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### Key Attributes of Effective Resolution Regimes for Financial Institutions

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**Key Attributes of Effective Resolution Regimes  
for Financial Institutions**

October 2011

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## Foreword

The *Key Attributes of Effective Resolution Regimes for Financial Institutions* (the ‘*Key Attributes*’) set out the core elements that the FSB considers to be necessary for an effective resolution regime. Their implementation should allow authorities to resolve financial institutions in an orderly manner without taxpayer exposure to loss from solvency support, while maintaining continuity of their vital economic functions. They set out twelve essential features that should be part of the resolution regimes of all jurisdictions. They relate to:

1. Scope
2. Resolution authority
3. Resolution powers
4. Set-off, netting, collateralisation, segregation of client assets
5. Safeguards
6. Funding of firms in resolution
7. Legal framework conditions for cross-border cooperation
8. Crisis Management Groups (CMGs)
9. Institution-specific cross-border cooperation agreements
10. Resolvability assessments
11. Recovery and resolution planning
12. Access to information and information sharing.

Not all resolution powers set out in the *Key Attributes* are suitable for all sectors and all circumstances. To promote effective and consistent implementation across jurisdictions the FSB will continue to work with its members to develop further guidance, taking into account the need for implementation to accommodate different national legal systems and market environments and sector-specific considerations (e.g., insurance, financial market infrastructures).

The Annexes I to IV provide more specific guidance to assist authorities in implementing the *Key Attributes* with respect to:

- institution-specific cross-border cooperation agreements (Annex I)
- resolvability assessments (Annex II)
- Recovery and Resolution Plans (Annex III)
- temporary stays on early termination rights (Annex IV).



## Preamble

The objective of an effective resolution regime is to make feasible the resolution of financial institutions without severe systemic disruption and without exposing taxpayers to loss, while protecting vital economic functions through mechanisms which make it possible for shareholders and unsecured and uninsured creditors to absorb losses in a manner that respects the hierarchy of claims in liquidation.

An effective resolution regime (interacting with applicable schemes and arrangements for the protection of depositors, insurance policy holders and retail investors) should:

- (i) ensure continuity of systemically important financial services, and payment, clearing and settlement functions;
- (ii) protect, where applicable and in coordination with the relevant insurance schemes and arrangements such depositors, insurance policy holders and investors as are covered by such schemes and arrangements, and ensure the rapid return of segregated client assets;
- (iii) allocate losses to firm owners (shareholders) and unsecured and uninsured creditors in a manner that respects the hierarchy of claims;
- (iv) not rely on public solvency support and not create an expectation that such support will be available;
- (v) avoid unnecessary destruction of value, and therefore seek to minimise the overall costs of resolution in home and host jurisdictions and, where consistent with the other objectives, losses for creditors;
- (vi) provide for speed and transparency and as much predictability as possible through legal and procedural clarity and advanced planning for orderly resolution;
- (vii) provide a mandate in law for cooperation, information exchange and coordination domestically and with relevant foreign resolution authorities before and during a resolution;
- (viii) ensure that non-viable firms can exit the market in an orderly way; and
- (ix) be credible, and thereby enhance market discipline and provide incentives for market-based solutions.

Jurisdictions should have in place a resolution regime that provides the resolution authority with a broad range of powers and options to resolve a firm that is no longer viable and has no reasonable prospect of becoming so. The resolution regime should include:

- (i) stabilisation options that achieve continuity of systemically important functions by way of a sale or transfer of the shares in the firm or of all or parts of the firm's business to a third party, either directly or through a bridge institution, and/or an officially mandated creditor-financed recapitalisation of the entity that continues providing the critical functions; and

- (ii) liquidation options that provide for the orderly closure and wind-down of all or parts of the firm's business in a manner that protects insured depositors, insurance policy holders and other retail customers.

In order to facilitate the coordinated resolution of firms active in multiple countries, jurisdictions should seek convergence of their resolution regimes through the legislative changes needed to incorporate the tools and powers set out in these *Key Attributes* into their national regimes.

## 1. Scope

**1.1** Any financial institution that could be systemically significant or critical if it fails should be subject to a resolution regime that has the attributes set out in this document (“Key Attributes”). The regime should be clear and transparent as to the financial institutions (hereinafter “firms”) within its scope. It should extend to:

- (i) holding companies of a firm;
- (ii) non-regulated operational entities within a financial group or conglomerate that are significant to the business of the group or conglomerate; and
- (iii) branches of foreign firms.<sup>1</sup>

**1.2** Financial market infrastructures (“FMIs”)<sup>2</sup> should be subject to resolution regimes that apply the objectives and provisions of the *Key Attributes* in a manner as appropriate to FMIs and their critical role in financial markets. The choice of resolution powers should be guided by the need to maintain continuity of critical FMI functions.<sup>3</sup>

**1.3** The resolution regime should require that at least all domestically incorporated global SIFIs (“G-SIFIs”):

- (i) have in place a recovery and resolution plan (“RRP”), including a group resolution plan, containing all elements set out in Annex III (see Key Attribute 11);
- (ii) are subject to regular resolvability assessments (see Key Attribute 10); and
- (iii) are the subject of institution-specific cross-border cooperation agreements (see Key Attribute 9).

## 2. Resolution authority

**2.1** Each jurisdiction should have a designated administrative authority or authorities

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<sup>1</sup> This should not apply where jurisdictions are subject to a binding obligation to respect resolution of financial institutions under the authority of the home jurisdiction (for example, the EU Winding up and Reorganisation Directives).

<sup>2</sup> For the purposes of this document, the term “financial market infrastructure” is defined as “a multilateral system among participating financial institutions, including the operator of the system, used for the purposes of recording, clearing, or settling payments, securities, derivatives, or other financial transactions”. It includes payment systems, central securities depositories (CSDs), securities settlement systems (SSSs), central counterparties (CCPs), and trade repositories (TRs). See CPSS-IOSCO - Consultative report on Principles for financial market infrastructures - March 2011.

<sup>3</sup> CPSS and IOSCO are undertaking joint work on recovery and resolution issues for FMIs. On recovery, this includes reviewing ex ante loss-sharing rules. On resolution, this includes a review of whether specific resolution arrangements for FMIs are needed. If, based on their findings, the FSB concludes that special resolution arrangements for FMIs are required, it will, with the involvement of CPSS and IOSCO, review which Key Attributes specifically apply to FMIs and whether further specific powers need to be incorporated in the Key Attributes to address their resolution.



responsible for exercising the resolution powers over firms within the scope of the resolution regime (“resolution authority”). Where there are multiple resolution authorities within a jurisdiction their respective mandates, roles and responsibilities should be clearly defined and coordinated.

- 2.2** Where different resolution authorities are in charge of resolving entities of the same group within a single jurisdiction, the resolution regime of that jurisdiction should identify a lead authority that coordinates the resolution of the legal entities within that jurisdiction.
- 2.3** As part of its statutory objectives and functions, and where appropriate in coordination with other authorities, the resolution authority should:
- (i) pursue financial stability and ensure continuity of systemically important financial services, and payment, clearing and settlement functions;
  - (ii) protect, where applicable and in coordination with the relevant insurance schemes and arrangements, such depositors, insurance policy holders and investors as are covered by such schemes and arrangements;
  - (iii) avoid unnecessary destruction of value and seek to minimise the overall costs of resolution in home and host jurisdictions and losses to creditors, where that is consistent with the other statutory objectives; and
  - (iv) duly consider the potential impact of its resolution actions on financial stability in other jurisdictions.
- 2.4** The resolution authority should have the authority to enter into agreements with resolution authorities of other jurisdictions.
- 2.5** The resolution authority should have operational independence consistent with its statutory responsibilities, transparent processes, sound governance and adequate resources and be subject to rigorous evaluation and accountability mechanisms to assess the effectiveness of any resolution measures. It should have the expertise, resources and the operational capacity to implement resolution measures with respect to large and complex firms.
- 2.6** The resolution authority and its staff should be protected against liability for actions taken and omissions made while discharging their duties in the exercise of resolution powers in good faith, including actions in support of foreign resolution proceedings.
- 2.7** The resolution authority should have unimpeded access to firms where that is material for the purposes of resolution planning and the preparation and implementation of resolution measures.

### **3. Resolution powers**

#### *Entry into resolution*

**3.1** Resolution should be initiated when a firm is no longer viable or likely to be no longer viable, and has no reasonable prospect of becoming so. The resolution regime should provide for timely and early entry into resolution before a firm is balance-sheet insolvent and before all equity has been fully wiped out. There should be clear standards or suitable indicators of non-viability to help guide decisions on whether firms meet the conditions for entry into resolution.

#### *General resolution powers*

**3.2** Resolution authorities should have at their disposal a broad range of resolution powers, which should include powers to do the following:

- (i) Remove and replace the senior management and directors and recover monies from responsible persons, including claw-back of variable remuneration;
- (ii) Appoint an administrator to take control of and manage the affected firm with the objective of restoring the firm, or parts of its business, to ongoing and sustainable viability;
- (iii) Operate and resolve the firm, including powers to terminate contracts, continue or assign contracts, purchase or sell assets, write down debt and take any other action necessary to restructure or wind down the firm's operations;
- (iv) Ensure continuity of essential services and functions by requiring other companies in the same group to continue to provide essential services to the entity in resolution, any successor or an acquiring entity; ensuring that the residual entity in resolution can temporarily provide such services to a successor or an acquiring entity; or procuring necessary services from unaffiliated third parties;
- (v) Override rights of shareholders of the firm in resolution, including requirements for approval by shareholders of particular transactions, in order to permit a merger, acquisition, sale of substantial business operations, recapitalisation or other measures to restructure and dispose of the firm's business or its liabilities and assets;
- (vi) Transfer or sell assets and liabilities, legal rights and obligations, including deposit liabilities and ownership in shares, to a solvent third party, notwithstanding any requirements for consent or novation that would otherwise apply (see Key Attribute 3.3);
- (vii) Establish a temporary bridge institution to take over and continue operating certain critical functions and viable operations of a failed firm (see Key Attribute 3.4);

- (viii) Establish a separate asset management vehicle (for example, as a subsidiary of the distressed firm, an entity with a separate charter, or as a trust or asset management company) and transfer to the vehicle for management and run-down non-performing loans or difficult-to-value assets;
- (ix) Carry out bail-in within resolution as a means to achieve or help achieve continuity of essential functions either (i) by recapitalising the entity hitherto providing these functions that is no longer viable, or, alternatively, (ii) by capitalising a newly established entity or bridge institution to which these functions have been transferred following closure of the non-viable firm (the residual business of which would then be wound up and the firm liquidated) (see Key Attribute 3.5);
- (x) Temporarily stay the exercise of early termination rights that may otherwise be triggered upon entry of a firm into resolution or in connection with the use of resolution powers (see Key Attribute 4.3 and Annex IV);
- (xi) Impose a moratorium with a suspension of payments to unsecured creditors and customers (except for payments and property transfers to central counterparties (CCPs) and those entered into the payment, clearing and settlements systems) and a stay on creditor actions to attach assets or otherwise collect money or property from the firm, while protecting the enforcement of eligible netting and collateral agreements; and
- (xii) Effect the closure and orderly wind-down (liquidation) of the whole or part of a failing firm with timely payout or transfer of insured deposits and prompt (for example, within seven days) access to transaction accounts and to segregated client funds).

### ***Transfer of assets and liabilities***

**3.3** Resolution authorities should have the power to transfer selected assets and liabilities of the failed firm to a third party institution or to a newly established bridge institution. Any transfer of assets or liabilities should not:

- (i) require the consent of any interested party or creditor to be valid; and
- (ii) constitute a default or termination event in relation to any obligation relating to such assets or liabilities or under any contract to which the failed firm is a party (see Key Attribute 4.2).

### ***Bridge institution***

**3.4** Resolution authorities should have the power to establish one or more bridge institutions to take over and continue operating certain critical functions and viable operations of a failed firm, including:

- (i) the power to enter into legally enforceable agreements by which the authority transfers, and the bridge institution receives, assets and liabilities of the failed firm as selected by the authority;

- (ii) the power to establish the terms and conditions under which the bridge institution has the capacity to operate as a going concern, including the manner under which the bridge institution obtains capital or operational financing and other liquidity support; the prudential and other regulatory requirements that apply to the operations of the bridge institution; the selection of management and the manner by which the corporate governance of the bridge institution may be conducted; and the performance by the bridge institution of such other temporary functions as the authority may from time to time prescribe;
- (iii) the power to reverse, if necessary, asset and liability transfers to a bridge institution subject to appropriate safeguards, such as time restrictions; and
- (iv) the power to arrange the sale or wind-down of the bridge institution, or the sale of some or all of its assets and liabilities to a purchasing institution, so as best to effect the objectives of the resolution authority.

### ***Bail-in within resolution***

**3.5** Powers to carry out bail-in within resolution should enable resolution authorities to:

- (i) write down in a manner that respects the hierarchy of claims in liquidation (see Key Attribute 5.1) equity or other instruments of ownership of the firm, unsecured and uninsured creditor claims to the extent necessary to absorb the losses; and to
- (ii) convert into equity or other instruments of ownership of the firm under resolution (or any successor in resolution or the parent company within the same jurisdiction), all or parts of unsecured and uninsured creditor claims in a manner that respects the hierarchy of claims in liquidation;
- (iii) upon entry into resolution, convert or write-down any contingent convertible or contractual bail-in instruments whose terms had not been triggered prior to entry into resolution and treat the resulting instruments in line with (i) or (ii).

**3.6** The resolution regime should make it possible to apply bail-in within resolution in conjunction with other resolution powers (for example, removal of problem assets, replacement of senior management and adoption of a new business plan) to ensure the viability of the firm or newly established entity following the implementation of bail-in.

### ***Resolution of insurers***

**3.7** In the case of insurance firms, resolution authorities should also have powers to:

- (i) undertake a portfolio transfer moving all or part of the insurance business to another insurer without the consent of each and every policyholder; and
- (ii) discontinue the writing of new business by an insurance firm in resolution while continuing to administer existing contractual policy obligations for in-force business (run-off).

## *Exercise of resolution powers*

- 3.8** Resolution authorities should have the legal and operational capacity to:
- (i) apply one or a combination of resolution powers, with resolution actions being either combined or applied sequentially;
  - (ii) apply different types of resolution powers to different parts of the firm's business (for example, retail and commercial banking, trading operations, insurance); and
  - (iii) initiate a wind-down for those operations that, in the particular circumstances, are judged by the authorities to be not critical to the financial system or the economy (see Key Attribute 3.2 xii).
- 3.9** In applying resolution powers to individual components of a financial group located in its jurisdiction, the resolution authority should take into account the impact on the group as a whole and on financial stability in other affected jurisdictions, and undertake best efforts to avoid taking actions that could reasonably be expected to trigger instability elsewhere in the group or in the financial system.

## **4. Set-off, netting, collateralisation, segregation of client assets**

- 4.1** The legal framework governing set-off rights, contractual netting and collateralisation agreements and the segregation of client assets should be clear, transparent and enforceable during a crisis or resolution of firms, and should not hamper the effective implementation of resolution measures.
- 4.2** Subject to adequate safeguards, entry into resolution and the exercise of any resolution powers should not trigger statutory or contractual set-off rights, or constitute an event that entitles any counterparty of the firm in resolution to exercise contractual acceleration or early termination rights provided the substantive obligations under the contract continue to be performed.
- 4.3** Should contractual acceleration or early termination rights nevertheless be exercisable, the resolution authority should have the power to stay temporarily such rights where they arise by reason only of entry into resolution or in connection with the exercise of any resolution powers. The stay should:
- (i) be strictly limited in time (for example, for a period not exceeding 2 business days);
  - (ii) be subject to adequate safeguards that protect the integrity of financial contracts and provide certainty to counterparties (see Annex IV on Conditions for a temporary stay); and
  - (iii) not affect the exercise of early termination rights of a counterparty against the firm being resolved in the case of any event of default not related to entry into

resolution or the exercise of the relevant resolution power occurring before, during or after the period of the stay (for example, failure to make a payment, deliver or return collateral on a due date).

The stay may be discretionary (imposed by the resolution authority) or automatic in its operation. In either case, jurisdictions should ensure that there is clarity as to the beginning and the end of the stay.

- 4.4** Resolution authorities should apply the temporary stay on early termination rights in accordance with the guidance set out in Annex IV to ensure that it does not compromise the safe and orderly operations of regulated exchanges and FMIs.

## **5. Safeguards**

### ***Respect of creditor hierarchy and “no creditors worse off” principle***

- 5.1** Resolution powers should be exercised in a way that respects the hierarchy of claims while providing flexibility to depart from the general principle of equal (*pari passu*) treatment of creditors of the same class, with transparency about the reasons for such departures, if necessary to contain the potential systemic impact of a firm’s failure or to maximise the value for the benefit of all creditors as a whole. In particular, equity should absorb losses first, and no loss should be imposed on senior debt holders until subordinated debt (including all regulatory capital instruments) has been written-off entirely (whether or not that loss-absorption through write-down is accompanied by conversion to equity).
- 5.2** Creditors should have a right to compensation where they do not receive at a minimum what they would have received in a liquidation of the firm under the applicable insolvency regime (“no creditor worse off than in liquidation” safeguard).
- 5.3** Directors and officers of the firm under resolution should be protected in law (for example, from law suits by shareholders or creditors) for actions taken when complying with decisions of the resolution authority.

### ***Legal remedies and judicial action***

- 5.4** The resolution authority should have the capacity to exercise the resolution powers with the necessary speed and flexibility, subject to constitutionally protected legal remedies and due process. In those jurisdictions where a court order is still required to apply resolution measures, resolution authorities should take this into account in the resolution planning process so as to ensure that the time required for court proceedings will not compromise the effective implementation of resolution measures.
- 5.5** The legislation establishing resolution regimes should not provide for judicial actions

that could constrain the implementation of, or result in a reversal of, measures taken by resolution authorities acting within their legal powers and in good faith. Instead, it should provide for redress by awarding compensation, if justified.

- 5.6** In order to preserve market confidence, jurisdictions should provide for flexibility to allow temporary exemptions from disclosure requirements or a postponement of disclosures required by the firm, for example, under market reporting, takeover provisions and listing rules, where the disclosure by the firm could affect the successful implementation of resolution measures.

## **6. Funding of firms in resolution**

- 6.1** Jurisdictions should have statutory or other policies in place so that authorities are not constrained to rely on public ownership or bail-out funds as a means of resolving firms.

- 6.2** Where temporary sources of funding to maintain essential functions are needed to accomplish orderly resolution, the resolution authority or authority extending the temporary funding should make provision to recover any losses incurred (i) from shareholders and unsecured creditors subject to the “no creditor worse off than in liquidation” safeguard (see Key Attribute 5.2); or (ii) if necessary, from the financial system more widely.

- 6.3** Jurisdictions should have in place privately-financed deposit insurance or resolution funds, or a funding mechanism for *ex post* recovery from the industry of the costs of providing temporary financing to facilitate the resolution of the firm.

- 6.4** Any provision by the authorities of temporary funding should be subject to strict conditions that minimise the risk of moral hazard, and should include the following:

- (i) a determination that the provision of temporary funding is necessary to foster financial stability and will permit implementation of a resolution option that is best able to achieve the objectives of an orderly resolution, and that private sources of funding have been exhausted or cannot achieve these objectives; and
- (ii) the allocation of losses to equity holders and residual costs, as appropriate, to unsecured and uninsured creditors and the industry through ex-post assessments, insurance premium or other mechanisms.

- 6.5** As a last resort and for the overarching purpose of maintaining financial stability, some countries may decide to have a power to place the firm under temporary public ownership and control in order to continue critical operations, while seeking to arrange a permanent solution such as a sale or merger with a commercial private sector purchaser. Where countries do equip themselves with such powers, they should make provision to recover any losses incurred by the state from unsecured creditors or, if necessary, the financial system more widely.

## **7. Legal framework conditions for cross-border cooperation**

- 7.1** The statutory mandate of a resolution authority should empower and strongly encourage the authority wherever possible to act to achieve a cooperative solution with foreign resolution authorities.
- 7.2** Legislation and regulations in jurisdictions should not contain provisions that trigger automatic action in that jurisdiction as a result of official intervention or the initiation of resolution or insolvency proceedings in another jurisdiction, while reserving the right of discretionary national action if necessary to achieve domestic stability in the absence of effective international cooperation and information sharing. Where a resolution authority takes discretionary national action it should consider the impact on financial stability in other jurisdictions.
- 7.3** The resolution authority should have resolution powers over local branches of foreign firms and the capacity to use its powers either to support a resolution carried out by a foreign home authority (for example, by ordering a transfer of property located in its jurisdiction to a bridge institution established by the foreign home authority) or, in exceptional cases, to take measures on its own initiative where the home jurisdiction is not taking action or acts in a manner that does not take sufficient account of the need to preserve the local jurisdiction's financial stability.<sup>4</sup> Where a resolution authority acting as host authority takes discretionary national action, it should give prior notification and consult the foreign home authority.
- 7.4** National laws and regulations should not discriminate against creditors on the basis of their nationality, the location of their claim or the jurisdiction where it is payable. The treatment of creditors and ranking in insolvency should be transparent and properly disclosed to depositors, insurance policy holders and other creditors.
- 7.5** Jurisdictions should provide for transparent and expedited processes to give effect to foreign resolution measures, either by way of a mutual recognition process or by taking measures under the domestic resolution regime that support and are consistent with the resolution measures taken by the foreign home resolution authority. Such recognition or support measures would enable a foreign home resolution authority to gain rapid control over the firm (branch or shares in a subsidiary) or its assets that are located in the host jurisdiction, as appropriate, in cases where the firm is being resolved under the law of the foreign home jurisdiction. Recognition or support of foreign measures should be provisional on the equitable treatment of creditors in the foreign resolution proceeding.
- 7.6** The resolution authority should have the capacity in law, subject to adequate confidentiality requirements and protections for sensitive data, to share information,

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<sup>4</sup> This should not apply where jurisdictions are subject to a binding obligation to respect resolution of financial institutions under the authority of the home jurisdiction (for example, the EU Winding up and Reorganisation Directives).



including recovery and resolution plans (RRPs), pertaining to the group as a whole or to individual subsidiaries or branches, with relevant foreign authorities (for example, members of a CMG), where sharing is necessary for recovery and resolution planning or for implementing a coordinated resolution.

**7.7** Jurisdictions should provide for confidentiality requirements and statutory safeguards for the protection of information received from foreign authorities.

## **8. Crisis Management Groups (CMGs)**

**8.1** Home and key host authorities of all G-SIFIs should maintain CMGs with the objective of enhancing preparedness for, and facilitating the management and resolution of, a cross-border financial crisis affecting the firm. CMGs should include the supervisory authorities, central banks, resolution authorities, finance ministries and the public authorities responsible for guarantee schemes of jurisdictions that are home or host to entities of the group that are material to its resolution, and should cooperate closely with authorities in other jurisdictions where firms have a systemic presence.

**8.2** CMGs should keep under active review, and report as appropriate to the FSB and the FSB Peer Review Council on:

- (i) progress in coordination and information sharing within the CMGs and with host authorities that are not represented in the CMGs;
- (ii) the recovery and resolution planning process for G-SIFIs under institution-specific cooperation agreements; and
- (iii) the resolvability of G-SIFIs.

## **9. Institution-specific cross-border cooperation agreements**

**9.1** For all G-SIFIs, at a minimum, institution-specific cooperation agreements, containing the essential elements set out in Annex I, should be in place between the home and relevant host authorities that need to be involved in the planning and crisis resolution stages. These agreements should, inter alia:

- (i) establish the objectives and processes for cooperation through CMGs;
- (ii) define the roles and responsibilities of the authorities pre-crisis (that is, in the recovery and resolution planning phases) and during a crisis;
- (iii) set out the process for information sharing before and during a crisis, including sharing with any host authorities that are not represented in the CMG, with clear reference to the legal bases for information sharing in the respective national laws and to the arrangements that protect the confidentiality of the shared information;

- (iv) set out the processes for coordination in the development of the RRP for the firm, including parent or holding company and significant subsidiaries, branches and affiliates that are within the scope of the agreement, and for engagement with the firm as part of this process;
- (v) set out the processes for coordination among home and host authorities in the conduct of resolvability assessments;
- (vi) include agreed procedures for the home authority to inform and consult host authorities in a timely manner when there are material adverse developments affecting the firm and before taking any significant action or crisis measures;
- (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;
- (viii) provide an appropriate level of detail with regard to the cross-border implementation of specific resolution measures, including with respect to the use of bridge institution and bail-in powers;
- (ix) provide for meetings to be held at least annually, involving top officials of the home and relevant host authorities, to review the robustness of the overall resolution strategy for G-SIFIs; and
- (x) provide for regular (at least annual) reviews by appropriate senior officials of the operational plans implementing the resolution strategies.

**9.2** The existence of agreements should be made public. The home authorities may publish the broad structure of the agreements, if agreed by the authorities that are party to the agreement.

## **10. Resolvability assessments**

**10.1** Resolution authorities should regularly undertake, at least for G-SIFIs, resolvability assessments that evaluate the feasibility of resolution strategies and their credibility in light of the likely impact of the firm's failure on the financial system and the overall economy. Those assessments should be conducted in accordance with the guidance set out in Annex II.

**10.2** In undertaking resolvability assessments, resolution authorities should in coordination with other relevant authorities assess, in particular:

- (i) the extent to which critical financial services, and payment, clearing and settlement functions can continue to be performed;
- (ii) the nature and extent of intra-group exposures and their impact on resolution if they need to be unwound;

- (iii) the capacity of the firm to deliver sufficiently detailed accurate and timely information to support resolution; and
- (iv) the robustness of cross-border cooperation and information sharing arrangements.

**10.3** Group resolvability assessments should be conducted by the home authority of the G-SIFI and coordinated within the firm's CMG taking into account national assessments by host authorities.

**10.4** Host resolution authorities that conduct resolvability assessments of subsidiaries located in their jurisdiction should coordinate as far as possible with the home authority that conducts resolvability assessment for the group as a whole.

**10.5** To improve a firm's resolvability, supervisory authorities or resolution authorities should have powers to require, where necessary, the adoption of appropriate measures, such as changes to a firm's business practices, structure or organisation, to reduce the complexity and costliness of resolution, duly taking into account the effect on the soundness and stability of ongoing business. To enable the continued operations of systemically important functions, authorities should evaluate whether to require that these functions be segregated in legally and operationally independent entities that are shielded from group problems.

## **11. Recovery and resolution planning**

**11.1** Jurisdictions should put in place an ongoing process for recovery and resolution planning, covering at a minimum domestically incorporated firms that could be systemically significant or critical if they fail.

**11.2** Jurisdictions should require that robust and credible RRP, containing the essential elements of Recovery and Resolution Plans set out in Annex III, are in place for all G-SIFIs and for any other firm that its home authority assesses could have an impact on financial stability in the event of its failure.

**11.3** The RRP should be informed by resolvability assessments (see Key Attribute 10) and take account of the specific circumstances of the firm and reflect its nature, complexity, interconnectedness, level of substitutability and size.

**11.4** Jurisdictions should require that the firm's senior management be responsible for providing the necessary input to the resolution authorities for (i) the assessment of the recovery plans; and (ii) the preparation by the resolution authority of resolution plans.

### ***Recovery plan***

- 11.5** Supervisory and resolution authorities should ensure that the firms for which a RRP is required maintain a recovery plan that identifies options to restore financial strength and viability when the firm comes under severe stress. Recovery plans should include:
- (i) credible options to cope with a range of scenarios including both idiosyncratic and market wide stress;
  - (ii) scenarios that address capital shortfalls and liquidity pressures; and
  - (iii) processes to ensure timely implementation of recovery options in a range of stress situations.

### ***Resolution plan***

- 11.6** The resolution plan is intended to facilitate the effective use of resolution powers to protect systemically important functions, with the aim of making the resolution of any firm feasible without severe disruption and without exposing taxpayers to loss. It should include a substantive resolution strategy agreed by top officials and an operational plan for its implementation and identify, in particular:
- (i) financial and economic functions for which continuity is critical;
  - (ii) suitable resolution options to preserve those functions or wind them down in an orderly manner;
  - (iii) data requirements on the firm's business operations, structures, and systemically important functions;
  - (iv) potential barriers to effective resolution and actions to mitigate those barriers;
  - (v) actions to protect insured depositors and insurance policy holders and ensure the rapid return of segregated client assets; and
  - (vi) clear options or principles for the exit from the resolution process.
- 11.7** Firms should be required to ensure that key Service Level Agreements can be maintained in crisis situations and in resolution, and that the underlying contracts include provisions that prevent termination triggered by recovery or resolution events and facilitate transfer of the contract to a bridge institution or a third party acquirer.
- 11.8** At least for G-SIFIs, the home resolution authority should lead the development of the group resolution plan in coordination with all members of the firm's CMG. Host authorities that are involved in the CMG or are the authorities of jurisdictions where the firm has a systemic presence should be given access to RRP's and the information and measures that would have an impact on their jurisdiction.
- 11.9** Host resolution authorities may maintain their own resolution plans for the firm's

operations in their jurisdictions cooperating with the home authority to ensure that the plan is as consistent as possible with the group plan.

### ***Regular updates and review***

- 11.10** Supervisory and resolution authorities should ensure that RRP are updated regularly, at least annually or when there are material changes to a firm's business or structure, and subject to regular reviews within the firm's CMG.
- 11.11** The substantive resolution strategy for each G-SIFI should be subject, at least annually, to a review by top officials of home and relevant host authorities and, where appropriate, the review should involve the firm's CEO. The operational plans for implementing each resolution strategy should be, at least annually, reviewed by appropriate senior officials of the home and relevant host authorities.
- 11.12** If resolution authorities are not satisfied with a firm's RRP, the authorities should require appropriate measures to address the deficiencies. Relevant home and host authorities should provide for prior consultation on the actions contemplated.

## **12. Access to information and information sharing**

- 12.1** Jurisdictions should ensure that no legal, regulatory or policy impediments exist that hinder the appropriate exchange of information, including firm-specific information, between supervisory authorities, central banks, resolution authorities, finance ministries and the public authorities responsible for guarantee schemes. In particular:
- (i) the sharing of all information relevant for recovery and resolution planning and for resolution should be possible in normal times and during a crisis at a domestic and a cross-border level;
  - (ii) the procedures for the sharing of information relating to G-SIFIs should be set out in institution-specific cooperation agreements (see Annex I); and
  - (iii) where appropriate and necessary to respect the sensitive nature of information, information sharing may be restricted, but should be possible among the top officials of the relevant home and host authorities.
- 12.2** Jurisdictions should require firms to maintain Management Information Systems (MIS) that are able to produce information on a timely basis, both in normal times for recovery and resolution planning and in resolution. Information should be available at the group level and the legal entity level (taking into account information needs under different resolution scenarios, including the separation of individual entities from the group). Firms should be required, in particular, to:
- (i) maintain a detailed inventory, including a description and the location of the key MIS used in their material legal entities, mapped to their core services and critical functions;

- (ii) identify and address exogenous legal constraints on the exchange of management information among the constituent entities of a financial group (for example, as regards the information flow from individual entities of the group to the parent);
- (iii) demonstrate, as part of the recovery and resolution planning process, that they are able to produce the essential information needed to implement such plans within a short period of time (for example, 24 hours); and
- (iv) maintain specific information at a legal entity level, including, for example, information on intra-group guarantees and intra-group trades booked on a back-to-back basis.



## Annex I

### Essential elements of institution-specific cross-border cooperation agreements

Cross-border cooperation agreements should help facilitate institution-specific crisis management planning and cooperation between relevant authorities, with a presumption in favour of cooperation in the event of the firm's resolution. They should support the preparation of RRPs and the effective implementation of resolution measures in a crisis by providing a framework for possible solutions to legal or other impediments that may exist. This will require firm-specific agreements involving all members of a firm's cross-border CMG, including the relevant authorities from the home and all key host jurisdictions. Bi-national agreements between the relevant authorities of the home and a host jurisdiction should set out how national legal and resolution regimes would interact given a firm's business. They may complement firm-specific multinational agreements among home and all key host jurisdictions.

The effectiveness of institution-specific cooperation agreements hinges on the home and host authorities having the necessary resolution powers in relation to the firm's operations, including the branch operation of a foreign firm (see Key Attribute 7).

The institution-specific cooperation agreement establishes a framework for the development of RRPs, based on the conduct of pre-crisis resolvability assessments, and for cooperation and coordination in a crisis in accordance with the agreed RRPs. Both RRPs and cooperation agreements are expected to be regularly updated and evolve over time.

Institution-specific cross-border cooperation agreements should, at a minimum, include the following elements.<sup>5</sup>

#### 1. Objectives, nature and scope of the agreement

1.1 A declarative statement of its objectives and scope (for example, “we, as home and host authorities for [the firm], have signed this cooperation agreement setting out how we will work together with a view to facilitating institution-specific crisis management planning and cooperation between relevant authorities, with an emphasis on cooperation in the event of [the firm's] resolution....The objective is to minimise the impact of the failure of [the firm] in each of the jurisdictions represented by the Parties to the Agreements”).

1.2 The home and host authorities that sign the agreement (“the Parties”).

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<sup>5</sup> These elements build upon the FSF's *Principles for cross-border cooperation in crisis management* as endorsed by the G20 Leaders Summit in London in April 2009.



- 1.3 Description of the firm, parent or holding company and significant subsidiaries, branches and affiliates that are within the scope of the agreement.
- 1.4 The legal nature of agreement (that is, whether and to what extent the agreement is binding).
- 1.5 Rules on public disclosure (for example, whether and to what extent its content should be disclosed to the public).

## **2. General framework for cooperation**

- 2.1 The roles, responsibilities and powers of the Parties “pre-crisis” (that is, in the recovery and resolution planning phases) and “in crisis” with respect to the firm, including the parent or holding company and significant subsidiaries, branches and affiliates that are within the scope of the agreement.
- 2.2 The components of the RRP for the firm, parent or holding company and significant subsidiaries, branches and affiliates that relate to the preparation and execution of resolution measures in a cross-border context (recognising that the plan is regularly reviewed and updated).

## **3. Commitments to cooperate**

- 3.1 The Parties’ agreement that the *Key Attributes* should guide their actions in any crisis management and resolution measures adopted in respect of the firm.
- 3.2 The Parties’ commitment to implement resolution options that are aimed at pursuing financial stability, the protection of insured depositors, insurance policy holders and other retail customers, duly considering the potential impact of their resolution actions on financial stability of other jurisdictions.
- 3.3 The Parties’ commitment to cooperate in the recovery and resolution planning process and share all relevant information, including RRP’s pertaining to the group as a whole or to individual subsidiaries where plans of subsidiaries exist, in order to ensure that the plans are consistent and help prepare for a coordinated resolution of the whole firm.
- 3.4 The Parties’ commitment to participate at the level of top officials in reviewing the firm’s overall resolution strategy; and to participate through representation on the CMG at an appropriately senior level in the development and maintenance of the firm’s group-wide resolution plan.
- 3.5 The Parties’ commitment to engage in periodic (table top) simulation or scenario exercises within the CMG in order to ensure that the plans are viable and to help

prepare for a coordinated resolution.

- 3.6** The Parties' commitment to conduct an assessment of the firm's resolvability, using the guidance on Resolvability Assessments set out in Annex II, including the firm's demonstrated ability, as part of the recovery and resolution planning process, to produce the essential information needed to implement such plans in a timely fashion in a crisis; to share the results of the assessment and use them to inform the resolution planning process with respect to the implementation of cross-border resolution measures.
- 3.7** The agreed frequency of review and sharing of RRP:
- (i) The substantive resolution strategy for each G-SIFI should be subject, at least annually, to a review by top officials of home and relevant host authorities
  - (ii) Each operational plan should be subject, at least annually, to a review by appropriate senior officials of the home and relevant host authorities.
- 3.8** The Parties' commitment to inform and consult each other in a timely manner before taking any crisis management or resolution measures (with precise definition of crisis management or resolution measures).
- 3.9** The Parties' commitment to inform each other promptly of material changes to their crisis management and resolution frameworks.
- 3.10** The Parties' commitment to share information at both senior and technical levels as appropriate subject to appropriate confidentiality arrangements. Where appropriate and necessary to respect the sensitive nature of information, information sharing may be restricted, but should be possible among the top officials of the relevant home and host authorities.

## **4. Home authority's commitments**

- 4.1** The home (resolution or supervisory) authority's commitment to:
- (i) coordinate in the CMG, with the benefit of the active participation of the other Parties, the assessment of the firm's resolvability in line with the guidance on *Resolvability Assessments* (see Annex II) and the identification of actions that home or host authorities or the firm may need to take to ensure the resolvability of the firm;
  - (ii) facilitate and chair meetings of the CMG and lead the review of the firm's RRP within the CMG, with the active participation of the other Parties and in line with the *Essential Elements of RRP*s (see Annex III);
  - (iii) alert other Parties without undue delay, so as to allow practical cooperation, if the firm encounters difficulties or if it becomes apparent that it is likely to enter

the home authority's resolution regime;

- (iv) take into account the overall effect on the group as a whole and on financial stability in other jurisdictions concerned and undertake best efforts to avoid taking actions that could reasonably be expected to trigger instability elsewhere in the group or in the financial system; and
- (v) where possible and feasible, coordinate a resolution of the firm as a whole, with the aim of maintaining financial stability, and protecting depositors, insurance policy holders, and retail investors in all relevant jurisdictions.

## **5. Host authorities' commitments**

### **5.1 The host authorities' commitments:**

- (i) to alert other Parties without undue delay if a local branch or locally-incorporated part of the firm encounters difficulties or if it becomes apparent that it is likely to enter the host authority's resolution regime;
- (ii) to work with the other Parties towards the coordinated resolution of the firm as a whole, with the aim of maintaining financial stability and protecting depositors, insurance policy holders and retail investors in all relevant jurisdictions; and
- (iii) not to pre-empt resolution actions by home authorities while reserving the right to act on their own initiative if necessary to achieve domestic stability in the absence of effective action by the home authority;

## **6. Cooperation mechanisms and information sharing framework**

**6.1** Provision for regular meetings of the Parties (for example, number of meetings per year, level of participants, ad hoc meetings in emergency situations and meetings upon request by Parties), and the relationship with existing cooperative structures (CMG, supervisory college).

**6.2** The statutory and contractual bases for prompt information sharing, including sharing among the different CMG members, and with any host authorities that are not represented in the CMG; existing constraints and how these could be addressed.

**6.3** The level of detail in regard to information sharing; whether and how it would change "pre-crisis and "in crisis".

**6.4** Procedures for information sharing at both senior and technical levels, tools of information exchange (for example, use of secured website).

**6.5** Commitment to maintain up-to-date contact lists with contact details for key senior and working-level staff covering multiple means of communication.

**6.6** Commitment to maintain confidentiality of shared information and measures to ensure confidentiality (for example, limiting the personnel with access to the data; confidentiality agreement signed by all relevant personnel; procedure and responsibility if confidentiality is breached).

## **7. Cross-border implementation of resolution measures**

**7.1** Process for the evaluation of the application of resolution options and processes to the firm, including the parent or holding company and significant subsidiaries, branches and affiliates that are within the scope of the agreement.

**7.2** Commitments to address the legal and operational impediments to cross-border implementation of resolution actions; and commitments to specify legal and operational procedures for implementing resolution strategies in a cross-border context. For example:

- (i) Procedural requirements and conditions for (a) recognition of the transfer to a bridge or third party purchaser of assets and liabilities relating to branches of the failed firm in the host jurisdiction; (b) recognition of the transfer to a bridge or third party purchaser of assets or shares of majority or wholly owned subsidiaries in the host jurisdiction; and (c) execution of a bail-in within resolution;
- (ii) Identification of types of financial contracts and assets that cannot be transferred with legal certainty (for example, contracts governed by the law of a jurisdiction where the firm does not have a physical presence) and implications for the successful application of the resolution tool;
- (iii) Availability of funding arrangements in home and host jurisdictions to support the implementation of the resolution measures and restore market confidence; and
- (iv) Application of insurance schemes (for depositors, insurance policy holders, and retail investors) and of applicable segregation and customer asset protection rules.



## Annex II

### Resolvability Assessments

#### 1. Defining resolvability

A SIFI is “resolvable” if it is feasible and credible for the resolution authorities to resolve it in a way that protects systemically important functions without severe systemic disruption and without exposing taxpayers to loss. For resolution to be feasible, the authorities should have the necessary legal powers - and the practical capacity to apply them - to ensure the continuity of functions critical to the economy. For resolution to be credible, the application of those resolution tools should not itself give rise to unacceptably adverse broader consequences for the financial system and the real economy.

#### 2. Objectives of resolvability assessments

The objectives of resolvability assessments are to:

- (i) make authorities and firms aware of the implications of resolution for systemic risk both nationally and globally;
- (ii) identify factors and conditions affecting the effective implementation of resolution actions, both endogenous (firm structure) and exogenous (resolution regime and cross-border cooperation framework), in relation to firms, and the degree of contingency preparedness (adequacy of RRP); and
- (iii) help determine the specific actions necessary to achieve greater resolvability without severe systemic disruption and without taxpayer exposure to loss, while protecting systemically important functions.

#### 3. Process for assessing resolvability

Resolvability assessments are necessarily qualitative and are not binary. Group resolvability assessments of G-SIFIs should be conducted by the home authority and coordinated within the firm’s CMG, taking into account national assessments by host authorities. The process for group resolvability assessment should be established in institution-specific cross-border cooperation agreements (see Annex I). Host authorities that conduct resolvability assessments of local subsidiaries of foreign firms should coordinate as far as possible with the home authorities conducting the group resolvability assessment. The results of those resolvability assessments should inform the recovery and resolution planning for that firm.

The process for assessing resolvability consists of three stages.

**Stage 1 - Feasibility of resolution strategies:** Identify the set of resolution strategies which would be feasible, given the current resolution tools available, the RRP for the firm, and the authorities’ capacity to apply them at short notice to the firm in question.

**Stage 2 - Systemic impact assessment:** Determine the credibility of all feasible resolution strategies by capturing the likely impact of the firm's failure and resolution on global and national financial systems and real economies.

**Stage 3 - Actions to improve resolvability:** Conclude whether resolution is likely to be both feasible and credible and identify any changes necessary to the RRP or to the structure or operations of the firm to improve resolvability. Timelines for completing the requisite changes should be established. Progress should also be monitored.

Resolvability assessments, and the actions flowing from them, form a key part of the resolution planning process and are a **continuous** process consisting of:

- (i) qualitative assessments by national authorities of the extent to which a firm is resolvable given its structure and the resolution regimes under which it operates;
- (ii) assessments conducted by the home authority and coordinated within the firm's CMG drawing on shared national assessments of the resolvability of subsidiaries by members of the CMG, and identification of the issues to be addressed by the firm or by specific authorities;
- (iii) presentation of issues to be addressed to the firm (or relevant regulatory authorities);
- (iv) remediation by the firm or relevant regulatory authorities; and
- (v) re-assessment of resolvability coordinated by the home authority.

#### **4. Assessing the feasibility of resolution strategies**

Set out below are some of the questions that, at a minimum, would need to be explored in order to assess the feasibility of resolution strategies.

##### ***Firm structure and operations***

**4.1 Firm's essential functions and systemically important functions.** Based on the firm's strategic analysis, what are the principal businesses and what are the services that are core to the firm's franchise value? What critical financial and economic functions does it perform for the global and national financial systems and the non-financial sector?

**4.2 Mapping of essential functions and systemically important functions and corporate structures.** How do legal and corporate structures relate to principal business lines and critical and core functions?

**4.3 Continuity of Service Level Agreements.** What is the extent to which key operational functions such as payment operations, trade settlements and custody are outsourced to other group entities or third party service providers? How robust are

the existing Service Level Agreements in ensuring that the key operational functions will continue to be provided to a bridge institution or surviving parts of a resolved firm when necessary?

- 4.4 Assessment.** What are the obstacles to separating systemically critical functions from the rest of the firm in a resolution and for ensuring their continuity, given the issues referred to in paragraphs 4.1 to 4.3 above?

#### *Internal interconnectedness*

- 4.5 Intra-group exposures.** What is the extent of the use of intra-group guarantees, booking practices and cross-default clauses? Are intra-group transactions well documented? How strong is the relevant risk management? To what extent are these transactions conducted at arm's length? Could back-to-back trades be unwound (for example, to facilitate a partial sale), if necessary? Do firms maintain at the legal entity level information on intra-group guarantees and intra-group trades booked on a back-to-back basis?

- 4.6 Assessment.** Do intra-group transactions result in material imbalances of value across legal entities that affect incentives for cooperation? How quickly could intra-group transactions be unwound?

#### *Membership in FMIs<sup>6</sup>*

- 4.7 Continuity of membership in FMIs.** Can the firm being resolved retain membership of FMIs? Will a newly established bridge institution be able to access FMIs?

- 4.8 Transfer of centrally cleared contracts to a bridge institution.** Can centrally cleared financial contracts of a failed institution be transferred to a bridge institution pending the bridge institution's access to the CCP?

- 4.9 Transferability of payment operations.** Do firms have in place arrangements that facilitate the transfer of payment operations to a bridge institution or third party purchaser? In particular, is there:

- (i) a centralised repository for all their FMI membership agreements;
- (ii) standardised documentation for payment services, covering issues including notice periods, termination provisions and continuing obligations, to facilitate orderly exit;
- (iii) a draft Transitional Services Agreement as part of RRP that, if needed, will allow the firm to continue to provide uninterrupted payment services (including

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<sup>6</sup> See Key Attributes, footnote 2.



access to FMIs) on behalf of the new purchaser, by using existing staff and infrastructure; and

- (iv) a “purchaser’s pack” that includes key information on the payment operations and credit exposures, and lists of key staff, to facilitate transfers of payment operations to a surviving entity, bridge institution or purchaser?

**4.10 Second-tier firms.** Do firms that are not direct FMI participants have contingency arrangements to access FMIs via more than one firm? Can they quickly switch if one direct participant fails?

**4.11 Assessment.** Can critical payment functions continue? Can access to FMIs be maintained?

#### *Management information systems (MIS)*

**4.12 Adequacy of MIS.** To what extent do the firm’s MIS capabilities permit it to construct a complete and accurate view of its aggregate risk profile under rapidly changing conditions? Can the firm provide key information such as risk exposures, liquidity positions, interbank deposits and short-term exposures to and of major counterparties (including CCPs) on a daily basis? Can the firm ensure the continuity of MIS for both the remaining and successor entities if the firm or one or more component legal entities have entered into resolution or insolvency? Are the necessary MIS available at the legal entity level, including on intra-group transactions and collateral?

**4.13 Prompt provision of necessary information to relevant authorities.** How quickly could information (for example, financial, credit exposure, legal entity specific and regulatory) be provided to the home supervisor, to functional supervisors, to resolution authorities and to host supervisors, as appropriate? What types of legal impediments preclude information sharing among authorities? Does the firm have processes and tools to provide authorities with the information necessary to allow the rapid identification of depositors and amounts protected by a deposit insurance scheme?

**4.14 Assessment.** To what extent is it likely that the firm could deliver sufficiently detailed, accurate and timely information to support an effective resolution?

#### *Coordination of national resolution regimes and tools*

**4.15 Domestic powers and tools to maintain continuity of systemically important functions.** Do the resolution regimes in the jurisdictions where the SIFI performs systemically important functions (or has subsidiaries which provide crucial services to those functions) provide for the resolution powers set out Key Attribute 3?

- 4.16 Cross-border resolution powers.** Do home and host country authorities have the requisite powers to act in a manner that supports implementation of a coordinated resolution, as set out in the *Key Attributes*? For example:
- (i) What are the mechanisms in place to coordinate with a host authority the cross-border operation and recognition of a bridge institution when the home authority has decided to use such a tool as part of a resolution procedure;
  - (ii) Do resolution regimes provide for a differential treatment of creditor claims on the basis of the location of the claim, or the jurisdiction where it is payable; and
  - (iii) Could resolution measures in one foreign jurisdiction trigger action in other jurisdictions? How does this affect the resolution process and likelihood to achieve a coordinated solution?
- 4.17 Information sharing between home and host authorities.** Are there any legal impediments to information sharing? How willing and able are home and host authorities to share the information necessary to effect a coordinated resolution?
- 4.18 Practical cross-border coordination.** Do existing cross-border cooperation agreements reflect the requirements set out in the *Key Attributes* and give authorities confidence that they have the practical, operational and legal capacity to coordinate effectively with their foreign counterparts?
- 4.19 Assessment.** Are the authorities confident that they have the necessary legal tools and operational capacity to achieve an internationally coordinated resolution of the SIFI?

## **5. Assessing the systemic impact**

The assessment of the expected adverse consequences for the financial system and the overall economy resulting from the failure should help identify and develop measures that mitigate the systemic impact of the firm's failure.

The *residual* systemic impact of the firm's failure reflects three sets of factors:

- (i) The inherent systemic risks in the firm's business profile;
- (ii) Mitigating actions taken by the firm through sound business structures, governance, management practices and well-articulated resolution planning; and
- (iii) The robustness of the identified institution-specific resolution strategies.

The criteria for evaluating the systemic impact of a firm's failure are still at a nascent stage and therefore the evaluation process is largely qualitative and judgmental. The core of the analysis, however, is assessing the residual systemic risks as they relate to the principal channels of systemic spillovers. Below are some suggested qualitative criteria to aid authorities' judgement of a given resolution strategy. The criteria should be assessed individually for each jurisdiction involved, and collectively for the firm as a whole.

- 5.1 Impact on financial markets.** To what extent is the firm's resolution likely to cause disruptions in domestic or international financial markets, for example, because of lack of confidence or uncertainty effects?
- 5.2 Impact on FMI.** Could the firm's resolution cause contagion through FMIs, for example by triggering of default arrangements in FMIs, or leaving other firms without access to FMIs?
- 5.3 Impact on funding conditions.** What are the likely impacts of the firm's resolution on other (similarly situated) firms in rolling over and raising funds?
- 5.4 Impact on capital.** To what extent could the exposure of systemically important counterparties to the firm in resolution result in their capital, individually or in aggregate, falling to levels below the regulatory thresholds?
- 5.5 Impact on the economy.** To what extent could the firm's resolution and its consequences have an impact on the economy and through which channels? Is there a potential for credit and capital flows to constrict? Are there important wealth effects?

## **Annex III**

### **Essential Elements of Recovery and Resolution Plans**

The *Key Attributes* call on jurisdictions to put in place an ongoing recovery and resolution planning process to promote resolvability as part of the overall supervisory process (see Key Attribute 11). The process should involve the resolution authorities and all other relevant authorities.

#### **1. Objectives and governance of the RRP**

- 1.1** An adequate, credible RRP is required for any firm when its failure is assessed by its home authority to have a potential impact on financial stability. This would include, at a minimum, all G-SIFIs (see Key Attribute 11.2).
- 1.2** The RRP should take account of the specific circumstances of the firm and reflect the nature, complexity, interconnectedness, level of substitutability and size of the firm.
- 1.3** The underlying assumptions of the RRP and stress scenarios should be sufficiently severe. Both firm (group) specific and system-wide stress scenarios should be considered taking into account the potential impact of cross-border contagion in crisis scenarios, as well as simultaneous stress situations in several significant markets. RRP should make no assumption that taxpayers' funds can be relied on to resolve the firm.
- 1.4** RRP should serve as guidance to firms and authorities in a recovery or resolution scenario. They do not in any way imply that the authorities would be obliged to implement them, or be prevented from implementing a different strategy in the event that the firm needs to be resolved.

#### ***Recovery plan***

- 1.5** The recovery plan serves as a guide to the recovery of a distressed firm. In the recovery phase, the firm has not yet met the conditions for resolution or entered the resolution regime. There should be a reasonable prospect of recovery if appropriate recovery measures are taken. The recovery plan should include measures to reduce the risk profile of a firm and conserve capital, as well as strategic options, such as the divestiture of business lines and restructuring of liabilities.
- 1.6** The responsibility for developing and maintaining, and where necessary, executing the recovery plan lies with the firm's senior management. Authorities should review

the recovery plan as part of the overall supervisory process, assessing its credibility and ability to be effectively implemented. The authorities should have the requisite powers to require the implementation of recovery measures.

- 1.7** Firms should be required to update the recovery plan at regular intervals, and upon the occurrence of events that materially change the firm's structure or operations, its strategy or aggregated risk exposure. They should be required to regularly review the exogenous and firm-specific assumptions a recovery plan is based upon and assess on an ongoing basis the relevance and applicability of the plans. If necessary, firms should adapt their recovery plan accordingly.

### ***Resolution plan***

- 1.8** The resolution plan should facilitate the effective use of the resolution authority's powers with the aim of making feasible the resolution of any firm without severe systemic disruption and without exposing taxpayers to loss while protecting systemically important functions. It should serve as a guide to the authorities for achieving an orderly resolution, in the event that recovery measures are not feasible or have proven ineffective.
- 1.9** The responsibility for developing and maintaining, and where necessary, executing the resolution strategies set out in resolution plan lies with the authorities.
- 1.10** At the national level, all relevant authorities involved in supervision, implementation of corrective actions and resolution should participate in the RRP process.
- 1.11** Firms should be required to provide the authorities with the data and information, including strategy and scenario analysis, required for purposes of resolution planning on a timely basis. Authorities should identify the specific information requirements and satisfy themselves that the firm has the capacity to provide the information upon request and in a timely manner.
- 1.12** Authorities should review resolution plans with the firms to the extent necessary. Authorities may decide not to disclose a resolution plan or parts of it to the firm.

### ***Governance and oversight of the RRP***

#### ***Authorities***

- 1.13** Authorities should establish a robust governance structure for the oversight of the recovery and resolution planning processes, including the ongoing review and updating of RRPs to take into account any changes in circumstances facing the firm or the financial system. Responsibilities for the development, review, approval and maintenance of RRPs should be clearly assigned. Authorities should define and

communicate a clear process for interaction with the firms in recovery and resolution planning. In those jurisdictions where court orders are required to apply resolution measures, resolution authorities should take this into account in the resolution planning process, so as to ensure that the time required for court proceedings will not compromise the effective implementation of resolution actions.

- 1.14** Authorities should have sufficient resources and expertise to support the preparation and assessment of RRP on an ongoing basis.
- 1.15** Authorities should review, and where necessary, direct changes to the assumptions and stress scenarios underlying a firm's RRP and require the firms to prepare additional stress scenarios. The stress scenarios should adequately consider all relevant endogenous and exogenous risk exposures that the firm faces, taking into account the firm's specific situation, strategy and positions. Authorities should seek to achieve a reasonable degree of consistency in the severity of stress scenarios used by different firms. However, the stress scenarios used need not be the same for each firm.
- 1.16** Authorities should assess the willingness of the firm's management to implement corrective measures, and where necessary, enforce the implementation of recovery measures.
- 1.17** Authorities should consider the systemic impact of measures if these were being implemented by several firms at the same time.

#### *Firms*

- 1.18** Firms should be required to have in place a robust governance structure and sufficient resources to support the recovery and resolution planning process. This includes clear responsibilities of business units, senior managers up to and including board members, and identifying a senior level executive responsible for ensuring the firm is and remains in compliance with RRP requirements and for ensuring that recovery and resolution planning is integrated into the firm's overall governance processes.
- 1.19** Firms should be required to have in place systems to generate on a timely basis the information required to support the recovery and resolution planning process to enable both the firm and the authorities effectively to carry out recovery and resolution planning, and where necessary, implement the RRP.
- 1.20** Firms should be required to draw up concrete firm-specific stress scenarios, including both idiosyncratic and market-wide stress and, upon request, provide strategy and scenario analysis.
- 1.21** Firms should upon request engage in periodic simulation or scenario exercises with

home and host authorities to assess whether the RRP are feasible and credible.

### ***Cross-border coordination***

- 1.22** The top officials of the home and key host authorities of G-SIFIs should meet, where appropriate with the CEO of the firm, and review at least annually the overall resolution strategy (see Key Attribute 1.6).
- 1.23** Appropriate senior officials of the home and host authorities should, at least annually, review the operational resolution plans for each G-SIFI and engage in periodic simulation or scenario exercises to test the viability of the plans. These exercises may include the firm in question.
- 1.24** At least for G-SIFIs, the home resolution authority should lead the development of the group resolution plan in coordination with all members of the firm's CMG. Host resolution authorities may maintain their own resolution plans for the firm's operations in their jurisdictions, cooperating as far as possible with the home authority to ensure that the plan is as consistent as possible with the group plan.
- 1.25** For all G-SIFIs, the home authorities should have a process to ascertain which jurisdictions that are not included in the CMG assess the local operations of the firm as systemically important to the local financial system, and the reasons for that assessment. The home authorities should establish a process for maintaining contact with such non-CMG jurisdictions and ensure that appropriate modalities for cooperation and information sharing are in place.

## **2. General outline of RRPs**

### ***Structure of RRPs***

- 2.1** To support rapid execution, both recovery and resolution plans should include:
- (i) a high-level substantive summary of the key recovery and resolution strategies and an operational plan for implementation;
  - (ii) the strategic analysis that underlies the recovery and resolution strategies;
  - (iii) conditions for intervention, describing necessary and sufficient prerequisites for triggering the implementation of recovery or resolution actions;
  - (iv) concrete and practical options for recovery and resolution measures;
  - (v) preparatory actions to ensure that the measures can be implemented effectively and in a timely manner;
  - (vi) details of any potential material impediments to an effective and timely execution of the plan; and

- (vii) responsibilities for executing preparatory actions, triggering the implementation of the plan and the actual measures.

### ***Recovery and resolution strategies***

**2.2** RRPs should contain a high-level substantive summary of the key recovery and resolution strategies and an operational plan for their implementation. This should include the identification of the firm's essential and systemically important functions (for example, illustrated with an organisational chart of the firm's major operations), a description of the critical measures to implement the key recovery and resolution strategies and an assessment of potential impediments to their successful implementation, as well as any material changes or actions taken since the firm's last submitted RRP.

### ***Strategic analysis***

**2.3** A key component of RRPs is a strategic analysis that identifies the firm's essential and systemically important functions and sets out the key steps to maintaining them in recovery as well as in resolution scenarios. Elements of such analysis should include:

- (i) identification of essential and systemically important functions, mapped to the legal entities under which they are conducted;
- (ii) actions necessary for maintaining operations of, and funding for, those essential and systemically important functions;
- (iii) assessment of the viability of any business lines and legal entities which may be subject to separation in a recovery or resolution scenario, as well as the impact of such separation on the remaining group structure and its viability;
- (iv) assessment of the likely effectiveness and potential risks of each material aspect of the recovery and resolution actions, including potential impact on customers, counterparties and market confidence;
- (v) estimates of the sequencing and the time needed to implement each material aspect of the plan;
- (vi) underlying assumptions for the preparation of the RRPs;
- (vii) potential material impediments to effective and timely execution of the plan; and
- (viii) processes for determining the value and marketability of the material business lines, operations, and assets.

## **3. Essential elements of a recovery plan**

**3.1** Firms should identify possible recovery measures and the necessary steps and time



needed to implement such measures and assess the associated risks. The range of possible recovery measures should include:

- (i) actions to strengthen the capital situation, for example, recapitalisations after extraordinary losses, capital conservation measures such as suspension of dividends and payments of variable remuneration;
- (ii) possible sales of subsidiaries and spin-off of business units;
- (iii) a possible voluntary restructuring of liabilities through debt-to-equity conversion; and
- (iv) measures to secure sufficient funding while ensuring sufficient diversification of funding sources and adequate availability of collateral in terms of volume, location and quality. Proper consideration should also be given to possible transfers of liquidity and assets within the group.

**3.2** Firms should assess the additional requirements to which they may potentially become subject during crisis situations in order to maintain their membership of FMIs, for example, as regards pre-funding or collateralising of positions, and identify options for addressing the additional requirements (for example, plan for the sourcing of additional collateral, and assess potential constraints on the firm's total payment flows).

**3.3** Firms should ensure that they have in place appropriate contingency arrangements (for example, functioning of internal processes, IT systems, clearing and settlement facilities, supplier and employee contracts) that enable them to continue to operate as they implement recovery measures.

**3.4** Firms should define clear backstops and escalation procedures, identifying the criteria (both quantitative and qualitative) which would trigger the implementation of the recovery plan or individual measures by the management of the firm, in consultation with the authorities. Such triggers should be designed to prevent undue delays in the implementation of recovery measures.

**3.5** Firms should develop a proper communication strategy with the authorities, public, financial markets, staff and other stakeholders.

## **4. Essential elements of a resolution plan**

**4.1** Authorities should identify potential resolution strategies and assess the necessary preconditions and operational requirements for their implementation, including with regard to arrangements for cross-border coordination. In addition to the overall resolution strategy and the underlying strategic analysis, authorities should identify:

- (i) regulatory thresholds and legal conditions that provide grounds for the initiation of official actions (including thresholds for entry into resolution) and

scope for authorities' discretion (for example, the extent to which authorities can refrain from taking actions or not avoid acting under certain conditions);

- (ii) the critical interdependencies and the impact of resolution actions on other business lines and legal entities (would other entities be able to continue to operate?); financial contracts (do authorities have powers to limit or suspend termination or close-out rights?); markets and other firms with similar business lines; and include a comparative estimate of losses to be borne by creditors and any premium associated with various resolution strategies;
- (iii) the range of sources available for resolution funding;
- (iv) the process for disbursements by deposit insurance funds and other insurance schemes (including, for example, identification of insured and uninsured depositors);
- (v) the processes for preserving uninterrupted access to payment, clearing and settlement facilities, exchanges and trading platforms;
- (vi) the internal processes and systems necessary to support the continued operation of the firm's critical functions;
- (vii) processes for their cross-border implementation; and
- (viii) proper communication strategies and processes to coordinate communication with foreign authorities.

## **5. Information requirements for recovery and resolution planning**

Firms should have the capacity to provide the essential information needed to implement the RRP on a timely basis for purposes of recovery and resolution planning, as well as in crisis situations, including information on the following:

- 5.1** Intra-group inter-linkages, for example, core business operations and interconnectedness by reference to business lines, legal entities and jurisdictions, intra-group exposures through intra-group guarantees and loans, and trades booked on a back-to-back basis; dependencies of the firm's legal entities on other group entities for liquidity or capital support as well as other (for example, operational) support.
- 5.2** Operational data, for example, the extent of asset encumbrance, amount of liquid assets, off-balance sheet activities, etc.
- 5.3** Organisation and operations that support the execution of recovery and resolution measures, for example, information on dealing room operations, including trade booking practices, hedging strategies, custody of assets; information on payment, clearing and settlement systems; and inventory of the key management information systems, including accounting, position keeping and risk systems.
- 5.4** Key crisis-management roles and responsibilities, for example, contact information,

communication facilities for in-crisis communication, and the firm's procedures for providing relevant home and host authorities with access to information, both in normal times and during a crisis.

- 5.5** Legal and regulatory framework in which the firm operates, for example, the relevant home and host authorities and their roles, functions and responsibilities in financial crisis management; resolution regimes, including the relevant aspects of applicable corporate, commercial, insolvency, and securities laws and insolvency regimes affecting major portions of the group; liquidity sources, including both private and central bank sources.

## Annex IV

### Temporary stay on early termination rights

#### 1. Objectives

- 1.1 Under standard market documentation for financial contracts and absent any statutory or regulatory provisions to the contrary, contractual acceleration, termination and other close-out rights (collectively, “early termination rights”) in financial contracts may be triggered upon entry of a firm into resolution or in connection with the use of resolution powers. In the case of a SIFI, the termination of large volumes of financial contracts upon entry into resolution could result in a disorderly rush for the exits that creates further market instability and frustrates the implementation of resolution measures aimed at achieving continuity.
- 1.2 The *Key Attributes* (see Key Attribute 4.3) stipulate that, subject to adequate safeguards, entry into resolution and the exercise of any resolution powers should not constitute an event that entitles the counterparty of the firm in resolution to exercise early termination rights provided the substantive obligations under the contract, including payment and delivery obligations, and provision of collateral, continue to be performed. Should early termination rights nevertheless be exercisable, the resolution authority should have the power to stay temporarily such rights where they arise by reason only of entry into resolution or in connection with the use of resolution powers and provided that the substantive obligations under the contract, including payment and delivery obligations, and provision of collateral, continue to be performed.
- 1.3 Limited in this way, the restrictions on early termination rights set out in paragraph 1.2. do not affect other rights of counterparties under a netting and collateralisation agreements and do not interfere with payment or delivery obligations to FMIs.<sup>7</sup> If a firm in resolution fails to meet any margin, collateral or settlement obligations that arise under a financial contract or as a result of the firm’s membership or participation in an FMI, its counterparty or the FMI would have the immediate right to exercise an early termination right against the firm in resolution. The counterparty and the FMI could not terminate and close-out the contract based solely upon the entry into resolution or the exercise of resolution powers. They would have such right if the firm in resolution or the resolution authority failed to meet any margin,

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<sup>7</sup> For the purposes of this document, the term “financial market infrastructure” is defined as “a multilateral system among participating financial institutions, including the operator of the system, used for the purposes of recording, clearing, or settling payments, securities, derivatives, or other financial transactions”. It includes payment systems, central securities depositories (CSDs), securities settlement systems (SSSs), central counterparties (CCPs), and trade repositories (TRs). See CPSS-IOSCO - Consultative report on Principles for financial market infrastructures - March 2011.

collateral or settlement obligations that arise under a financial contract or as a result of the firm's membership or participation in an FMI.

## **2. Conditions for a temporary stay**

**2.1** A temporary stay of the exercise of early termination rights should be subject to the following conditions:

- (i) The stay only applies to early termination rights that arise for reasons only of entry into resolution or in connection with the use of resolution powers (including, for example, a change in control of the relevant firm or its business arising from such proceedings);
- (ii) The stay is strictly limited in time (for example, for a period not exceeding two business days);
- (iii) The resolution authority would only be permitted to transfer all of the eligible contracts with a particular counterparty to a new entity and would not be permitted to select for transfer individual contracts with the same counterparty and subject to the same netting agreement ("no cherry-picking" rule);
- (iv) For contracts that are transferred to a third party or bridge institution, the acquiring entity would assume all the rights and obligations of the firm from which the contracts were transferred;
- (v) The early termination rights of the counterparty are preserved against the firm in resolution in the case of any default occurring before, during or after the period of the stay that is not related to entry into resolution or the exercise of a resolution power (for example, a failure to make a payment or the failure to deliver or return collateral on a due date);
- (vi) Following a transfer of financial contracts the early termination rights of the counterparty are preserved against the acquiring entity in the case of any subsequent independent default by the acquiring entity;
- (vii) The counterparty can exercise the right to close out immediately against the firm in resolution on expiry of the stay or earlier if the authorities inform the firm that the relevant contracts will not be transferred; and
- (viii) After the period of the stay, early termination rights could be exercised for those financial contracts that are not transferred to a sound firm, bridge institution or other public entity.

### ***Operation of the stay***

**2.2** The stay may be discretionary (imposed by the resolution authority on a case-by-case basis) or automatic in its operation. In either case, jurisdictions should ensure that the counterparties to the firm in resolution have clarity as to the beginning and the end of the stay.

**2.3** As part of the resolution planning process and resolvability assessments, authorities should consider the implications of a temporary stay on the exercise of early termination rights for FMIs and other counterparties of the firm (see Annex II 4.8; Annex III 4.1).