

Operational Continuity in Resolution: Moving Towards Implementation

11 April 2017

From 1 January 2019, UK banks and designated investment firms (“**institutions**”) will be required to meet rules, derived from guidance issued by the Financial Stability Board (the “**FSB**”), on operational continuity. Banks in other jurisdictions are likely to become subject to similar requirements in due course.

Operational continuity expectations represent a sea-change in how operational services are procured, provided and consumed by institutions. For many institutions, compliance with the requirements will involve significant changes to existing operating models. The requirements also give rise to challenges associated with relationships with third-party providers of shared resources, including premises and IT.

In this alert memorandum we provide background on why regulators are focused on operational continuity, discuss briefly the current state of play internationally and then analyse the PRA Rules on operational continuity and the steps that firms will need to take to meet them.

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Introduction

What is operational continuity?

Regulatory authorities remain focused on ensuring that systemically important banks have viable recovery and resolution plans that can be executed to prevent disorderly bank failures.

Following the widespread introduction of bank resolution statutes, regulatory authorities in most developed jurisdictions now have powers to require and enforce recovery plans from banks, and to resolve banks when they fail. The authorities' attention is increasingly focused on ensuring that banks' operational infrastructure can support recovery and resolution.

Recovery and resolution are operationally intensive processes: the disposal of a business line to raise capital in recovery, the transfer of part of a business to a bridge bank by way of stabilisation action in resolution or the restructuring of the business of a failed institution following stabilisation all pose challenges associated with short-term disruptions and medium-term changes to the operational profile of the organisation. In resolution, in particular, the successful stabilisation and restructuring of a failed bank is highly dependent on the capacity of the bank's infrastructure to continue to service critical economic functions. Resolution tools can restore the capital and liquidity position of a bank, but cannot fix a broken IT system or replace skilled staff. Operational continuity requirements therefore require *ex ante* steps to ensure that the operational infrastructure underpinning a bank's activities is sufficiently robust and flexible to ensure the continuous provision of services during and following recovery or resolution.

The FSB Guidance

On 18 August 2016, the FSB published [final guidance](#) on arrangements to support operational continuity in resolution (the "FSB Guidance").¹

The purpose of the FSB Guidance is to assist authorities and firms subject to resolution planning

requirements in assessing whether such firms have appropriate arrangements in place to support operational continuity in resolution. The FSB Guidance supports the objectives of the FSB set out in "[Key Attributes of Effective Resolution Regimes for Financial Institutions](#)" (the "Key Attributes"). The Key Attributes provide that an effective resolution regime should ensure the continuity of systemically important financial services and payment, clearing and settlement functions.

The FSB Guidance anticipates that a firm will need to ensure operational continuity both at stabilisation (where resolution tools are applied) and upon winding-down and/or restructuring. The FSB Guidance provides guidance on a number of arrangements firms should consider relating to financial resilience, operational resilience, contractual and charging structures, governance arrangements and management information systems.

UK implementation

Shortly in advance of the issuance of the FSB Guidance, the UK Prudential Regulation Authority (the "PRA") issued on 7 July 2016 a [policy statement](#) on ensuring operational continuity in resolution (PS21/16) (the "PRA Policy Statement"). The PRA also issued with the policy statement a new "Operational Continuity" part of the PRA Rulebook, amendments to the "Recovery Plans" part of the PRA Rulebook and a [supervisory statement](#) (SS9/16) (the "Supervisory Statement") (together the "PRA Rules"). The PRA Policy Statement also set out the feedback that the PRA received on an earlier [consultation paper](#) and [addendum](#) it published in 2015. The PRA has also consulted in [CP 28/16](#) on reporting requirements associated with the rules. The PRA Rules will apply from 1 January 2019 onward to certain UK banks, building societies and designated investment firms. It is likely that the Financial Conduct Authority will apply similar rules to significant UK investment firms in due course.

The PRA Rules largely reflect the FSB Guidance but go beyond the FSB Guidance in a number of respects.

¹ The FSB Guidance stems from a [consultative document](#) published on 3 November 2015, which closed for responses on 4 January 2016. The FSB subsequently published the [responses](#) it received on 21 January 2016.

Implementation elsewhere

The PRA is the first regulatory authority to have introduced rules implementing the FSB Guidance. No rules have yet been made or proposed in the EU or US to implement the FSB Guidance, although elements of the existing recovery and resolution planning rules in the EU and the US cover some of the requirements.

The US has several requirements that address issues covered by the FSB Guidance, including the Federal Reserve's Supervision and Regulation Letter 14-1 and the various iterations of resolution planning guidance provided by the Federal Reserve and FDIC to both US GSIBs and non-US GSIBs with the largest US operations. For example, firms must:

- develop “playbooks” to facilitate continued access to payment, clearing and settlement services during resolution (and describe relevant contingency arrangements), and have the capability to measure obligations and exposures associated with such activities;
- enhance management information systems so that they are capable of producing relevant data on a US legal-entity basis and have controls to ensure data integrity and reliability; and
- ensure the continuity of critical shared services and outsourced services, including by enhancing contractual arrangements governing such services (e.g., to prevent the automatic termination of services upon the commencement of resolution proceedings).

How should firms approach operational continuity?

In broad terms, in order to meet the new requirements, firms will need to:

- (a) **scope:** assess their critical functions and identify the critical services that support those functions;
- (b) **map:** identify providers of critical services, any documentation governing service provision (for internal provision) and resources that support the provision of those services. They will also need to create a map of critical services (or, if a map already exists, update it) and their provision, dividing service provisions by operating model;
- (c) **gap analysis:** diligence current service provision models (based on the assumed future state in 2019) against the requirements and identify where changes are needed to the current operating model;
- (d) **design:** design changes to the operating model to bring the institution into compliance—organisations with multiple critical functions supported by intra-group or cross-border critical services, or UK ring-fenced banks, may consider creating a service company model to facilitate meeting the requirements; and
- (e) **implement:** implement changes to the service delivery model—these are likely to include:
 - (i) changes to governance arrangements associated with internal service provision;
 - (ii) the creation of service catalogues for internal service provision;
 - (iii) changes to the pricing of internal service provision;
 - (iv) documentation of internal services—the creation of service level agreements (“SLAs”) and other legal agreements;
 - (v) amendments to external services contracts;
 - (vi) ensuring liquidity of intra-group service providers; and

- (vii) creating appropriate regulatory reporting procedures.

Changes to the delivery model may also carry other consequences, including in terms of employment, tax and data privacy.

For firms moving to an operational subsidiary model, the changes will be more extensive and are likely to involve the transfer of assets, including premises, staff, facilities and IT/IP, and the reconfiguration of the organisation to reflect the migration of operational infrastructure.

Related developments

The operational continuity requirements come into force at the same time as the Bank of England's [policy on the minimum requirement for eligible liabilities](#) (MREL). In addition, the European proposals for changes to the Capital Requirements Directive, Capital Requirements Regulation and Bank Recovery and Resolution Directive are also intended to come into force in 2019, although Brexit and uncertainty as to when the EU legislation will be passed and come into effect mean that it is not clear whether UK In-Scope Firms (as defined below) will in fact be required to implement these. In practice, In-Scope Firms will need to plan for implementation of these requirements together, given the interaction between them.

In the remainder of this alert memorandum, we discuss the PRA Rules following the structure proposed above on how to approach the new operational continuity requirements.

I. Scope

Which firms are within scope?

The PRA Rules will apply to UK banks, building societies and designated investment firms (including UK subsidiaries of non-EEA firms that are authorised by the PRA) that perform critical functions and that fulfil any of the following conditions as of 1 January of each year:

1. its average total assets² in the previous 36 months exceeded £10 billion;
2. its average safe custody assets³ in the previous 36 months exceeded £10 billion; or
3. the average total amount of received sight deposits⁴ it held in the previous 36 months exceeded £350 million,

(an “**In-Scope Firm**”).

What services are within scope?

The key entry point to assessing the impact of operational continuity is to scope the services to which the rules apply. Both the FSB Guidance and PRA Rules apply the operational continuity requirements by reference to a firm's critical functions.

Both the FSB Guidance and the PRA Rules broadly define “critical functions” as activities performed for third parties where failure would lead to the disruption of services that are vital for financial stability and the functioning of the economy given a banking group's size or market share, external and internal interconnectedness, complexity and cross-border activities. These are required to be identified as part of resolution planning.

The FSB Guidance uses the term “critical shared services,” and the PRA Rules use the term “critical services.” Both terms capture activities, functions or services performed for one or more business units or legal entities of a group, the failure of which would lead to the inability to perform critical functions. Examples of critical services include information

² This refers to the average total assets a firm is required to report under Chapters 7 and 9 of the Regulatory Reporting Part of the PRA Rulebook.

³ This refers to the average safe custody assets a firm is required to report under provision 16.14 of the Supervision Manual of the Financial Conduct Authority Handbook.

⁴ This refers to the received sight deposits a firm is required to report under Commission Implementing Regulation (EU) No 680/2014 as amended by Commission Implementing Regulation (EU) No 2016/313, laying down implementing technical standards with regard to the supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council (the “**CRR**”).

technology, facility management and administrative services.

Importantly, services need not be shared between critical functions to be within scope: the FSB Guidance and the PRA Rules capture services received by a single business unit within a single firm.

Firms' existing recovery and resolution plans are required to identify critical functions and the infrastructure supporting those functions. These will be the starting point for scoping the application of the requirements.

Non-critical services are not within the scope of the requirements. Nonetheless, firms will need to consider whether to apply their operational continuity compliance programme to non-critical, as well as critical, services. This is because non-critical services may become critical (and *vice versa*) over time. If a firm chooses not to apply its operational continuity programme to non-critical services, it will need to monitor services whose status changes from non-critical to critical.

What critical services may not be provided externally?

The PRA Rules build on existing regulations for outsourcing and general systems and controls obligations. These constrain outsourcing in a number of respects. In broad terms, these restrict the external provision of critical services as follows:

- Management and control of an In-Scope Firm's affairs cannot be delegated. Functions that involve responsibility for the organisation and control of the affairs of an In-Scope Firm may not be outsourced.
- Monitoring, management and control of outsourced services cannot be delegated. Each In-Scope Firm must be able to monitor, manage (including risk-manage) and control the outsourced services and must take reasonable care to supervise the discharge of outsourced functions.
- Conflicts associated with the outsourcing must be identified, assessed, managed and monitored.
- In-Scope Firms' outsourcings must cover only those services that are transactional and can be

presented in contractual terms. This is in contrast to functions that involve the exercise of judgement or management direction.

- Outsourcing should not impair internal control or increase operational risk, senior management roles or other roles involving the exercise of significant discretion.

II. Mapping: Service delivery models

The PRA anticipates that In-Scope Firms will need to undertake comprehensive mapping and due diligence to be clear on which critical services need to be maintained in resolution.

The FSB Guidance and the PRA identify three service delivery models that firms usually adopt for the provision of operational services. These are:

- (1) service provision within a regulated entity ("**intra-bank**");
- (2) service provision by an intra-group service company ("**intra-group**")—in broad terms, either:
 - (a) by a bank or other financial services provider within the group ("**inter-bank**"); or
 - (b) by an unregulated group member that provides operational services only (a "**service company**"); and
- (3) service provision by a third party service provider ("**third party**").

When undertaking the mapping, firms will need to divide service provision along the lines of the models above.

The FSB Guidance and the PRA Rules highlight that there is no presumption that firms or certain types of firms should adopt a particular model. However, as discussed further below, demonstrating compliance is likely to be more challenging for inter-bank and cross-border provision in a number of respects. Further, the PRA has indicated in the past that it takes a positive view of service company structures and the increased resolvability benefits of these structures in regard to In-Scope Firms.

We explore some of the issues firms may face when using the different services delivery models further below.

III. Gap analysis: key requirements

The core PRA Rule is Rule 2, which has three elements. The Rule provides that an In-Scope Firm must ensure that its operational arrangements for critical services:

- (i) facilitate the execution of its, and its group's, recovery plan (Rule 2.1),
- (ii) facilitate the resolution of all or part of its business (Rule 2.2), and
- (iii) ensure the continuity of critical services in the event all or part of the business of any member of its group fails or is likely to fail (Rule 2.3).

Rule 2.1: facilitating recovery

It will be clear that an organisation's needs in recovery will be determined by the recovery options set out in the recovery plan. In-Scope Firms will have conducted work on execution/implementation issues associated with the execution of recovery plan options, including 'unplugging' issues associated with disposals (sections 2.3 and 2.7 of the PRA's template for recovery plans set out in [SS 18/13](#)). The PRA's expectation appears to be that operational impediments associated with those options will be dealt with under Rule 2.1. Accordingly, it may be appropriate for some In-Scope Firms to reappraise recovery options in light of the enhanced requirements.

Rule 2.2: facilitating resolution—should firms assume the resolution strategy will be followed?

It is less clear how firms can demonstrate that the operational arrangements facilitate resolution, given the inherent uncertainty around the circumstances of and powers used in resolution. The PRA emphasises the need for "separability"—i.e., the facility with which component business lines may be broken out and transferred in resolution.

An In-Scope Firm's needs as to separability and restructuring to support operational continuity will be dependent on the resolution strategy for the In-Scope Firm. Whilst the rules themselves do not

directly link the operational continuity requirements to the resolution strategy, it would seem logical to do so. Doing so then raises the further question of whether operational continuity requirements should be applied at all by subsidiaries within groups whose resolution strategy is based on a single point of entry ("SPE") strategy. The PRA Rules do not address the point directly, but the reference to "all or part" of the group failing suggests the separability requirement applies at a standalone level for each In-Scope Firm, regardless of the resolution strategy. It is therefore possible that the PRA will insist on application of the operational continuity requirements, even for subsidiaries within SPE groups, on the basis of the need for a fall-back resolution strategy in the event the SPE strategy fails. In many cases this is likely to be disproportionate. We recommend that firms in this position liaise with the PRA to set expectations as to how to approach this case.

Rules 2.1 and 2.2: facilitating recovery and resolution—demonstrating separability

The Supervisory Statement emphasises that the PRA will expect In-Scope Firms to be able to demonstrate how their operational arrangements to support critical services facilitate recovery and resolution within a reasonable time. In particular, In-Scope Firms will need to demonstrate, in writing, what would happen to critical services if recovery options were executed or if resolution tools were applied, including:

- how operational arrangements facilitate separability and restructuring within a reasonable time;
- if an In-Scope Firm has identified the disposal of business units or legal entities as part of its recovery strategy, how its operational arrangements support the execution of recovery options within a reasonable time;
- how operational arrangements facilitate any post-resolution restructuring; and
- how operational arrangements facilitate separability of a ring-fenced body and its sub-group from other wider group entities.

Underlying the Supervisory Statement is a clear expectation that In-Scope Firms' servicing models

will be such that they can support divestments in recovery (to the extent the recovery plan contemplates divestments) or resolution. This may be expected to be more difficult for In-Scope Firms relying on inter-bank service provision models across borders, given the wide array of possible outcomes of failure and difficulties in demonstrating certainty of continuity.

Rules 2.3 and 3.4: continuity and operational resilience

Similar to the requirements on facilitating resolution, interpreting the PRA's expectations around continuity is difficult due to the absence of a hypothesis as to what failure (or likely failure) of a group member entails.

In particular, the requirement to ensure the continuity of critical services in the event all or part of the business of any other member of its group fails or is likely to fail is difficult to reconcile with the intra-group service delivery model. This is because the failure of an affiliate which provides critical services would inevitably result in disruption to the provision of services to the In-Scope Entity. On its face, the rule would appear to prohibit intra-group provision altogether. This issue was raised with the PRA in the consultation process for the rulemaking. The PRA indicated informally in discussions of the consultation that this was not the intent of the rule, and that the rule is intended to be met through compliance with the other aspects of the PRA Rules and Supervisory Statement, but has declined to provide any commentary to this effect.

Rule 3.4 gives rise to a similar issue. The rule requires that access to operational assets supporting critical services "must not be disrupted" in the event of a group member being restructured or resolved.

Section 6 of the Supervisory Statement provides further guidance on these requirements as they apply in the context of intra-entity and intra-group provisions. This indicates that the PRA will expect In-Scope Firms to ensure that services remain operational even if a group entity fails. The statement provides illustrations as to how this expectation may be achieved:

- (1) ensuring that the critical services provider has change capabilities and operational contingency arrangements,
- (2) demonstrating that operational resilience is not affected by the loss of key business entities or units post-resolution and
- (3) ensuring that the critical services provider has sufficient staff and expertise dedicated to the critical services to ensure that post-restructuring activities can be carried out if necessary.

The Supervisory Statement leaves unaddressed the question of whether intra-group provision—particularly from outside the EU, where recognition of resolution action generally cannot be assured—can meet the requirements.

In-Scope Firms may need to make assumptions about which other entities in the group should be assumed to fail, in what circumstances and with what consequences, in order to be able to demonstrate that they meet the requirements.

Financial resilience

The Supervisory Statement indicates that critical services providers must have sufficient financial resources to ensure the continuity of critical services both during stress and after resolution.

Critical services providers should be able to withstand any temporary loss of revenue due to suspension of payments during a resolution period, expense-revenue mismatch during resolution, employee costs such as retention and redundancy payments, restructuring and wind-down costs and write down of intangible and relationship-specific assets.

The Supervisory Statement requires that where a critical services provider is a member of the same group, the services provider should be supported by liquidity resources equivalent to at least 50% of the annual fixed overheads of the critical services provided. Where the provider is itself a bank, that liquidity resources requirement should be met in addition to the liquidity coverage ratio. In its consultation paper, the PRA had initially proposed that service providers also be supported by capital equivalent to 25% of the annual fixed overheads of the critical services provided. However, this proposal

was abandoned, and instead it will be for the Bank of England, as resolution authority, to consider whether loss absorbing capacity should be allocated within groups.

Financial resources reporting

In order to monitor whether firms meet the minimum liquidity expectation, the PRA proposes requiring data from intra-group critical services providers. This will allow the PRA to monitor and identify the appropriate level of liquid assets a group provider should hold. The PRA proposes that In-Scope Firms submit annually, on a calendar year basis, certain information within 45 business days after the first reporting period ending 31 December 2019 (with the first submission due in March 2020). Consultation paper CP 28/16 proposes that the report includes the name of the receiver and provider of critical services, fixed and discretionary operational costs (i.e., salaries, bonuses, pensions, etc.), recharge cost between group entities, annual fixed overhead costs, liquid asset expectation and amount, type and location of liquid resources the group provider has to meet.

Rules 3.1 to 3.3: Contractual service provision

The requirements associated with contractual service provision affect service delivery models differently.

Service level agreements

Under all models, there is an expectation that SLAs will be created. These are expected to be objective and on third party terms. In-Scope Firms will likely leave SLAs in place for third party services, but not for intra-bank or intra-group services. The Supervisory Statement indicates that SLAs must include as a minimum:

- clear parameters against which service provision can be measured;
- quantifiable and qualitative metrics and performance indicators;
- the provider and recipient(s) of the service;
- the nature of service and its pricing structure;

- any onward provision to other entities or sub-contracting to third party providers; and
- provisions that terms and pricing should not change as a result of a party to the contract entering stress or resolution.

In-Scope Firms will therefore need to identify and catalogue services, including intra-bank services, and create or update SLAs which meet the PRA's expectations. In practice, identifying and documenting and pricing (see below) services received intra-group or intra-bank is likely to be the most intensive element of compliance with the new requirements.

Intra-entity SLAs

Intra-entity SLAs are, of course, not legally enforceable. However, on divestment (whether in recovery or resolution) of the provider from the business line it services (or *vice versa*) there is an expectation that they will be used for transitional purposes. The PRA has in the past requested of certain of the major UK banks that In-Scope Firms' intra-entity SLAs should be drafted so as to come into force as transitional service agreements ("TSAs") on resolution following divestment, with full arm's length contractual terms built in. PRA Rule 3.1 requires that an In-Scope Firm document the transitional arrangements for critical services in the event that the firm is restructured or resolved, section 8.3 of the Supervisory Statement indicates that intra-bank SLAs should include details of the transitional arrangements in resolution and section 10.1 indicates that a firm should be able to convert service contracts into a third party contract or TSA "at short notice." Firms should consider these expectations in light of their resolution strategy.

Contractual rights to continuity

Under the intra-group and third party service provision models, Rule 3.2 requires that a critical services provider should not be able to terminate, suspend or materially change the contractual provisions governing the provision of critical services because a firm or a member of a group entered into resolution. The Rule also requires that the In-Scope Firm be entitled to receive services after it has entered resolution, provided there is no default on payment.

This requirement is straightforward to apply to intra-bank and intra-group arrangements, but has proved problematic in respect of external service provision, as it requires renegotiation of contracts to exclude termination rights on resolution or insolvency.

Need intra-bank or intra-group contracts be at arm's length?

The rules do not explicitly require that contracts be made on arm's length terms, other than in relation to charges (as to which, see immediately below). However, the Supervisory Statement includes a comment (section 10) that intra-entity contracts be convertible into third party agreements or TSAs: this points to a preference for arm's length terms overall. The strength of this preference is likely to depend upon the resolution strategy for the firm.

Rule 3.3: Charging

Under Rule 3.3, all charging structures for critical services are required to be predictable, transparent and set on arm's length terms. The PRA Rules are silent on the level of granularity associated with charging structures, but it is likely that charging structures will need to be broken out by critical function at a minimum.

Rule 4.2: Governance

The PRA Rules require that a critical services provider, when located within the group, must have its own governance and management structure in place.

The Supervisory Statement indicates that an In-Scope Firm should be able to demonstrate that the group critical services provider has management of sufficient seniority, who are responsible for the day-to-day running of critical services and who can ensure critical services will continue to be performed in resolution. However, the group critical services provider should not rely on senior staff that perform significant duties for other entities in the group. If a senior member of staff has multiple roles within the group, responsibilities for critical services should be prioritised in resolution.

Staff responsible for the running of critical services will need to continue to be remunerated in resolution. Such staff should be employed by the

critical services provider, where critical services are provided in a separate group entity, and the main part of their remuneration should be paid by the critical services provider, not by other entities.

IV. Design

A key question for In-Scope Firms is whether to change the existing model for critical service provision. This will depend on how service provision operates today, any particular resolvability weaknesses associated with the model (particularly around cross-border inter-bank provision, where the risk of non-co-operative resolution of an overseas critical service provider is perceived as a threat to the resolvability of an In-Scope Firm) and the resolution strategy for the In-Scope Firm and its group. For the majority of firms, there is no clear path to compliance: individual firms will need to assess their position and take a view on what represents an appropriate position in light of the inherent uncertainties in the PRA Rules.

The service company model

In the UK, several banks have announced their intention to establish service company structures, driven in part by the UK ring-fencing rules (which require service company structures for the provision of services which are shared between the ring-fenced bank and non-ring-fenced bank).

The key benefit of a service company model is that it isolates the critical operational infrastructure of a financial institution from its balance sheet. Assuming that the service company is appropriately capitalised and funded, it may continue to operate through the failure of one or more banks within its group without disruption. It is therefore superficially highly attractive to the authorities. It may also carry other benefits, including efficiencies associated with centralising infrastructure in a single location within the group; clearer governance; reduced operational risk; and a platform from which to offer third parties operational services. The service company route is likely to be the most robust approach from the perspective of the PRA.

As against this, the move from in-bank or inter-bank service provision to a service company model is time-consuming and expensive, as it involves the identification and transfer of assets and liabilities

from the bank(s) to the service company(ies) within the group. In addition, for groups with an SPE strategy, the isolation of operational infrastructure is also arguably redundant, given that the strategy will contemplate resolution at the level of the holding company. Further, the position of service companies within the regulatory framework in the UK (and possibly elsewhere) is unclear: legislative and regulatory authorities have not yet given meaningful consideration to whether (and how) to regulate such vehicles. Service company structures also carry a number of complex questions around commercial terms, and the relationship between the service company and its group. Careful consideration should be given to the challenges, and expense, associated with the creation of such structures and the longer-term implications for an In-Scope Firm.

V. Implementation

Implementation of the requirements is likely to be complex and to involve multiple workstreams. Firms should be mindful of the issues outlined below relating to implementation.

Governance

Changes to governance relating to internal service provision may prove controversial to the extent that service provision moves towards an arm's length basis. The expectation that critical services providers have their own governance and management presents some questions as to reporting lines and the extent to which senior management of a bank can continue to be involved in the day-to-day management of operational infrastructure. In-Scope Firms will need to manage the tension between ordinary course management and the PRA's expectations.

Service catalogue

The generation of a service catalogue as part of the creation of SLAs is likely to require substantial diligence for those In-Scope Firms which have not already documented the internal flow of services. The time and effort to identify and document services, and keep the catalogue up to date, should not be underestimated.

Pricing of internal service provision

Moving to arm's length pricing of internal service provision is likely to involve significant changes to the basis of internal remuneration for firms which receive or provide intra-group services, which typically charge on a cost-plus basis. Consideration may need to be given to the broader implications for pricing of products and services delivered to clients.

Documentation of internal services—creation of SLAs and other legal agreements (for intra-group provision)

In-Scope Firms will need to produce standard form SLAs and internal legal agreements. Where relevant, these will need to comply with relevant regulations governing material outsourcings. This exercise will involve a degree of judgement as to "how arm's length" agreements will need to be. Relevant outsourcing and other regulatory requirements will also need to be met.

Renegotiation of external services contracts

As indicated above, the renegotiation of external services contracts has proved problematic in respect of external service provision.

In-scope Firms may have dozens, or even hundreds, of external suppliers providing critical services. Amending existing contracts to provide for contractual rights to continuity on resolution or insolvency is likely to be difficult. Various UK banks have made efforts to include provisions dealing with continuity on resolution in outsourcings and other contracts, to date with mixed results. In practice, In-Scope Firms may need to take a pragmatic view of what changes can be made to existing service contracts, whilst ensuring new contracts governing critical service provision include continuity rights.

Financial resilience of intra-group service providers

Ensuring the financial resilience of service providers is likely to require changes to the financial structure of the service provider. Affected service providers will need to create liquidity buffers (separate from any buffers maintained for purposes of the liquidity coverage ratio) in the form of cash held with third parties or liquid assets.

Reporting

Documenting and reporting on operational continuity is likely to be an additional workstream, capturing updates to recovery and resolution planning, financial reporting in respect of the liquidity position of any intra-group service providers and compliance reporting more generally on the satisfaction of the operational continuity requirements to support the requirement to demonstrate continuity.

Reorganisation

If implementation will include the reorganisation of operational infrastructure, for example through the transfer of assets to a service company or across entities within the group, then implementation will need to include identification and transfer of the relevant assets (which may require third party consents or filings), together with documenting the new relationships. To the extent staff are transferred, consideration will also need to be given to employment and pensions consequences.

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