Operational subsidiarisation in practice under an MPE resolution strategy

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Executive summary

Critical shared services of MPE banks must be organised in a way that would permit the group to maintain critical services when other parts of the group enter into resolution. This is what has been termed as "effective operational subsidiarisation."

The main features and pre-requisites of the operational subsidiarisation are:

- Shared services should be provided from a separate legal company.
- The financial viability of the shared service company should be driven by services provided rather than by corporate contributions from the parent; and should be supported by a robust and audited transfer pricing policy.
- The shared service company should be sufficiently funded ex-ante.
- Robust service level agreements (SLAs) between group entities are a requirement.
- IT service companies should be able to produce specific legal entity data.

Benefits of the operational subsidiarisation are significant, ranging from a more effective resolution – securing operational segregation – to a more efficient service – cost optimisation.

Operational subsidiarisation in MPE banks may be structured in two ways: i) a centralised approach based on either branches or subsidiaries, and ii) a decentralised approach.

- When choosing between the two approaches, banks need to strike a pragmatic balance between the wishes of the regulators – decentralised – and the need to maintain an economically viable business model – centralised.
- The benefits of the centralised model, especially under a subsidiary structure, clearly outweigh its resolution threats, which could be resolved by robust SLAs and ex-post capital and funding agreements.

Finally, outsourcing and, in particular, cloud computing, are gaining importance in both the banking business and the regulatory agenda. Resolution regimes and authorities should be flexible enough to be adapted, or at least not limit, the emerging financial innovation.

- Cross-border outsourcing agreements, internal and external audit processes and operational stress test exercises would assess the availability of the information and would enhance authorities' confidence in the cloud.

1. Introduction

The Financial Stability Board (FSB) and several national authorities are working on how to develop a successful implementation of effective resolution strategies, reducing the impact on taxpayers in the case of the collapse of a financial institution. In particular, in July 2013, the FSB outlined two stylized approaches for resolving significant financial institutions1: Single Point of Entry (SPE) and Multiple Point of Entry (MPE)[2].

A key consideration for developing a successful resolution strategy is to identify and remove the potential barriers to the implementation of the preferred resolution strategy. A critical barrier for MPE banks is the minimum requirements for **operational continuity and structuring shared services**[3]. In fact, arrangements that work perfectly well in a going concern, in which all entities are part of the same group with common goals, may break down in a resolution scenario. Resolution may result in one or more entities going into administration, being sold off or entering some form of special resolution or bridge-bank regime. In this case, each entity will be managed independently and the management or administrators of each entity cannot then necessarily rely on continued operational service being provided.

MPE banks' shared services[4] (e.g. data processing centre, software development and maintenance or back-office services) must be organised in a way that would permit the group to maintain services to ensure that those services are available even when other parts of the group enter into resolution. As the FSB notes, "this entails the provision of critical shared services or functions out of adequately capitalised separate legal entities that are dedicated to service provision, or advance preparation for a carve-out in a crisis"[5]. This is what has been termed as **"effective operational subsidiarisation."**

Operational subsidiarisation and resolution challenge the prevailing shared services model. Nowadays, most banks use shared services to a greater or lesser degree. This may vary from the use of staff or technology owned by one entity to process transactions of others through to an independent centralised company providing a shared service, or, even, outsourced.

Section 2 of the note describes the main features and pre-requisites to implement a feasible operational subsidiarisation. Section 3 presents how to implement effectively the operational subsidiarisation in an MPE Group. And, finally, section 4 and 5 outlines the main challenges in terms of resolution and cloud computing.

2. Operational subsidiarisation: facts and pros

Contextualisation in the resolution debate

Maintaining shared services in or for a particular entity when the bank or another part of the group fails is the main objective of the operational subsidiarisation.

In the event of failure, knowing how the shared services are structured is important. This is especially critical in global MPE banks operating in multiple jurisdictions. Host authorities may be concerned as to whether entities in different countries may or may not be able or encouraged to continue delivering services in their country. These doubts may even arise within the same country when rules that are being introduced to ring-fence certain banking activities (e.g. the Vickers rule in the UK or the structural banking reform proposed by the EU Commission). In this context, operational subsidiarisation may mitigate authorities' and bank managers' concerns.

[1] FSB (July 2013), "Recovery and Resolution Planning for SIFI: Guidance on Developing Effective Resolution Strategies".

[2] Whereas an SPE strategy focuses on the entire group, an MPE scheme involves the application of resolution powers by two or more resolution authorities to different parts of the group, and this is likely to result in a break-up of the group into two or more separate parts, preserving essential functions without causing contagion to the rest.

[3] P. Tucker (May 2013), speech at INSOL International World Congress "Resolution and future finance

[4] See identification of shared services in Annex 1.

[5] Multiple-point-of-entry preconditions (see FSB July 2013).

In practice, operational subsidiarisation establishes that the part of a bank's infrastructure that is vital to ensure ongoing operations of critical functions should be placed into a separately capitalised and solvent company remote from the whole group. This ensures that the critical functions provided by a self-sufficient and independent company are able to continue to operate in the event that a bank becomes non-viable.

Main characteristics and pre-requisites of the operational subsidiarisation

When designing and establishing an operational subsidiarisation, the following elements will need to be considered to mitigate the potential obstacles in case of resolution:

A. Shared services should be provided from a separate legal company

See Section 3 for an analysis of the various alternative structures

B. The financial viability of the shared service company should be driven by the services provided rather than by corporate contributions from the parent; and should be supported by robust and audited transfer pricing policy.

The conditions of a related party transaction should not differ from those that would have been established among independent companies. This is the "arm's length principle" stated by the OECD in its Transfer Pricing Guidelines[6].

The billing of the subsidiary for the services rendered should be at market prices. That is to say, the transaction should not be treated differently for tax purposes from comparable transactions between independent enterprises, simply because the transactions are between enterprises that happen to be associated).

The method to be used to determine arm's length transfer pricing for intragroup services should be determined according to the OECD's Guidelines. Often, the application of the Guidelines will lead to use of the Comparable Uncontrolled Price Method (CUP) or Cost Plus method for pricing intra-group services. A CUP method is likely to be the most appropriate method where there is a comparable service provided between independent enterprises in the recipient's market, or by the associated enterprise providing the services to an independent enterprise in comparable circumstances. On the other hand, if a Cost Plus Method is used, the final price should also include any mark-ups necessary to address tax considerations. An appropriate mark-up should be added to the cost incurred in the rendering of the services, to make an appropriate profit in light of the functions performed (taking into account assets used and risks assumed) and market conditions.

In line with the above, although there are different ways to price and charge back intragroup services, using a robust transfer pricing policy is more than desirable. While unrealistic transfer prices do not affect the overall bank directly (not taking into consideration additional taxes or minority shareholders impacts), they become a concern when they are misused to reduce profits at a subsidiary or regional division of the banking group that is located in a country that levies high taxes, and raise profits in a country that levies no or low taxes. It is worth to note that an incorrect transfer pricing policy could lead to high penalties and tax adjustments. Additionally, an intense focus on transfer pricing by almost all tax authorities around the globe, together with a growing focus on international exchange of information, drives the implementation of an audited transfer pricing procedure, either internally or externally.

Developing a shared service income business model supported by a robust transfer pricing policy would enhance transparency and mitigate tax and resolution authorities' concerns.

[6] OECD (September 2010), "Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations".

C. The shared service company should be sufficiently funded and capitalized (capital and liquidity).

Operational companies would have the necessary financial and managerial resources to ensure that they can continue providing shared services in case of resolution of any subsidiary of a group.

Besides having a comfortable financial situation (capital and liquidity) in a business-as-usual basis, what is really relevant in an extreme adverse situation is to maintain the financial strength when the group is under resolution.

The failure of a subsidiary and the subsequent past-due payments of the shared services may threaten the financial viability of the operational company and put at risk the continuity of the critical functions of the whole group. In fact, the provision of liquidity should maintain the day-to-day services and continue to pay the salaries, software licenses, etc. to preserve the failed bank's critical functions. Therefore, maintaining a liquidity buffer in the operational company would constitute a feasible back-stop against contagion risk.

D. Robust service level agreements (SLAs) between group entities are necessary, including cross-border inter-company service agreements, which can be enforced in resolution.

Operational subsidiaries need to have in place robust SLAs with their bank customers, which can be enforced in resolution. These SLAs serve as "market" contracts within the group with specific clauses for resolution scenarios, which guarantee the continuity of the service for an agreed period, and, therefore, maintain the critical functions of the failed bank.

The SLAs should include, at least two critical provisions:

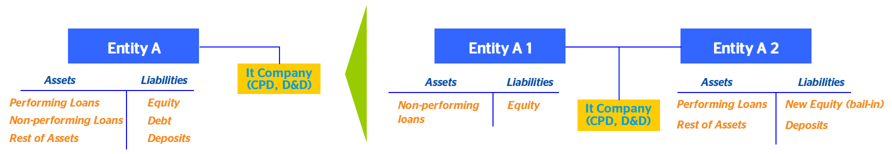
- Minimum prescribed period. The cornerstone in the SLAs is the provision to continue providing services for a minimum period of time (e.g., 120 days post-resolution) to identify and arrange for an alternative service provider, or to build the in-house capability to perform the services. A long lag period provides greater flexibility to resolution authorities in order to maximise the value of the failed institution and find the optimal resolution strategy, normally through a bridge-bank strategy.

  The provision of services should also be extended to a potential third-party purchaser or the bridge bank for this period of time; and, reciprocally, the third-party purchaser or bridge bank would continue to fund the provision of those services.

  For example, Figure 1 shows that contracts for such services should assure that critical functions could continue to be provided for an extended transition period, notwithstanding the possibility that entity A1 could cease to be part of the group.

  Figure 1

  Operational subsidiarisation and bridge-bank resolution strategy

  Source: BBVA Research

- Minimum cancellation period. The SLAs may also determine that it would be possible to transition away from the services provided by the operational company and for the bridge bank or third-party purchaser, as applicable, to perform those services within a minimum number of days. Therefore, the xx-day (e.g. 60 days) notice period would be sufficient time to allow for alternative service arrangements to be made and to prevent disruption.

E. **Operational companies, that provide shared information and IT services to several subsidiaries within the group, should be able to produce legal entity-specific data.**

   Data information systems are a key component of the banking strategy, particularly in global groups. Data systems enable the business and regions to effectively manage information on key areas such as risk management, finance, accounting or reporting. In particular, they provide information and reporting needs at all levels with local and group consolidated financial and non-financial information considering the diversity of views, objectives and structures but maintaining the uniqueness and corporate criteria.

   Such data information processes are usually carried out through independent and common data processing centres that should be able to produce critical management information at the subsidiary level. As the FSB stated in July 2013, this includes detailed information on capital, subordinated debt, contingent capital and debt, as well as operational links7.

   Additionally, data information shared services should be readily separable from the rest of the corporate organisation so that they can be relied on at the level of relevant subsidiaries or local blocks.

Advantages of operational subsidiarisation

The advantages of the operational subsidiarisation in case of resolution of a large and complex group have already been highlighted by the authorities as the UK Independent Commission on Banking (ICB)[8].

From the standpoint of the authorities, operational subsidiarisation could prove very effective means of securing operational segregation. Chief among them:

- It involves placing into an independent company the key infrastructure needed for a bank to preserve the critical functions either for the economy or the bank itself. Operational subsidiarisation constitutes a natural firewall against contagion risk.
- It also allows critical infrastructure to be re-opened immediately after resolution is invoked. Being segregated from the banking entity paves the way to carry out their shared services whilst the resolution authority controls the failed bank.
- Placing critical shared operations in neither a deposit-taking nor a trading entity could facilitate operational continuity, regardless of which entity experiences stress. Such an approach could reduce the loss in default experienced by enabling ongoing services to the banks continuing operations. That is to say, this structure is more resilient to face shocks, either idiosyncratic or systemic.

From the standpoint of the bank managers, the operational subsidiary approach is more efficient than providing services within the operative entity.

- Shared service businesses, such us back-office process or IT data processing, is very far away from the banking sector. Operational subsidiarisation provides bank managers with a greater degree of flexibility. In fact, group managers may allocate specialised human, IT and software resources to fully comply with their shared services task.

[7] See FSB (July 2013)

[8] The Independent Commission of Banking (UK) identifies the operational subsidiarisation as the best approach to carry out shared services within a global group. See final recommendation (September 2011)

- The costs, if structured correctly, would primarily be one-off and related to the transfer of infrastructure, but not financial, assets into the new entity.
- In addition, a group would incur the cost of capitalising the subsidiary to ensure that it can operate for a set period post-resolution without additional funds, as well as some incremental operational costs of coordination.
- Setting up an independent service company represents an opportunity to banks which have invested heavily in their shared services platforms and may consider commercialising these and providing services to other banks.
- From a strategy point of view, it generates better customer focus and allows offering better services to clients, billing them at “arm’s length”.

In the case of an MPE resolution strategy, the operational subsidiarisation is gaining relevance. It is important to note that under an MPE strategy, subsidiaries are independent from each other, so local authorities would have all resolution powers to activate the resolution process independently in the subsidiaries under their jurisdiction. Thus, operational subsidiarisation is inherent to MPE banks.

However, whether to have a unique centralised shared service company or multiple decentralised companies is a key question that bank managers and authorities should carefully analyse in order to assess the resolvability of MPE banking groups.

Would host authorities allow centralised shared services in a third country? Which are the minimum SLAs that they might require to enhance trust? Which is the most efficient and least costly structure to carry out shared services?

Section 3 analyses different operational structure alternatives, either centralised or decentralised, that MPE global banks should consider to guarantee that critical services can be maintained in a resolution scenario.

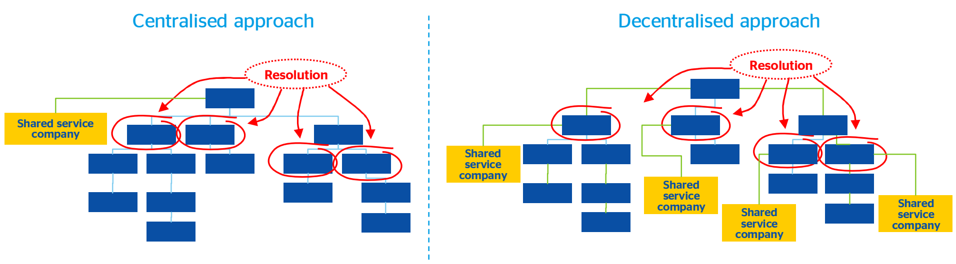
3. Outsourcing. A particular case of operational subsidiarisation

MPE groups usually organise themselves into well-defined regions and functional subgroups with limited and non-systematic financial and operational interdependencies. In this sense, an MPE approach does not only apply to bank units, but also to shared services, such as IT or back-office processes.

Operational subsidiarisation is a key prerequisite for MPE banks in order to facilitate and eliminate the barriers to resolution. Thus, common services should be provided by stand-alone companies facilitating the continuity and survival of any part of the group in case of breakup.

Figure 2

Operational subsidiarisation structure approaches: centralised vs. decentralised



Source: BBVA Research

As shown in Figure 2, there are two alternatives to implement a stand-alone support of critical and shared services under an MPE resolution strategy.

1. **Centralised subsidiarisation approach.**

Under a centralised approach, shared services are provided by a common and unique company located below the top-tier holding company for the whole group. This does not mean that all shared services are carried out within the same company, as the uniqueness refers to a common company for each shared services. Therefore, operational centralised banks may have several shared services companies that provide different shared services.

In the case of MPE groups which operate in several jurisdictions, shared services in host countries may be provided following two schemes: i) local branches, or ii) local subsidiaries.

Carrying out shared local serviced through an operational subsidiary is a middle-way approach that may minimise host authority concerns of a fully centralised scheme. Despite a common operational parent company, resolution authorities may apply an MPE resolution scheme and control both the local bank subsidiary and the local operational subsidiary in order to assure the maintenance of critical functions.

From the bank managers' standpoint, a centralised approach structured through several operational subsidiaries may ensure one decision-making unit whilst decentralising low-value activities. For example, a company may have a single decision-making unit for investing and building out its call centre, but the call centre organisation may still consist of decentralised personnel working from their homes and having decision rights over maintaining their systems

Finally, it is worth mentioning that both schemes, operational branches and subsidiaries, require formal and audited contracts and SLAs as a basis for services. At the end of the day, those are unavoidable pre-requisites in practice.

2. **Decentralised subsidiarisation approach.**

At the opposite end of the spectrum, a decentralised structure considers each shared service company as a "silo", where each bank subsidiary is self-contained and owns and operates its own shared services.

The resolution principle of self-sufficient shared services - operational subsidiarisation - may be interpreted by orthodox authorities as requiring all shared services to be provided within each entity in geographical or business division-led silos.

A decentralised approach is inherently the best scheme from an MPE resolution standpoint – multiple-point-of-resolution within a group is aligned with multiple independent shared service companies. However, lack of flexibility and cost are the major drawbacks (see below for further details).

Pros & Cons of both approaches

The discussions about the optimal structure of an MPE banking group should take into account the following factors:

- Efficiency and economies of scale: the centralised model provides enormous economies of scale through centralisation of services on a global level as banks share operational processes (administrative services) and technology across divisions and legal entities. Additionally, absence of duplication of function and sharing common IT and administrative activities will boost performance and cut administrative costs.

  In contrast, centralised organisations can suffer from the negative effects of several layers of bureaucracy. These businesses often have multiple layers of management stretching from the owner down to the frontline operations. Business owners responsible for making every decision in the company may require more time to accomplish these tasks, which can result in sluggish shared service operations.

- Resolvability: from the point of view of resolution, the decentralised approach should be the preferred approach. This model involves the application of resolution powers to different parts of the group including the subsidiary and the company services provider. Nevertheless, in a centralised model the local subsidiary could be resolved but not the company that provides services across multiple divisions and entities.

  When assessing firms' resolvability, at least two concepts should be analysed:

  - ✓ Continuity of services: in the case of a decentralised model, local authorities would have every incentive to maintain shared services of the failed subsidiary in order not to disrupt the continuity of the critical functions which may pose a local systemic risk.
  - ✓ Resilient during financial crises: a decentralised operational approach also creates natural firewalls in the event of crisis. This model generates inbuilt limits to contagion.

- Home perspective: From the perception of local authorities the decentralised model could be optimal because each subsidiary is self-sufficient with respect to the services in case of resolution. Moreover, in a decentralised model, the coordination between authorities could be less than in a centralised model. Although coordination between home and host authorities is important in both models, and in both approaches the ultimate responsibility for resolving any subsidiary lies with the host resolution authority, in a centralised model there will inevitably be better coordination with other regulators and with the home regulator.

  Regardless of all the positive features mentioned above, the decentralised scheme structured through local subsidiaries could in practice have the same benefits from the resolution authority standpoint.

- Data information system at entity level: Operational subsidiarisation ensures two MPE pre-conditions: i) authorities may obtain subsidiary data and information at individual level, and ii) data systems should be readily separable from the rest of the corporate organisation. Differences between the centralised and decentralised approach arise in terms of corporate standards and management vs. flexibility in order to adapt information to local needs.

Figure 3

Pros and cons between centralised and decentralised operational subsidiarisation approach

	Pros	Cons
Centralised	• Cost is lower as there are economies of scale and lower ongoing maintenance costs • Services are provided across multiple divisions and subsidiaries • As the service company is a separate entity, it can continue to provide services to different parts of the group in the case of the failure of a subsidiary • Higher resilient during the crisis • Data systems can be used at the local subsidiary or bloc level • Corporate-wide operational reporting is standard	• Resolvability is lower within each entity • The subsidiary is not the owner of shared services (technology or administrative services). Thus it is reliant on the systems and application of another part of the group • Stronger Service Level Agreements
Decentralised	• Each subsidiary is self-contained and owns and operates its own processes • Resolvability is higher within each entity • Preferred option from home authorities' perspectives • Provides the greatest configuration flexibility between regions and allows diversity • Separate data bases	• Costs are higher as functions are duplicated. • There are no economies of scale. • In case of failure it does not provide service to other parts of the group • Non-standard corporate management and view

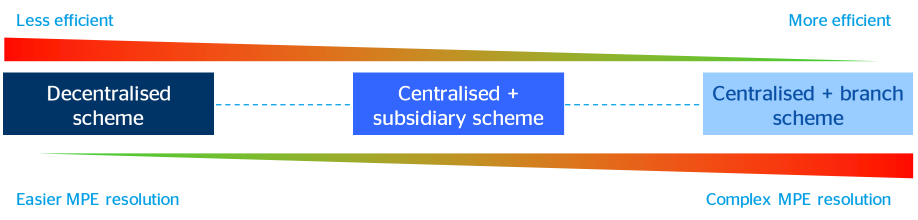
Source: BBVA Research

Decision-making dilemma

Choosing between decentralised or centralised operational subsidiarisation is not a binary decision and many resolution options may lie in between. As shown in Figure 4, firms need to strike a pragmatic balance between the desires of the regulators and the need for maintaining a viable business model.

Figure 4

Decentralised vs. centralised subsidiarisation approach



Source: BBVA Research

The past two/three years have been a time of unprecedented pressure in the banking sector. Customers have become even more demanding – and less forgiving; regulators' expectations are more onerous than ever before; and margins and profits are slipping back into minimum levels.

The cost benefits of the centralised model, especially under a subsidiary structure, clearly outweigh its drawbacks. In fact, this model has proved fairly resilient during the financial crisis. Any concern in terms of higher resolvability barriers in the centralised model could be solved by robust SLAs and ex-post capital and funding agreements.

Against this backdrop, discussions between bank managers and authorities are tilting towards a centralised approach with strong SLAs.

4. Outsourcing. A particular case of operational subsidiarisation

In the outsourcing model, the shared services are provided by a third and independent party. Given the costs associated with moving to resolvable structures, outsourcing of shared services, in particular those of critical functions that need to be ring-fenced, will be a consideration for a number of banks. Common examples of outsourced activities include IT processing, accounting and call centres.

The outsourcing resolution policy should require banks to have the legal and practical ability to control and execute core outsourced functions. This is to ensure that the bank has the ability to continue providing core shared services in the event that one of its service providers fails or becomes dysfunctional, or if the bank itself fails. This is important to ensure that the impact of the failure of a bank, or a service provider, on the wider economy is minimised and to preserve options for the resolution of bank failures.

In this regard, key considerations should be taken into account:

- As many outsourcing companies are located in a third country, SLAs need to remain valid and enforceable in all relevant jurisdictions.
- The contract needs to clearly articulate the structure of the outsourcing arrangement and the expectations of both sides; otherwise excessive amounts of management time may be consumed with dispute resolutions or with managing a contentious relationship.
- Banks should generally be subject to a standard condition of registration relating to outsourcing.

Outsourcing is a way of operational subsidiarisation on which most of the features mentioned in the previous section apply.

5. Cloud computing: resolution regimes should preserve any emerging technology

Financial services firms are capturing the benefits of cloud computing, from improving customer relationship management, giving more functionality to desktops, and exploring new infrastructure as a service model. Early-mover banks are using "the cloud"[9] in different ways; some are methodically integrating cloud pilot projects into their IT strategies and architecture; while others are using cloud-based solutions for non-core functions.

Although cloud computing offers services according to three fundamental models: infrastructure as a service (IaaS), platform as a service (PaaS), and software as a service (SaaS), from a resolution perspective the key

[9] The term "cloud computing" refers to computing that involves a large number of computers connected through a communication network such as the Internet, or distributed computing over a network, and means the ability to run a program or application on many connected computers at the same time.

question is who provides cloud services, that is either private or public cloud. If services are rendered over a network that is open for public use (e.i., Amazon AWS, Microsoft and Google), then authorities will have to focus their regulatory efforts on outsourcing complains.

Despite the outsourcing issues in terms of resolution mentioned previously, the extent to which banks and authorities are willing to venture into the cloud is largely a data availability and security matter. Particularly where the data to be transferred to the service provider is sensitive and is to be held offshore and in virtual machines.

From the resolution standpoint, it may raise questions about the extent to which subsidiary information should be readily and feasible separable from the rest of the cloud in case of subsidiary resolution.

While such reticence is understandable with any emerging technology, the potential benefits of various forms of cloud computing are too significant to ignore. Banks that develop and adopt a comprehensive, multi-year cloud strategy can position themselves to use the cloud to improve performance, competitiveness and customer care, while keeping valuable data and assets well-protected. Thus, resolution regimes and authorities should be flexible enough, or at least not limit, the positive features of cloud computing.

In this regard, to mitigate such concerns banks should carry out internal and external audit process and operational stress test exercises. Those practices would assess the availability of the information in the cloud; and would enhance authorities' confidence in the cloud.

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