

3 August 2012

## Thematic Peer Review of Resolution Regimes

### Questionnaire

#### Introduction

The global financial crisis demonstrated the urgent need to improve resolution regimes so as to enable authorities to resolve failing financial institutions quickly without destabilising the financial system or exposing taxpayers to the risk of loss from solvency support. Following the crisis, a number of jurisdictions have adopted, or are currently preparing, legislation to strengthen their resolution regimes, while some progress has also been made in establishing crisis management groups and enhancing cross-border cooperation.<sup>1</sup>

In November 2011, the FSB issued the *Key Attributes of Effective Resolution Regimes for Financial Institutions*<sup>2</sup> as part of the package of policy measures to address the moral hazard risks posed by systemically important financial institutions. The *Key Attributes* (KAs) set out the core elements of effective resolution regimes that apply to any financial institution that could be systemically significant or critical if it fails.<sup>3</sup> A drafting team set up under the FSB's Resolution Steering Group (ReSG) is currently developing an assessment methodology that provides greater technical detail on the various elements of the KAs.

Resolution regimes have been identified as a priority area under the FSB Coordination Framework for Implementation Monitoring (CFIM). As a result, the implementation of the KAs by FSB member jurisdictions will undergo intensive monitoring and detailed reporting.<sup>4</sup> To ensure effective implementation, the FSB decided, as stated in its November 2011 Progress Report to the G20 Leaders, to "carry out an iterative series of peer review assessments of implementation of the Key Attributes, with a first thematic peer review beginning by end-2012." The FSB Standing Committee on Standards Implementation (SCSI), in its meeting on 13-14 December 2011, agreed to undertake a peer review in this area in the second half of 2012.

The objective of this first peer review in this area is to evaluate FSB member jurisdictions' existing resolution regimes and any planned changes to those regimes using the KAs as a benchmark. The peer review will not assess jurisdictions' compliance with the KAs or assign

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<sup>1</sup> See, for example, "Resolution policies and frameworks - progress so far" by the Basel Committee on Banking Supervision (July 2011, available at <http://www.bis.org/publ/bcbs200.pdf>).

<sup>2</sup> See [http://www.financialstabilityboard.org/publications/r\\_111104cc.pdf](http://www.financialstabilityboard.org/publications/r_111104cc.pdf).

<sup>3</sup> The document also contains specific requirements for resolvability assessments, recovery and resolution planning, and the development of institution-specific cooperation agreements between home and host authorities, which must be met for those institutions identified as global systemically important financial institutions (G-SIFIs).

<sup>4</sup> See [http://www.financialstabilityboard.org/activities/implementation\\_monitoring/index.htm](http://www.financialstabilityboard.org/activities/implementation_monitoring/index.htm).

grades, but it will provide a comparative analysis of existing regimes and of progress made by different jurisdictions to those regimes, both across individual KAs and across different financial sectors (banking, insurance, securities, financial market infrastructures). In doing so, the review will give due consideration to sectoral specificities and recognise that not all powers and characteristics of resolution regimes set out in those KAs are suitable or relevant for all sectors and under all circumstances.

In particular, the objectives of the review are to:

- take stock of national resolution regimes that apply to different types of financial institutions, and of any planned changes to those regimes;
- highlight good practices in national resolution regimes as well as any material inconsistencies or gaps (compared to the KAs) that would need to be addressed;
- evaluate progress in implementing reforms to national resolution regimes using the KAs as a benchmark, and identify challenges arising from their implementation; and
- inform and help to improve the assessment methodology by identifying needed clarifications or revisions to the essential criteria and/or explanatory notes.

The primary source of information for the peer review will be member jurisdictions' responses to this questionnaire. The questionnaire is divided into two sections:

- Section 1 seeks general information about recent experiences with the resolution of systemically significant or critical financial institutions and lessons learned; recent reforms to resolution regimes; and plans and timelines for additional reforms; and
- Section 2 focuses in more detail on national implementation (or planned implementation) of the KAs in resolution regimes across different sectors – in terms of the legal (including supervisory) framework as well as of institutional capacities and practices – drawing on the draft assessment methodology prepared by a team of experts under the FSB Resolution Steering Group.

Annex I, which is drawn from the latest version of the draft assessment methodology for the KAs, reproduces the definitions of key terms that are used in the questionnaire.

National authorities should provide a consolidated response that covers all financial sectors in their jurisdiction. The response should include descriptions of differences in the application of national resolution regimes to different types of financial institutions where these exist. In addition to the consolidated response, national authorities may also choose to provide (where appropriate) sector-specific responses with additional detailed information on the resolution regimes for different sectors.<sup>5</sup> Respondents are encouraged to draw on their responses to prior surveys on resolution where those are relevant for this questionnaire.

National authorities are requested to include planned reforms to resolution regimes in their responses only if those reforms are articulated in a document (e.g. consultation paper or legislative proposal) that is already publicly available or is expected to be published no later than the end of 2012. In the case of the recent legislative proposal for bank recovery and

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<sup>5</sup> The CPSS-IOSCO and IAIS are currently analysing the application of the KAs to resolution regimes for financial market infrastructures and insurance companies respectively, and they expect to complete this work later this year. The analysis by the standard setters will feed into the assessment methodology for the KAs.

resolution in the European Union (EU)<sup>6</sup>, the European Commission is requested to provide responses to section 2 of the questionnaire based on that proposal. Those FSB member jurisdictions that are EU member states are also requested to provide responses on planned reforms to their resolution regimes if these reforms differ or go beyond the EU proposal.

Feedback should be submitted by **Friday, 28 September 2012** to [fsb@bis.org](mailto:fsb@bis.org) under the subject heading “FSB Thematic Peer Review on Resolution Regimes”. Individual submissions will not be made public.

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<sup>6</sup> See [http://ec.europa.eu/internal\\_market/bank/crisis\\_management/index\\_en.htm](http://ec.europa.eu/internal_market/bank/crisis_management/index_en.htm).

## **1. Experience of financial institution failures and recent and planned reforms to national resolution regimes**

*Recent actions to address the failure of a systemically significant or critical financial institution*

- 1.1 Have your national authorities taken actions since the beginning of 2007 to resolve, restructure or wind up one or more financial institutions that were deemed to be systemically significant or critical in failure in response to their actual or imminent failure? (Yes / No)

If yes, please answer the following summary questions:

- (a) What types of institutions were involved? Please select among the following options:
- bank, insurer, securities or investment firm, FMI, other (please explain);
  - part of a financial conglomerate;
  - internationally active (i.e. having a significant presence abroad through branches or subsidiaries) or primarily domestic in nature;
  - foreign owned and operating domestically via branches or subsidiaries.
- (b) Please briefly summarize the general nature of the actions taken. In particular, please indicate:
- whether the actions were taken under a pre-existing resolution regime for financial institutions, emergency legislation enacted at that time for the purposes of resolution, or general corporate insolvency proceedings;
  - what type of resolution measures were used (for example, liquidation, purchase and assumption, merger, bridge institution, asset management vehicle, receivership or conservatorship, nationalization, recapitalisation);
  - whether any of the actions required cooperation with authorities in other jurisdictions and, if so, the general nature of that cooperation.
- (c) Was financial assistance provided to support the actions? If yes, what was the general nature of that assistance and what sources of funding were used (e.g. protection funds for depositors, insurance policy holders etc.; resolution funds; private sector funds; public funds; central bank support other than emergency liquidity assistance on standard terms)?
- (d) If public funds were used, were any measures taken (or planned) to recover those funds from the private sector (e.g. from shareholders or creditors of the institution that was resolved, or the financial industry generally)?

*Lessons from the crisis or experience of failure of financial institutions*

- 1.2 Can any lessons be drawn from the experience of resolution actions described in response to question 1.1? For example:
- Were the available resolution powers or funding arrangements generally adequate? If they were inadequate, please explain the key shortcomings.

- Overall, were the public authorities adequately prepared to respond to the crisis events, including in terms of resolution policy and strategy? If not, in what respects was there insufficient preparation?
- Was there effective coordination and information sharing between the relevant resolution authorities domestically and (if applicable) on a cross-border basis? If not, in what respects were there deficiencies?
- Was sufficient information about the institution (including its structure and business organization, assets and liabilities, trading book, counterparties etc.) and its related entities available to the relevant authorities in an adequate timeframe? If there were deficiencies in the information available, please explain.
- Did any of the preconditions for effective resolution regimes prove to be insufficient and in need of reform? (The preconditions are: well-established framework for financial stability, surveillance and policy formulation; an effective system of supervision, regulation and oversight of financial institutions; effective protection schemes for depositors, insurance policyholders and other customers, and clear rules on the treatment of client assets and money; a robust accounting, auditing and disclosure regime; a well developed legal framework and judicial system.) If yes, please explain.

Please attach any relevant documents that summarise the principal lessons drawn from these experiences.

1.3 Has your jurisdiction recently introduced, or is it planning to introduce, legislative reforms either to develop a resolution regime for financial institutions or to revise an existing one? (Yes / No)

If yes, please answer the following questions.

- (a) Were those reforms adopted, or are they being considered, wholly or partially as a result of recent experience with the failure of financial institutions in your jurisdiction, or were they developed for other reasons (e.g. to implement the *Key Attributes* or otherwise improve the existing regime)? Please explain.
- (b) What is the sectoral coverage of those reforms?
- (c) At what stage are the reforms currently? Please choose one of the following, and indicate if different reforms are at different stages:
  - intra-governmental policy development (pre-public consultation);
  - public consultation on policy document;
  - preparation of draft legislation;
  - public consultation on draft legislation;
  - draft legislation introduced into parliament;
  - primary legislation enacted but not yet in force;
  - implementing rules being developed.

- (d) When will the reforms come into effect? Are there different timelines for different sectors or for different sets of powers?

## 2. Overview of national resolution regimes and consistency with the Key Attributes

Please answer the following questions with respect to both existing resolution regimes and planned changes to those regimes with respect to banking, insurance, securities and investment institutions, as well as privately owned and managed financial market infrastructure. Please indicate clearly to which parts of the financial sector the resolution regime or individual national provisions that are referred to in your answers apply.

The questions are largely based on the essential criteria found in the latest version of the draft assessment methodology for the *Key Attributes*. A question at the end of each subsection asks for information concerning planned changes in that area; respondents should only provide answers to that question if the planned reform is already described in a publicly available document, such as a consultation paper or a legislative proposal.

### 2.1 KA 1 (Scope)

- 2.1.1 Does your jurisdiction currently have a special resolution regime used to restructure and wind up failing financial institutions that is distinct from the ordinary corporate insolvency regime? (Yes / No)

If no, and you consider that the ordinary corporate insolvency regime is adequate generally or for particular financial sectors, please explain why.

If yes, please answer the following questions:

- (a) Does the resolution regime apply to the following kinds of financial institutions:
- Banks and other deposit-taking institutions? (Yes / No)
  - Securities or investment firms? (Yes / No)
  - Insurers? (Yes / No) If yes, please indicate which kinds of insurers are covered by the regime.
  - Privately owned and managed FMI? (Yes / No)
- (b) If there is a resolution regime for more than one sector or separate statutory regimes for different sectors, please answer the following questions for each of those regimes:
- What are the legal foundations for the resolution regime (for example, what statutes or laws does it include) and when was the regime adopted?
- (c) Is the scope of application limited by reference to an institution's size or systemic importance? (Yes / No ) If yes, please indicate (as relevant):
- the applicable size thresholds or how systemic importance is otherwise defined;

- when the determination of size or systemic importance is made (for example, in advance or at the time when the decision is made to put an institution into resolution); and
- who determines the systemic importance of the institution.

2.1.2 Does the resolution authority have powers over the following:

- Holding companies of a financial institution to which the resolution regime applies? (Yes / No)
- Non-regulated operational entities within a financial group or conglomerate that are significant to the financial activities of the group or conglomerate? (Yes / No)
- Domestic branches of foreign financial institutions? (Yes / No)

Please briefly describe the nature of the resolution powers for each of those classes of entity.

Does the resolution regime differentiate in the nature and scope of resolution powers between domestically incorporated financial institutions domiciled in your jurisdiction and subsidiaries of foreign financial institutions? (Yes / No) If yes, please briefly describe those differences.

2.1.3 Do you plan any reforms that, once adopted, will change your answers to questions 2.1.1 to 2.1.2? (Yes / No)

If yes, please describe those changes and indicate the expected dates on which they will be adopted and come into force.

## **2.2 KA 2 (Resolution Authority)**

2.2.1 Does the legal framework of your jurisdiction clearly identify one or more resolution authorities? (Yes / No)

Please name the authority(ies).

If there is more than one, please briefly explain the division of functions and responsibilities (for example, is each responsible for a different sector?).

2.2.2 Does the resolution authority have functions and responsibilities other than resolution? (Yes / No)

If yes, please describe those other functions and responsibilities by selecting among the following options: prudential supervisor, market conduct regulator, central bank, deposit insurance authority, other (please explain).

2.2.3 If there is more than one resolution authority, please answer the following questions:

- Does the legal framework provide a clear allocation of objectives, functions and powers of those authorities? (Yes / No)

Please indicate how that allocation is established and coordinated (for example, in statute, in MoUs etc.).

- (b) Are there clear and effective arrangements for cooperation and communication between the authorities? (Yes / No)

Please indicate how those arrangements are set out (for example, in statute, in MoUs etc.).

- (c) Does the resolution regime identify a lead authority that coordinates the resolution of legal entities of the same group within your jurisdiction? (Yes / No)  
If yes, which is the lead authority?

2.2.4 Does the resolution authority (or authorities) have statutory objectives? (Yes / No)

If yes, please summarise them, specifying whether they include the following objectives and functions (as set out in KA 2.3):

- (a) To pursue financial stability and ensure continuity of systemically important financial services, and payment, clearing and settlement functions? (Yes / No)
- (b) To 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? (Yes / No)
- (c) To 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? (Yes / No)
- (d) To duly consider the potential impact of its resolution actions on financial stability in other jurisdictions? (Yes / No)

2.2.5 Does the legal framework provide the resolution authority with the capacity to enter into agreements with relevant foreign resolution authorities, including for the purposes of information sharing and cross-border cooperation? (Yes / No)

2.2.6 Please describe briefly the main elements that ensure the resolution authority's operational independence, e.g. discretion as to the choice of resolution powers to resolve a particular institution in a way that best achieves the objectives set out in 2.2.3.

Are the operational independence and governance structures of the resolution authority prescribed by law and publicly disclosed? (Yes / No)

If yes, please give details.

2.2.7 To whom is the resolution authority accountable for the discharge of its duties in relation to its resolution-related statutory responsibilities?

Please briefly explain the mechanisms for accountability. Is the resolution authority required to release periodically public reports on its activities and performance?

What procedures does the resolution authority maintain for reviewing and evaluating actions it takes in carrying out its statutory responsibilities?

What is the nature of any independent external review of the authority's capability and performance of its functions?

2.2.8 Please indicate the main sources of funding used to cover the operations of the



resolution authority (e.g. staff expenditures etc.).

- 2.2.9 Does the resolution authority maintain governance arrangements and procedures that define the responsibilities, authorities and accountabilities of its governing body and senior management? (Yes / No)

In particular, do those arrangements and procedures include the following:

- (a) Rules and procedures for the appointment and dismissal of the head of the authority, members of the governing body (where relevant), and senior management? (Yes / No)
- (b) A code of conduct including rules of conflicts of interest that applies to the head of the authority, all its management and personnel? (Yes / No)

Please describe any additional governance arrangements and procedures that apply.

- 2.2.10 Does the legal framework of your jurisdiction provide statutory legal protection of the resolution authority, its head, members of the governing body and its staff against liability for actions taken or omissions made while discharging their duties in good faith or otherwise acting within the scope of their powers, including actions taken in support of foreign resolution proceedings? (Yes / No)

If yes, please briefly describe the nature of that protection and any limitations. For example, does the protection include both immunity from legal liability and indemnification for costs?

- 2.2.11 Do you plan any reforms that, once adopted, will change your answers to questions 2.2.1 to 2.2.10? (Yes / No)

If yes, please describe those changes and indicate the expected dates on which they will be adopted and come into force.

## **2.3 KA 3 (Resolution Powers)**

- 2.3.1 Does the resolution regime(s) permit resolution to be initiated both when a financial institution is no longer viable and when an institution is likely to be no longer viable (e.g. before the institution is balance-sheet insolvent and before all equity has been fully wiped out), and has no reasonable prospect of becoming so? (Yes / No)

Does the resolution regime support timely entry into resolution by establishing procedures to support the timely determination of non-viability? (Yes/No)

Please briefly describe the triggers for resolution under your regime(s) and the procedures for determining that a trigger has been met and that resolution may be initiated. If there are different triggers for different resolution powers or different kinds of financial institutions, please explain.

- 2.3.2 Which authority (in each sector, if different) (i) triggers resolution; (ii) decides which resolution action or actions will be taken; (iii) implements the resolution?

- 2.3.3 Does the resolution authority have the power to remove and replace senior management and directors of a financial institution in resolution? (Yes / No)

Please briefly describe the power, the conditions under which it may be exercised and

the entities in relation to which it may be exercised (for example, whether the power can be exercised in relation to firms in different sectors and to holding companies).

- 2.3.4 Does the resolution authority have the power to pursue claims against responsible persons, with a view to recovering monies from such persons, including the power to recover variable remuneration, both awarded and deferred, from senior management and directors whose actions or omissions have caused or materially contributed to the failure of the institution being resolved, irrespective of whether those persons have been removed from their position? (Yes / No)

Please briefly describe the power, indicating in particular: (i) the type of entities to which it applies (e.g. some or all regulated institutions, holding companies etc.); (ii) the persons from whom monies may be recovered (e.g. directors, other employees); and (iii) the conditions under which monies may be recovered (e.g. whether responsibility for the failure must be established, whether a court order is required etc.).

- 2.3.5 Does the resolution authority have the power to appoint an administrator to take control of and manage a firm in resolution with the objective of restoring the firm or parts of its business to ongoing and sustainable viability? (Yes / No)

- 2.3.6 If an administrator may be appointed to take control of and manage a firm in resolution, please answer the following questions:

- (a) Who appoints the administrator?
- (b) Does the resolution authority have the power to give binding directions to the administrator, or is the administrator under the direction of the court?
- (c) Are the objectives of administrator the same as the statutory objectives of the resolution agency: for example, pursuing financial stability; ensuring continuity of systemically important financial services and payment, clearing and settlement functions; and protecting depositors, insurance policy holders or other beneficiaries protected by a direct insurance contract and investors that are covered by sectoral insurance arrangements or guarantee schemes? (Yes / No) If no, please explain the objectives of the administrator.
- (d) Which of the resolution powers specified in questions 2.3.7 to 2.3.16 (if any) is the administrator able to exercise?

- 2.3.7 Does the resolution authority have the power to temporarily operate a firm, including powers to continue, terminate or assign contracts and purchase or sell assets? (Yes / No)

If yes, please explain the nature of those powers and any limitations that apply.

- 2.3.8 Does the resolution authority have powers to do all of the following (as appropriate in the particular case):

- (a) Require that the institution under resolution temporarily provide to any successor or acquiring entity, to which assets and liabilities of the institution have been transferred, services that are necessary to support continuity of essential services and functions related to those assets and liabilities? (Yes / No)

- (b) Require companies in the same group (whether or not they are regulated) to continue to provide services that are necessary to support such continuity to the institution under resolution or to any successor or acquiring entity at a reasonable rate of reimbursement? (Yes / No)
- (c) Procure such services from unaffiliated third parties at a commercial rate of consideration? (Yes / No)

Please explain any limitations to those powers and any conditions that apply.

- 2.3.9 Does the resolution authority have the power to override the rights of shareholders of the institution in resolution, including as regards shareholder approval for (i) a merger or acquisition; (ii) sale of substantial business operations; and (iii) recapitalisation or other measures to restructure and dispose of the institution's business or its liabilities and assets? (Yes / No)

If no, please explain how shareholders' rights are exercised in the context of, and within the timeframe required by, a resolution.

- 2.3.10 Does the resolution authority have the power to transfer or sell assets and liabilities, legal rights and obligations of an institution in resolution, including deposit liabilities, insurance policies and data and systems, and the ownership in shares of that institution, to a solvent third party, notwithstanding any requirements for consent or novation that would otherwise apply? (Yes / No)

If no, please explain how any consents or novation necessary for the transfer to take effect are obtained.

- 2.3.11 Does the resolution regime or legal framework provide for the establishment of a bridge institution? (Yes / No)

If yes, please answer the following questions.

- (a) Does the resolution regime specify or otherwise limit the terms and conditions under which a bridge institution will be set up and operate as a going concern, including:
  - (i) Its ownership structure? (Yes / No)
  - (ii) Its source of capital? (Yes / No)
  - (iii) Its operational financing and liquidity support? (Yes / No)
  - (iv) The applicable regulatory requirements, including regulatory capital? (Yes / No)
  - (v) The applicable corporate governance framework? (Yes / No)
  - (vi) The responsibilities of the management of the bridge institution? (Yes / No)
- (b) Does the resolution authority have the power to transfer assets or liabilities back from the bridge institution to the institution under resolution or the estate of the institution or to an asset management vehicle that has been established for the management and run down of non-performing loans or difficult-to-value assets? (Yes / No)

Are there any safeguards restricting the exercise of that power? (Yes / No) If yes, please briefly describe those safeguards.

- 2.3.12 Does the resolution authority have the power to establish a separate asset management vehicle or equivalent legal entity (for example, as a subsidiary of the distressed institution, an entity with a separate charter, or as a trust or asset management company) and transfer non-performing loans or difficult-to-value assets to that vehicle for management and run-down? (Yes / No)

If yes, please briefly describe the legal structure that is used.

- 2.3.13 Does the resolution authority have the power to carry out bail-in within resolution as a means to achieve or help achieve continuity of essential functions either (i) by partially or fully 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 institution (the residual business of which would then be wound up and the institution liquidated)? (Yes / No)

If yes, please specify whether the resolution regime allows bail-in within resolution to be used for (i) or (ii) above, or both, and answer the following questions.

- (a) Does the resolution authority have the power to take the following actions as necessary to absorb losses:
- (i) Write down equity or other instruments of ownership of the institution? (Yes / No)
  - (ii) Write down subordinated or senior unsecured and uninsured creditor claims? (Yes / No)
  - (iii) Exchange or convert into equity or other instruments of ownership of the institution, any successor in resolution (such as a bridge institution to which part or all of the business of the failed institution is transferred) or the parent company within that jurisdiction, all or parts of subordinated or senior unsecured and uninsured creditor claims? (Yes / No)
  - (iv) Does the bail-in power require approval of the court or other authority (e.g. finance ministry)? (Yes / No) Please explain.
- (b) What is the scope of the power to carry out bail-in within resolution, i.e. the range of liabilities covered and the hierarchy according to which bail-in powers may be applied and how any discretion as to the scope of application will be exercised in individual cases? Please explain whether the scope is set out in a statute, rules or published guidance.
- (c) Is the resolution authority able to require or bring about, including through application to the court, any of the following actions where necessary to give effect to the write-down or conversion:
- (i) The cancellation of share capital and instruments? (Yes / No)
  - (ii) The issuance of new shares or other instruments of ownership quickly and without the need for shareholder consent? (Yes / No)

- (iii) The overriding of pre-emption rights of existing shareholders of the institution? (Yes / No)
- (iv) The issuance of warrants to equity holders or subordinated (and if appropriate senior) debt holders whose claims have been subject to bail-in (to enable adjustment of the distribution of shares based on a further valuation at a later stage)? (Yes / No)
- (v) The suspension of shares and other relevant securities from listing and trading, and prohibition against dealing in the shares, for a temporary period, including temporary exemptions from disclosure requirements? (Yes / No)

Please indicate for each action whether it is brought about through exercise of an administrative power by the resolution authority, or through application to the court.

(d) Does the resolution authority have the power to apply ‘bail-in within resolution’ in combination with the other resolution powers and regulatory measures, including powers to replace senior management of the failing institution and to require the development of a new business plan. (Yes / No)

With respect to FMIs, does the resolution regime or legal framework include analogous mechanisms of loss allocation (for example, arrangements to mutualise losses between members or participants in a FMI)? If yes, please provide details of such mechanisms.

2.3.14 Does the resolution authority (or another public authority) have the power to impose a moratorium with a suspension of payments to unsecured creditors and customers and a stay on creditor actions to attach assets or otherwise collect money or property from the institution in resolution? (Yes / No)

If yes, what is the scope of the moratorium that may be imposed, and are payments and property transfers to central counterparties (CCPs) and those entered into the payment, clearing and settlements systems excluded from its scope? If they are not excluded, does the resolution authority have the discretion not to apply the moratorium to such payments and transfers? Are there particular types of institutions for which a moratorium cannot be imposed?

What is the maximum period for which a moratorium may be imposed? Is the enforcement of eligible netting and collateral agreements affected by any such stay on creditor actions?

2.3.15 Does the resolution authority have the power to effect the closure and orderly wind-down and liquidation of a failing institution (including through application to the court)? (Yes / No)

In the event of closure and liquidation, does the resolution authority (or authorities) have the power to effect or secure the following (as appropriate in the particular case):

- (a) A timely pay-out to insured depositors, investors or insurance policy holders? (Yes / No)
- (b) Prompt access to insured transaction accounts for clients? (Yes / No)

- (c) Timely transfer or return of segregated client assets? (Yes / No)
- (d) In the case of a FMI, timely pay out or transfer of participant (client) positions? (Yes / No)

For each case, please indicate the timeframe in which payout may be made or access given.

2.3.16 Does the resolution authority have the following powers that may be used for the resolution of an insurer:

- (a) Powers to effect a portfolio transfer without having to obtain the consent of any insurance policy holder? (Yes / No)
- (b) Powers to discontinue the writing of new business once an insurance firm is placed in resolution, while existing contractual policy obligations continue to be administered (run-off)? (Yes /No)

2.3.17 Does the resolution authority have the power and the operational capacity to combine resolution actions, to apply them sequentially and to apply different resolution powers to different parts of the business of the institution in resolution? If no, please explain any restrictions that may apply.

2.3.18 Are there policies or procedures that require the resolution authority, when developing resolution plans and exercising resolution powers in relation to domestic entities of a cross-border financial group, to evaluate and take due account of the expected or possible impact of its actions on the group as a whole and on financial stability in other jurisdictions where the group operates? (Yes / No)

What is the source of this requirement – for example, statute, rules, policies?

Are there any statutory or other requirements on the resolution authority to seek to avoid taking actions that may have adverse consequences for financial stability in another jurisdiction?

2.3.19 If you have answered ‘no’ to any of questions 2.3.3 to 2.3.17, do you plan any reforms that will confer upon authorities the powers in question? (Yes / No)

If yes, please explain. If no, please indicate why you do not consider the powers in question to be necessary or appropriate.

2.3.20 Do you plan any other reforms that, once adopted, will change your answers to questions 2.3.1, 2.3.2 and 2.3.18? (Yes / No)

If yes, please describe those changes and indicate the expected dates on which they will be adopted and come into force.

## **2.4 KA 4 (Set-off, collateralization, segregation of client assets)**

2.4.1 Does the resolution authority (or another public authority) have the power to impose a temporary stay on the exercise of early termination rights that arise by reason only of entry of an institution into resolution or in connection with the use of resolution powers? (Yes / No)

If yes, please indicate whether the power is an administrative power of the resolution

authority, or requires an order of the court.

- 2.4.2 Is the exercise of any power to impose a temporary stay on the exercise of early termination rights that may otherwise be triggered upon entry of an institution into resolution or in connection with the use of resolution powers subject to conditions? (Yes / No)

If yes, please briefly describe those conditions and indicate the extent to which they diverge from the conditions set out in KA 4.3 and section 2 of Annex IV to the *Key Attributes*. What is the maximum period for which a stay can be imposed?

- 2.4.3 Do you plan any reforms that, once adopted, will change your answers to questions 2.4.1 or 2.4.2? (Yes / No)

If yes, please describe those changes and indicate the expected dates on which they will be adopted and come into force.

## **2.5 KA 5 (Safeguards)**

- 2.5.1 Is the resolution authority required, when exercising its resolution powers, to respect the hierarchy of creditor claims under the applicable insolvency law and the principle of equal treatment of creditors of the same class? (Yes / No)

- 2.5.2 Does the legal framework permit or require departure from the principle of equal (*pari passu*) treatment of creditors of the same class? (Yes / No)

If yes, under what circumstances?

- 2.5.3 Does the legal framework in your jurisdiction provide that creditors that suffer a greater loss as a result of resolution than they would have incurred in liquidation have a right to receive compensation? (Yes / No)

If yes, does that framework set out a mechanism for administering that compensation, including a transparent process by which the amount of compensation payable is determined and procedures for review and challenge of that determination? (Yes / No)

If yes, please describe that mechanism and process, and those procedures.

- 2.5.4 Does the legal framework permit judicial actions that could constrain implementation, or result in a reversal, of measures taken by resolution authorities acting within their legal powers and in good faith?

If yes, please explain.

If no, does the legal framework provide for financial compensation as a remedy, to the exclusion of any type of reversal, in whole or in part, of any decision taken by the resolution authority?

- 2.5.5 Do you plan any reforms that, once adopted, will change your answers to questions 2.5.1 to 2.5.4? (Yes / No)

If yes, please describe those changes and indicate the expected dates on which they will be adopted and come into force.

## **2.6 KA 6 (Funding of institutions in resolution)**

2.6.1 Is 'open firm' financial assistance for institutions in resolution available under your resolution regime? (Yes / No)

If yes, please describe the funding options available and any conditions for and limitations on the use of 'open firm' financial assistance.

2.6.2 Does your jurisdiction have in place funding arrangements to provide temporary financing to facilitate the resolution of failing institutions, which include one or a combination of the following:

- (a) A privately financed resolution fund? (Yes / No)
- (b) A publicly financed resolution fund? (Yes/No)
- (c) A privately financed protection or insurance fund for deposits, insurance policy holders or investors? (Yes / No)
- (d) Use of public funds, including funds from the central bank (other than emergency liquidity assistance on standard terms)? (Yes / No)
- (e) A mechanism for later recovery of the costs to public funds of providing such temporary financing from assets of the institution in resolution, unsecured creditors, members of or participants in a FMI or, if necessary, the financial system participants more widely? (Yes / No)

In each applicable case, please describe the funding arrangements as well as any criteria for, and limitations on, the use of each option.

2.6.3 If a protection or insurance fund can be used for financing resolution beyond the payout or transfer of insured deposits, insurance policy or investments (as the case may be), are there rules and policies on the use of such funds, including clarity on the extent of the contribution that may be made? (Yes / No)

Please indicate any restrictions on the extent of that contribution.

2.6.4 Under what conditions does the resolution regime allow the provision of temporary funding to an institution in resolution? Please indicate which agency would provide the funding (ministry of finance, central bank, deposit insurance agency, others). In particular, do the conditions include the following:

- (a) The provision of that funding has been assessed as necessary for financial stability? (Yes / No)
- (b) It will permit implementation of a resolution option that best achieves the objectives of an orderly resolution? (Yes / No)
- (c) Private sources of funding have been exhausted or would not achieve those objectives? (Yes / No)
- (d) Losses are allocated to shareholders and residual costs, as appropriate, to unsecured and uninsured creditors and, if necessary, the financial industry through ex-post assessments, insurance premiums or other mechanisms? (Yes / No)

Please indicate any other condition that may apply.



2.6.5 If there is a process for the recovery of any temporary public funding, whether from the shareholders and unsecured creditors of the institution in resolution or from financial system participants more widely, please indicate:

- (a) How the amount to be recovered from particular classes of person (for example, shareholders, junior and senior unsecured creditors, other market participants) would be determined and recovery would be enforced;
- (b) The categories of market participants that may be required to reimburse the funds that have been provided to the institution in resolution.

2.6.6 Does the resolution regime include the option of placing a failing institution under temporary public ownership as part of a resolution action? (Yes / No)

If yes, is such temporary public ownership subject to the following conditions:

- (a) The institution involved is systemically significant or critical and its failure would cause financial instability? (Yes / No)
- (b) Public ownership is a last resort because no other resolution options would achieve the objectives of orderly resolution? (Yes / No)
- (c) There is a general policy that public ownership of the institution or the majority of its business be temporary and that it should be returned to the private sector as soon as practicable? (Yes / No)
- (d) There are clear rules regarding the allocation of losses to shareholders and unsecured and uninsured creditors? (Yes / No)
- (e) There are transparent arrangements to recover losses and costs incurred by the State arising from the temporary public ownership from unsecured creditors or, if necessary, from the financial system participants more widely? (Yes / No)

If any other conditions apply, please describe them.

2.6.7 Do you plan any reforms that, once adopted, will change your answers to questions 2.6.1 to 2.6.6? (Yes / No)

If yes, please describe those changes and indicate the expected dates on which they will be adopted and come into force.

## **2.7 KA 7 (Legal framework for cross-border cooperation)**

2.7.1 What are the relevant legal provisions or policies, if any, that mandate or strongly encourage the resolution authority to achieve a cooperative solution with foreign resolution authorities?

2.7.2 Please indicate whether your resolution regime has the following features:

- (a) Provisions that trigger automatic action as a result of official intervention or the initiation of resolution or insolvency proceedings in other jurisdictions (other than automatic withdrawal of the local license of a branch on the withdrawal of the firm's license by its home authority). (Yes / No)
- (b) Differential treatment of depositors, policyholders and other creditors on the basis of the location of their claim or of the jurisdiction in which the claim is payable. (Yes / No)

2.7.3 Is the resolution authority able to exercise resolution powers over local branches of foreign institutions? (Yes / No)

If yes, is it able to use those powers both to support a resolution carried out by a foreign home authority and to take measures on its own initiative?

Please briefly explain the resolution powers available for branches.

Please explain the triggers for invoking resolution powers in respect of branches.

2.7.4 If the resolution authority has resolution powers with respect to local branches of foreign institutions, are there restrictions on the exercise of those powers on its own initiative (that is, independently of the home resolution authority of the foreign institution)? (Yes / No)

Please explain any such restrictions.

2.7.5 Are there mechanisms or processes in place through which resolution actions by a foreign resolution authority can promptly be given legal effect in your jurisdiction? (Yes / No)

If yes, please describe those mechanisms or processes. (For example, do they provide for such actions to be given effect automatically; require application to a court by either the foreign or local resolution authority; or empower the local resolution authority to take administrative action to implement or support the foreign resolution action?)

2.7.6 Do you plan any reforms that, once adopted, will change your answers to questions 2.7.1 to 2.7.5? (Yes / No)

If yes, please describe those changes and indicate the expected dates on which they will be adopted and come into force.

## **2.8 KA 10 (Resolvability assessments)**

2.8.1 Is there a requirement or are there arrangements in place for resolvability assessments to be carried out? (Yes / No)

If yes, please indicate the source of that requirement (for example, statute, supervisory rules, policy).

2.8.2 If resolvability assessments are required, is that requirement restricted to G-SIFIs headquartered in your jurisdiction? (Yes / No)

If the requirement applies to institutions other than G-SIFIs, please indicate:

(a) the types of institutions to which it applies; and

(b) the criteria that are used for determining whether a resolvability assessment is required for such an institution.

2.8.3 Do supervisory authorities or resolution authorities have powers to require, where necessary, the adoption of appropriate measures, such as changes to the business practices, legal structure or organisation of an institution (including at the level of the group), in order to reduce the complexity and costliness of resolution? (Yes / No)

If yes, please briefly describe the nature and scope of those powers, including the

measures that may be required and the circumstances in which the powers may be exercised.

2.8.4 Do you plan any reforms that, once adopted, will change your answers to questions 2.8.1 to 2.8.3? (Yes / No)

If yes, please describe those changes and indicate the expected dates on which they will be adopted and come into force.

## **2.9 KA 11 (Recovery and resolution planning)**

2.9.1 Is there a requirement in place for the development and maintenance of recovery plans and resolution plans? (Yes / No)

If yes, please answer the following questions.

(a) Please indicate the source of that requirement (for example, statute, regulation, supervisory rules).

(b) What is the scope of that requirement? Does it apply to:

(i) G-SIFIs headquartered in your jurisdiction? (Yes / No)

(ii) Any institutions identified by the resolution authority as systemically significant or critical? (Yes / No)

(iii) Institutions other than those covered by (i) and (ii) (please specify)?

(c) Are there statutory provisions, regulations or written policies in place that set out the minimum contents of recovery plans and resolution plans for these institutions? (Yes / No)

(d) Are these institutions required to review and update their recovery plans at least annually, and sooner upon the occurrence of an event that materially changes the institution's structure or operations, its strategy or aggregated risk? (Yes / No)

(e) Does the legal (including supervisory) framework provide for review or approval of firms' recovery plans by an authority? (Yes / No)

If yes, please specify the authority(ies) responsible. Does that authority have the power to require the firm to make changes to a recovery plan if it is not satisfied with the plan as submitted by the firm?

(f) Is the supervisory authority or the resolution authority required to review and, to the extent necessary, update resolution plans at least annually, and sooner upon the occurrence of an event that materially changes the institution's structure or operations, its strategy or aggregated risk exposure? (Yes / No)

2.9.2 Do you plan any reforms that, once adopted, will change your answers to question 2.9.1? (Yes / No)

If yes, please describe those changes and indicate the expected dates on which they will be adopted and come into force.

## **2.10 KA 12 (Access to information and information sharing)**

2.10.1 Please indicate in the tables below whether the domestic authorities listed in the left-hand column are able, under the legal framework in your jurisdiction, to disclose non-public information necessary for recovery and resolution planning and for carrying out resolution with other authorities (specified in the top row of the table) that have a role in resolution. Table 1 covers information sharing between domestic authorities, while Table 2 covers information sharing with foreign authorities. Fields should be marked as “YES” where information can be shared with the domestic or foreign authority in question, and “NO” where it cannot be shared under any circumstances.<sup>7</sup>

**Table 1: Information sharing between domestic authorities**

		Domestic authority (receiving information)				
		Supervisor	Resolution Authority	Central Bank	Finance Ministry	Guarantee Scheme <sup>8</sup>
Domestic authority (information provider)	Supervisor					
	Resolution Authority					
	Central Bank					
	Finance Ministry					
	Guarantee Scheme					

<sup>7</sup> Tables 1 and 2 are identical to tables that are required to be completed in the survey conducted by the FSB Resolution Steering Group Workstream on Information Sharing. Respondents that have completed that survey may reproduce or refer to the answers provided in that context when providing responses to this question.

<sup>8</sup> Guarantee schemes include schemes or funds for the protection of depositors, insurance policy holders or investors. If more than one such scheme exists in your jurisdiction and has a role in resolution, please indicate whether the authorities responsible for all such schemes have powers to disclose information.

**Table 2: Information sharing with foreign authorities**

		Foreign authority (receiving information)				
		Supervisor	Resolution Authority	Central Bank	Finance Ministry	Guarantee Scheme
Domestic authority (information provider)	Supervisor					
	Resolution Authority					
	Central Bank					
	Finance Ministry					
	Guarantee Scheme					

Please explain whether any of the following conditions or restrictions for sharing non-public information for resolution purposes apply:

- (a) limitations on the classes of information that can be disclosed;
- (b) requirement for MoUs with the receiving authority;
- (c) adequate confidentiality protections by the authority that receives such information;
- (d) use of the information only for the purposes specified by the provider of the information; consent from the authority providing the information is required for any onward sharing of that information;
- (e) any other conditions (please explain).

2.10.2 Do you plan any reforms that, once adopted, will change your answers to question 2.10.1? (Yes / No)

If yes, please describe those changes and indicate the expected dates on which they will be adopted and come into force.

## Annex I: Definitions of key terms used in the questionnaire

**“bail-in within resolution”** – restructuring mechanisms within resolution to recapitalise a financial institution or capitalise a bridge institution, through the write-down, conversion or exchange of debt instruments (e.g., senior or subordinated unsecured debt instruments) under specified conditions, as appropriate to legal frameworks and market capacity, including the conversion or exchange of debt and other creditor claims to or for equity or other instruments in a newly formed bridge institution.

**“bail-out”** – any transfer of funds from public sources to a failed institution or a commitment by a public authority to provide funds with a view to sustaining a failed institution (e.g., by way of guarantees) that results in benefit to the shareholders or uninsured creditors of that institution, or the assumption of risks by the public authority that would otherwise be borne by the institution and its shareholders, where the funds transferred are not recouped from the institution, its unsecured creditors or, if necessary, the financial system more widely, or the national authority is not reimbursed for the risks assumed.

**“bank”** – any institution that is involved in either the provision of credit or deposit-taking and other repayable funds from the public, and that is defined by the relevant national legislation as a bank.

**“bridge institution”** – a temporary bank, financial company or other entity that is established to take over and continue certain operations of a failed institution as part of the resolution process.

**“emergency liquidity assistance on standard terms”** – the provision of liquidity against collateral in accordance with the standards terms of the central bank.

**“early termination rights”** – contractual acceleration, termination and other close-out rights in financial contracts that in particular may be triggered on the occurrence of an event or circumstances set out in the financial contract, such as when the resolution authorities initiate resolution proceedings or take certain related resolution actions with respect to an institution.

**“entry into resolution”** - the formal determination by the relevant authority or authorities that an institution meets the conditions for resolution and that it will be subject to resolution measures.

**“financial institution” or “institution”** – any entity the principal business of which involves the provision of financial services or the conduct of financial activities, including deposit-taking, credit intermediation, insurance, investment or securities business or operating financial market infrastructure.

**“financial market infrastructure (FMI)”**<sup>9</sup> – a multilateral system among participating financial institutions, including the operator of the system, used for the purposes of clearing, settling or recording payments, securities, derivatives or other financial transactions. It

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<sup>9</sup> See the definition in paragraph 1.8 of the April 2012 CPSS-IOSCO *Principles for Financial Market Infrastructures* (<http://www.bis.org/publ/cpss101a.pdf>).

includes payment systems, central securities depositories, securities settlement systems, central counterparties, and trade repositories.

**“group”** – a parent company (which may be a holding company) and its direct and indirect subsidiaries, both domestic and foreign.

**“holding company”** – a company that is not itself a financial firm, formed to control financial firms. This concept covers intermediate or ultimate control.

**“institution in resolution”** – a financial institution in relation to which resolution powers are being exercised. Where resolution powers have been exercised in relation to an institution, that institution is considered to be “in resolution” for as long as it remains subject to measures taken or supervised by a resolution authority or insolvency proceedings initiated by the resolution authority.

**“investment firm” or “securities firm”** – any non-deposit-taking institution whose principal activity is conducting investments operations on a regular basis, including: safeguarding and administering investments or securities; dealing in investments or securities as principal; and dealing in investments or securities as agent.

**“legal framework”** – the comprehensive legal system for a particular jurisdiction established by any combination of the following: a constitution; primary legislation enacted by a legislative body which has authority in respect of the jurisdiction; subsidiary legislation made by authorities authorised by the primary legislation for such jurisdiction; and legal precedent and customs applied by the courts.

**“open firm financial assistance”** – the provision of public funds to an institution in resolution where the ownership structure of that institution has not been changed. That is, the shareholders retain control and the institution is not within a framework (such as receivership or conservatorship) where the control rights are modified.

**“resolution”** – any action taken by a national authority in respect of a failed institution, including in particular the exercise of a resolution power specified in KA 3, with or without private sector involvement, with the aim of maintaining financial stability or ensure continuity of systemically important functions and or protecting insured depositors, insurance policyholders or investors. Resolution may include the application of procedures under insolvency law to parts of an institution in resolution, in conjunction with the exercise of resolution powers.

**“resolution authority”** – an authority which, either alone or together with other national authorities, is responsible for the resolution of an institution. References in this document to a “resolution authority” should be read as “resolution authority or authorities”.

**“resolution regime”** – the legal framework and policies governing the application of the resolution powers by national authorities for institutions. This may consist of sector-specific statutes and rules, or may consist of a single regime covering all institutions. The KAs are neutral as to the form of the regime, provided that all institutions that could be systemically significant or critical in the event of failure are subject to an effective resolution regime.