

Key Attributes Assessment Methodology for the Banking Sector

Overview of the post-consultation revisions

The FSB's [*Key Attributes of Effective Resolution Regimes for Financial Institutions*](#) ('*Key Attributes*') set out the core elements considered to be necessary to achieve a resolution of financial institutions without severe systemic disruption and without exposing taxpayers to the risk of loss, while protecting vital economic functions through mechanisms that make it possible for shareholders and unsecured and uninsured creditors to absorb losses in a manner that respects the hierarchy of claims.

To be considered for inclusion in the FSB's list of key standards for sound financial systems and to be used in assessments by the International Monetary Fund (IMF) and World Bank under the Standards and Codes (S&C) Initiative¹, the *Key Attributes* need to be complemented by an assessment methodology. The purpose of the methodology is to guide the assessment of a jurisdiction's compliance with the *Key Attributes* and promote consistent assessments across jurisdictions. It would also provide guidance to jurisdictions when adopting or amending national resolution regimes to implement the *Key Attributes* across financial sectors, and would be relied on in peer reviews of that implementation. With the involvement of experts from FSB member jurisdictions, and representatives of the Committee on Payments and Market Infrastructures (CPMI), International Association of Deposit Insurers (IADI), International Association of Insurance Supervisors (IAIS), International Organization of Securities Commissions (IOSCO), the IMF and World Bank, the FSB undertook to develop an assessment methodology with a set of essential criteria (ECs) and explanatory notes (ENs) for each Key Attribute (KA) that should be used to assess compliance with the relevant KA.

Public consultation and field testing of the draft methodology

On 28 August 2013, the FSB published a consultative document on an [*Assessment Methodology for the Key Attributes of Effective Resolution Regimes for Financial Institutions*](#) ('*Methodology*'). The consultative document proposed a single assessment methodology for the *Key Attributes* with assessment criteria for all financial sectors. Respondents to the public consultation generally welcomed the FSB's initiative to develop a methodology that would provide a comprehensive framework for consistent assessments of resolution regimes across

¹ The S&C Initiative, launched in 1999 (see <http://www.imf.org/external/standards/index.htm>), is designed to strengthen international financial architecture through the development, adoption and implementation of international standards and codes. The key standards are assessed by the IMF and World Bank as part of the Financial Sector Assessment Program (FSAP) or as stand-alone Reports on the Observance of Standards and Codes (ROSCs).

jurisdictions and submitted a range of comments and suggestions for consideration in the development of the final methodology.²

The IMF and World Bank, with the assistance of the FSB and volunteer jurisdictions, conducted a series of field tests to evaluate the adequacy and suitability of the ECs set out in the draft *Methodology* and to refine the guidance provided to assessors. Pilot assessments of bank resolution regimes were conducted in Switzerland and Columbia.³ In addition, the IMF used the draft *Methodology* as a reference document in its review of the bank and insurance resolution regimes of the United States⁴ in the context of the Financial Sector Assessment Program (FSAP). The FSB also used the draft *Methodology* as a reference for the conduct of its [Second Thematic Review on Resolution Regimes](#) (*Peer Review Report*) on the implementation of bank resolution regimes across the FSB member jurisdictions.

The revisions to the draft *Methodology* address comments from the public consultation and incorporate the experience of the field tests and the peer reviews. The changes also address redundancies and duplications in the assessment.

Main changes

The main changes to the *Methodology* (compared to the consultative document) are set out below:

- **Modular approach to the Methodology.** The *Key Attributes* are an ‘umbrella’ standard for resolution regimes for all types of financial institutions that are potentially systemically significant or critical in failure. This design was a strategic choice, motivated by the fact that jurisdictions need to have resolution regimes in place that are capable of managing the failure of systemically important financial institutions (SIFIs), whatever their licensing status or nature of financial activities. In order to be consistent with that choice, the consultative document had proposed a single comprehensive methodology. However, based on the feedback to the proposal and experience of the field tests that indicated the need for detailed sector-specific guidance on the application of the *Key Attributes*, the FSB decided to take a modular approach. The modular approach entails the division of the proposed *Methodology* into separate modules for the assessment of resolution regimes for banks, insurers and financial market infrastructures (FMIs) and takes the form of a self-contained and free-standing methodology for each sector. A modular approach allows for the development of criteria that are better tailored to the specific features of a particular sector and therefore facilitates sector-specific assessments of the *Key Attributes*. The FSB decided to give priority to the development of a module

² The comment letters are published at: [Public responses to August 2013 consultative document Assessment Methodology for the Key Attributes of Effective Resolution Regimes for Financial Institutions - Financial Stability Board](#).

³ See IMF’s “Colombia: Technical Assistance Report-Detailed Assessment of Observance of Key Attributes of Effective Resolution Regimes for Financial Institutions-Pilot of the Draft Assessment Methodology” (<https://www.imf.org/external/pubs/ft/scr/2016/cr1699.pdf>), April 2016.

⁴ See IMF’s “United States: Financial Sector Assessment Program-Review of the Key Attributes of Effective Resolution Regimes for the Banking and Insurance Sectors-Technical Note” (<https://www.imf.org/external/pubs/ft/scr/2015/cr15171.pdf>), July 2015.

for the banking sector and to extend the timeline for the development of modules for the non-bank sectors to take into consideration the further work underway in those sectors.⁵ Consequently, as now finalised, the methodology for the banking sector focuses exclusively on bank resolution regimes and ECs and ENs that are relevant for assessing them. Accordingly all ECs and ENs that relate exclusively to insurers or FMIs were removed, and other modifications were made to ECs and ENs where necessary to reflect that narrower focus on bank resolution regimes.

- **Grading taking into account proportionality.** Several respondents stressed the importance of sufficient flexibility under the *Methodology* to allow jurisdictions to adopt the *Key Attributes* in a manner proportionate to, for instance, the complexity and systemic importance of their financial institutions. For example, a jurisdiction should not be graded as non-compliant if compliance with particular KAs is clearly not necessary for the effectiveness of its resolution regime. Moreover, the Colombian assessment identified the need for additional guidance to facilitate the use of the *Methodology* in a variety of jurisdictions including in emerging markets and developing economies (EMDEs). In finalising the *Methodology*, therefore, the FSB added a new section on ‘Grading taking into account proportionality’ (Section III. D). That guidance provides that the overall assessment should take into account the structure and complexity of the financial sector, such as the presence of global systemically important banks (G-SIBs) and other systemically important banks; the relative systemic importance of different sectors and the market environment of the jurisdiction that is being assessed. An assessment must recognise that a jurisdiction’s resolution regime should be proportionate to the size, structure and complexity of the jurisdiction’s banking system. An individual KA or EC may be considered “not applicable” when the KA or EC does not apply to a jurisdiction because of structural, legal and/or institutional features of the financial system. However, the final methodology for the banking sector sets a high threshold for any such exceptions. The ECs assessed must allow for a determination of whether the resolution regime can achieve the ultimate objectives of the KA, and a “not applicable” determination should not be used if it would impede such a judgment.
- **Scope of the Methodology.** KA 1.1 provides that a resolution regime should extend to holding companies, non-regulated operational entities within a financial group or conglomerate that are significant to the business of the group or conglomerate, and domestic branches of foreign firms. The experience of the field tests identified that further clarification is needed about the expected coverage of resolution regimes in relation to such entities. The same issue was raised in the *Peer Review Report*. Accordingly, the following clarifications were made in finalizing the methodology for the banking sector:
 - Holding companies are assessed and graded taking into account proportionality (see above). It was clarified that if a jurisdiction does not have holding companies, criteria that apply to holding companies should be deemed “not applicable”.

⁵ See FSB’s “Resilience through resolvability – moving from policy design to implementation (5th Report to the G20 on progress in resolution)” (<http://www.fsb.org/wp-content/uploads/Resilience-through-resolvability—moving-from-policy-design-to-implementation.pdf>), August 2016.

- Resolution powers with regard to non-regulated operational entities should be assessed in relation to the relevant powers under KA 3.2 (iv) (related to ensuring continuity of essential services and functions) so that measures can be taken in relation to such entities insofar as that is necessary to support the resolution of an affiliated financial institution or the group as a whole.
- Resolution powers with regard to domestic branches of foreign firms should be assessed in relation to the relevant powers under KA 3 (Resolution powers).
- **Determination of systemic significance.** Under the *Key Attributes*, jurisdictions should meet the requirements of KA 9 (Institution-specific cross-border cooperation agreements), KA 10 (Resolvability assessments) and KA 11 (Recovery and resolution planning) for at least all domestically incorporated global systemically important financial institutions (G-SIFIs). Related to this, respondents emphasised that assessors are not expected to make a factual determination as to which financial institutions in the jurisdiction under assessment could be systemically significant or critical at failure. Instead, assessors should examine whether existing guidelines, criteria or procedures enable the authorities in the relevant jurisdiction to assess whether an institution could be systemically significant or critical if it fails and to apply the resolution regime or resolution powers to such an institution.
- **Timely entry into resolution.** KA 3.1 provides that 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 *Peer Review Report* recommends that the FSB provide additional clarification and guidance on criteria to facilitate the timely determination of financial institutions' non-viability or likely non-viability and early entry into resolution to address uncertainties of interpretation that came to light during the conduct of the review. The final methodology includes an additional EC (EC 3.2) which requires effective and adequate arrangements including evaluation and decision-making processes to be in place.
- **Powers to ensure continuity of services provided by companies in the same group.** Under KA 3.2 (iv), resolution authorities should have powers to ensure continuity of essential services and functions, and KA 3.2 (iv) provides that one of the ways to meet this requirement is to require other companies in the same group to continue to provide essential services to the entity in resolution, any successor or an acquiring entity. In finalising the methodology for the banking sector, the FSB added a new EN (EN 3 (j)) on 'Powers to ensure continuity of services provided by companies in the same group' and specified that, to ensure the continuity of services provided by companies in the same group, a jurisdiction should provide for the powers of the resolution authority to (i) directly require companies in the same group located within the jurisdiction to continue to provide such services (whether or not they are regulated) in the resolution regime; or (ii) require the bank in resolution to ensure the continuity of services through its contractual agreements with or its corporate control over such companies combined with powers to require changes to ensure resolvability. The *Peer Review Report* notes circumstances in which corporate control may be insufficient to achieve the necessary outcome. Therefore, EN 3 (j) clarifies that, if relying on corporate control, the potential

for, and impact on, resolvability of the bank, were the group entity to enter insolvency separate from the resolution, should be considered by assessors.

- **Funding of firms in resolution.** KA 6 (Funding of firms in resolution) provides for temporary funding by authorities. The experience of the field tests identified that further guidance is needed with respect to the evaluation of implementation of KA 6. The final methodology clarifies that the legal framework should establish credible arrangements to provide temporary financing in terms of nature, availability, and sufficiency of the funding to support the use of the resolution powers set out in KA 3 (Resolution powers) and achieve the resolution objectives. The FSB recently released specific further guidance on KA 6.⁶
- **Legal framework conditions for cross-border cooperation.** The experience of the field tests indicated that it was unclear from the draft *Methodology* what provisions or processes should be in place to meet the requirements reflected in KA 7.5 (relating to processes to give effect to foreign resolution measures), or how different types of legal framework provisions, administrative action, or judicial process should be graded. The final methodology clarifies in EC 7.4 that the legal framework of the jurisdiction under review should establish a transparent and expedited process through which the resolution measures taken in the exercise of the resolution powers by a foreign resolution authority can be given effect in the jurisdiction under review. The process should provide for recognition or the taking of measures under the domestic resolution or supervisory legal framework that support and are consistent with the resolution measures taken by the foreign resolution authority. EN 7 (f) on ‘Processes for recognition and support’ further clarifies that jurisdictions may achieve the objectives of KA 7.5 through an administrative or judicial process or a combination of administrative and judicial processes. Having a transparent process implies that the process should be established ex ante. Jurisdictions should endeavour to assist relevant stakeholders in understanding how the process works and how their interests may be affected by, at a minimum, providing a short written summary of the process by which effect can be given to foreign resolution measures.
- **Assessment of the G-SIB specific requirements.** KAs 8, 9 and 10 include G-SIB specific requirements comprising the establishment of Crisis Management Groups (CMGs) (KA 8), the development of institution-specific cross-border cooperation agreements (CoAgs) (KA 9) and the conduct of regular resolvability assessments (KA 10). The final methodology specifies that KAs 8, 9 and 10 should be assessed in a manner that takes into account the confidentiality protections that apply to firm-specific recovery and resolution plans and CoAgs.
- **Continuity of access to FMIs.** The FSB recognises that maintaining a bank’s continued access to FMIs whether through direct participation or indirectly through correspondent banks will be essential to restoring stability and market confidence and supporting operational continuity of the critical functions of the bank in resolution. The final methodology makes clear that the assessment of effective resolution planning includes

⁶ See FSB’s “Guiding principles on the temporary funding needed to support the orderly resolution of a global systemically important bank (“G-SIB”)” (<http://www.fsb.org/wp-content/uploads/Guiding-principles-on-the-temporary-funding-needed-to-support-the-orderly-resolution-of-a-global-systemically-important-bank-“G-SIB”.pdf>), August 2016.

the evaluation of whether and how resolution authorities consider the bank in resolution or a successor would maintain access to the FMI services that are necessary to support the critical functions of the bank.

- **Arrangements for cross-border cooperation with key host authorities with respect to a bank that is not a G-SIB.** The consultative document did not provide for an assessment of cross-border cooperation arrangements for recovery and resolution planning purposes for non-G-SIBs that could be nevertheless systemically significant or critical if they fail. The final methodology recognizes the importance of such arrangements for non-G-SIBs and clarifies in EC 11.9 and EN 11 (c) on ‘Appropriate and proportionate arrangements for cross-border cooperation and coordination with key host authorities’ that if the jurisdiction is home to a bank with material cross-border operations that is subject to a resolution planning requirement in the home jurisdiction, the home resolution authority should have, for purposes of resolution planning, a process in place which includes appropriate and proportionate arrangements for cross-border cooperation and information sharing with host authorities to support the development and maintenance of recovery and resolution plans.

Next steps

The FSB will continue to monitor implementation, and all FSB jurisdictions have agreed to undergo an assessment of their bank resolution regimes. The development of the assessment methodology for the insurance sector will take into account the work undertaken from 2015 to 2017 by the FSB in this area and therefore extend into 2017.