

September 26, 2014

Comments on HM Treasury's Consultative Document: Transposition of the
Bank Recovery and Resolution Directive

Japanese Bankers Association

We, the Japanese Bankers Association, would like to express our gratitude for this opportunity to comment on the consultative document: *Transposition of the Bank Recovery and Resolution Directive*, released on July 23, 2014 by HM Treasury.

We hope that our comments below will be of assistance and offer an additional point of reference as you work towards finalising the framework.

(General comments)

We understand that international discussions have been made on co-operation between the authorities in different countries in order to effectively plan for and manage the failure of firms which operate across borders.

We agree with the proposal that the Bank of England's resolution powers to the UK branch of a third country institution are restricted to "back-stop" powers to be used in the event that this co-operation proves ineffective, and where action is required to protect the public interest.

In the resolution of cross-border banks, laws and regulations of a home jurisdiction and powers of a home authority should be respected first. Utmost efforts should be made to ensure communications between the authorities. In addition, "Chapter 9. Institution-specific cross-border cooperation agreements" of the *Key Attributes of Effective Resolution Regimes for Financial Institutions* (KA) issued by the Financial Stability Board (FSB) in October 2011 underlines the importance of prior consultation and discussions, stating that "these agreements should, inter alia: (vii) include agreed procedures for the host authority to inform and consult the home authority in a timely manner when there are material adverse developments affecting the firm and before taking any discretionary action or crisis measure; (paragraph 9.1 vii)".

Given the above, we believe that the Bank of England should have limited

resolution powers over a third country institution with a branch located in UK.

(Specific comments)

Chapter 15 Branches of third country institutions

Q.23 (P.50)

Do you feel that the Bank of England should have the full set of resolution powers (with the exception of share transfer powers) over branches of third country institutions when acting independently to resolve a branch?

A.

We do not deny that the Bank of England should have resolution powers over branches of third country institutions only to deal with unlikely scenarios where the home authority's measures prove to be insufficient, for example, cooperation from the home authority in the resolution proceedings is not available. However, such resolution powers should be limited.

The power of the UK to have the right to refuse to recognize third country resolution proceedings assumes the extremely unusual cases where cooperation between authorities may prove ineffective and where action is required to protect the public interest. Such refusal power should therefore be limited within the appropriate scope.

In addition, the provision of the full set of the powers to the Bank of England may increase liquidation costs for resolution proceeding as well as negate the likelihood of reaching an agreement between the Bank of England and a home authority. For example, in the resolution of a third country institution with a branch located in UK, the Bank of England may independently take enforcement measures, such as a sale of assets of the UK branch, with a view to satisfying creditors of the UK branch, thereby giving rise to the sale at a price lower and leading to an increase in liquidation costs.

Q.24 (P.50)

If not, what powers do you feel would be appropriate, in order to ensure that the risks posed by branches of third country institutions can be addressed effectively?

A.

We support the limited powers, including a power to require the branch to subsidiarise, as set forth in this Consultation Paper. The action to change the status of a firm from a branch to a subsidiary might, through the local incorporation process, provide an opportunity for re-discussions about relevant situations between the Bank of England and a home authority, thereby leading to an appropriate conclusion and minimizing liquidation costs.

In principle, branches of a foreign bank are directly subordinate to the head office located in a home country and are under the control of a home authority. Given this, in the case where a host authority needs to execute the resolution of a branch of a third country institution, it is considered appropriate to carry out resolution proceedings only after the branch is subsidiarised and is under the control of a host financial supervision.