Response to the Consultation on Transposition of the Bank Recovery and Resolution Directive

Submission from Barclays

28 September 2014

Executive Summary:

Barclays welcomes the opportunity to respond to this consultation. We look forward to continuing our work with the UK authorities, including in relation to valuation principles, governance requirements pre and post resolution and regulatory powers over holding companies to ensure that a coherent package of prudential regulation and resolution legislation can be developed. We also note, of course, the importance of finalising the FSB TLAC debate in achieving this.

This response supplements and supports our previous May 2014 response to HM Treasury's earlier *Consultation on Banking Reform: Bail-in Powers Implementation*.

Overall, we agree with the approach taken in the consultation paper. However, we do feel that there are a number of critical areas where further clarity is needed in order to provide necessary certainty to market participants (including banks, investors and credit rating agencies).

In particular:

- We would appreciate clarification on the intended amendments in section 7.8-7.9, relating to powers to bail in a HoldCo in the circumstances where it is not itself failing (which is important in the context of capital and debt issuance from the HoldCo)
- [redacted]
- We seek confirmation from HM Treasury (HMT) that the rationale behind the suggested discretion to disregard the write-down or conversion of intra-group liabilities in section 7.10, for the purpose of determining whether the conditions for resolution are met, is the requirement in BRRD Art 33(2) that both the HoldCo and an OpCo meet the conditions for resolution (which may no longer be met for the subsidiary following capital write down or conversion at the PONV)
- We interpret the exclusion of CoCos triggered prior to PONV from the 8% minimum loss absorption prior to accessing resolution funds (section 11.40) <u>not</u> to mean that these instruments will be excluded from MREL before the PONV. Indeed, CoCos which are triggered would, in effect, still count towards the own funds component of MREL, since they would either be converted into equity or be written down, which would bolster reserves as the liability is extinguished
- [redacted]

- Indeed, as a general principle anything that has the potential to change the normal creditor hierarchy could cause confusion for investors; clarity on where an investor will stand in the hierarchy is essential. The Banking Act and its Code of Practice have an important role to play in this regard, and we would encourage the UK authorities to go beyond the BRRD PONV provisions, [redacted]
- We note that the consultation contains minimal discussion regarding the bail in of derivatives. We believe there is a need for more guidance on, amongst other things, the criteria which will be used to determine whether derivatives will be bailed in
- In relation to resolution financing, we consider that it is not possible to come to a view on the merits of establishing an alternative mechanism in the absence of the final form of the delegated act being developed by the European Commission. We have instead outlined a number of principles that should guide the approach taken to any ex-post contributions. In addition we have commented on the question of double tax relief, where UK bank levy and non-UK resolution fund costs are charged in respect of the same balance sheet. We are concerned that providing any such double tax relief will ultimately result in a position that is more generous to inbound banks operating in the UK, at the expense of UK-headquartered banks