporate appointed by the Bank to perform specified functions in relation to a firm in resolution, such as controlling the voting rights of all shares in the firm.

Bank Recovery and Resolution Directive (BRRD)

European law establishing a common approach within the EU to the recovery and resolution of banks and investment firms.

Banking Act 2009

Domestic legislation in the United Kingdom that established the United Kingdom's resolution regime and sets out the responsibilities and powers of the Bank of England as UK Resolution Authority.

Bank-led bail-in

A resolution in which the Bank uses its bail-in tool.

Business reorganisation plan (BRP)

A plan that must be developed and implemented after a bail-in to address the causes of the firm's failure and restore long-term viability in accordance with Commission Delegated Regulation (EU) 2016/1400.¹

Capability

A combination of information, systems, processes, knowledge, skills, behaviour and co-ordination within a firm or FMI that delivers a specific outcome.

Central counterparty (CCP)

An institution that reduces risk in financial markets by interposing themselves between trading counterparties and guaranteeing the obligations agreed.

Central securities depository (CSD)

A specialist organisation that holds financial instruments such as shares in a form that can easily be transferred without physical certificates.

Certificate of entitlement (CE)

An instrument given to creditors after a bail-in which entitles them to be compensated once the terms of exchange are announced.

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1400&from=EN>

Crisis Management Group (CMG)

A forum bringing key supervisory and resolution authorities of a G-SIB together periodically and in a crisis, to plan for a cross-border financial crisis affecting the firm.

Critical functions (CFs)

Activities (such as deposit-taking and lending) that some firms provide, which would lead to an impact on the real economy if they immediately stopped.

Domestic systemically important banks (D-SIBs)

Firms whose failure has been identified as likely to have a major impact on domestic financial stability.

European Banking Authority (EBA)

An EU body that works to ensure effective and consistent regulation and supervision across the European banking sector. See www.eba.europa.eu.

Failing or likely to fail

An assessment made as part of the trigger for resolution by the PRA or FCA about a firm. This includes whether the firm is failing or likely to fail to meet its minimum requirements to be authorised.

Financial market infrastructure (FMI)

Payment systems, securities settlement systems and central counterparties.

Financial Stability Board (FSB)

An international body that monitors and makes recommendations about the global financial system. See www.fsb.org.

Global systemically important banks (G-SIBs)

Banks identified as being systemic to global financial stability. They are subject to additional regulation and each have a Crisis Management Group (CMG).

Home authority

The Resolution Authority that coordinates the resolution of a cross-border group, which would usually be the Resolution Authority in which the bank is headquartered.

Host authority

A Resolution Authority in a jurisdiction in which the firm provides services through one or more subsidiaries or branches.

Internal Liquidity Adequacy Assessment Process (ILAAP) document

A document setting out a firm's approach to liquidity and funding that the firm updates annually, or more frequently if changes in the business, strategy, nature or scale of its activities or operational environment suggest that the current level of liquid resources or the firm's funding profile is no longer adequate.

Internal MREL

Resources issued from subsidiaries, important to a group's resolution, to the group resolution entity. These resources can be written down in order to move the losses from subsidiaries to a resolution entity enabling the subsidiary to continue to operate. Internationally, these resources are referred to as internal TLAC.

International Swaps and Derivatives Association (ISDA)

An association for participants of derivatives markets.

Material subsidiary

An entity incorporated in the United Kingdom that is not a UK resolution entity and meets at least one of the following criteria for materiality:

- (a) has more than 5% of the consolidated risk-weighted assets of the group; or
- (b) generates more than 5% of the total operating income of the group; or
- (c) has a total leverage exposure measure larger than 5% of the group's consolidated leverage exposure measure; or
- (d) exceptionally, is otherwise 'material', either directly or through its subsidiaries, to the delivery of a group's critical functions. The Bank will continue to review groups' structures and critical functions to judge if this criterion applies to any entities.

Management responsibilities map

A document that consolidates information on a firm's management and governance arrangements into an accessible, clear, and comprehensive single source of reference.

Minimum requirement for own funds and eligible liabilities (MREL)

A requirement established by the BRRD to maintain a minimum amount of equity and liabilities which meet certain criteria so that if a firm fails the Resolution Authority can implement the resolution strategy.

Multiple point of entry (MPE)

A resolution strategy that envisages applying resolution powers to multiple entities within a group.

No creditor worse off (NCWO)

A legal safeguard in the Banking Act (as may be amended, restated, supplemented or otherwise modified from time to time) that requires that no shareholder or creditor is left worse off from the use of resolution powers than they would have been had the whole bank been placed into an insolvency process.

Operational continuity in resolution (OCIR)

A regulatory requirement that firms' operational arrangements allow the continuity of critical services during stress or resolution.

Partial-transfer

A resolution power that transfers part or all of a failing firm to a purchaser or, temporarily, to a bridge bank.

Pre-resolution contingency planning period

The period of intensified contingency planning for resolution, starting from when there is a heightened risk to a firm's viability and ending when either the firm enters resolution or there is no longer a heightened risk to viability.

Recovery plan

A plan providing for measures to be taken by the firm to restore its financial position following a significant deterioration of its financial situation.

Resolution colleges (RCs)

Group established for EU firms with two or more EU countries. RCs are required to reach joint decisions on several aspects of resolution, including group resolution plans, resolvability assessments and MREL calibration.

Resolution entity

An entity within a group to which powers would be applied under the group resolution plan.

Resolution group

A resolution entity, together with its subsidiaries that are not themselves resolution entities.

Resolution instrument

A legal order that gives effect to the bail-in, in accordance with the Banking Act 2009 (as may be amended, restated, supplemented or otherwise modified from time to time).

Resolution Liquidity Framework (RLF)

The framework providing the tools to lend to banks, building societies or investment firms subject to the resolution regime, where the entity or its holding company is in a Bank of England led resolution (but not subject to an insolvency or administration procedure).

Resolution pack

A document containing the information necessary to draw up and implement a resolution plan. Firms are required to prepare, maintain and submit resolution packs by the PRA Rulebook.

Resolution plan

A plan developed by the Bank for each firm which provides detail on the implementation of that firm's resolution strategy.

Resolution powers/tools

The Banking Act (as may be amended, restated, supplemented or otherwise modified from time to time) gives the Bank a number of statutory powers to resolve a firm. These include the bail-in and partial-transfer tools.

Resolution strategy

The Bank identifies firm-specific preferred resolution strategies, which indicate the Bank's intended approach in resolution (ie bail-in, transfer, modified insolvency).

Resolution weekend

The period from the point when the Bank determines that a firm has met the conditions for resolution, and that the relevant resolution entity will be placed into resolution, until the start of the next business day. The Bank will endeavour to ensure that this phase takes place over a weekend, but in exceptional circumstances resolution may need to take place mid-week.

Ring-fenced bank

A bank that provides core banking services – taking deposits, making payments and providing overdrafts for UK retail customers and small businesses – that is financially, operationally and organisationally separated from investment banking and international banking activities.

Single point of entry (SPE)

A single point of entry resolution involves the application of resolution powers at a single resolution entity within the group, generally the parent or holding company.

Stabilisation powers

The powers that enable the Bank of England or HM Treasury to effect the stabilisation options, which are: partial-transfer; transfer to a bridge bank; transfer to an asset management vehicle; bail-in; and transfer to temporary public option. For the purposes of this document, the focus is on stabilisation powers that enable the Bank of England to effect a partial-transfer or bail-in.

Threshold conditions

The conditions that the PRA and FCA expect firms to meet at authorisation and on an ongoing basis.

Total loss-absorbing capacity (TLAC)

The standard, set by the FSB, that defines a minimum requirement for the instruments and liabilities that should be readily available for bail-in within resolution at G-SIBs.

Temporary stay

The suspension by the resolution authority of termination rights under a contract for up to two business days.

Special resolution objectives

The objectives to which the Bank of England must have regard in using, or considering the use of, stabilisation powers or modified insolvency proceedings.

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