行政院及所屬各機關出國報告
(出國類別：會議)

參加國際存款保險機構協會與印度存款保險及信用保證公司舉辦之研討會摘要報告

服務機關：中央存款保險公司

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出國地點：印度焦特布爾

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(Key Attributes of Effective Resolution Regimes for Financial Institution)

壹、前言

國際存款保險機構協會(International Association of Deposit Insurers, IADI)與印度存款保險及信用保證公司(Deposit Insurance and Credit Guarantee Corporation, DICGC)於印度焦特布爾（Jodhpur）聯合舉辦本次研討會，研討會主題為「存款保險於銀行處理架構中之角色-金融危機之啟示」(Role of Deposit Insurance in Bank Resolution Framework-Lessons from the Financial Crisis)。研討會期間，就銀行處理架構之重要元素、國際組織訂定之處理原則、各國之處理經驗、存款保險機構之角色等面向，分別講述討論，內容多聚焦於 2008 年以後所發生的全球金融海嘯，所作之金融改革。

本次研討會含講師共計 73 人參加，除各國存款保險機構或中央銀行代表外，尚包括國際貨幣基金(International Monetary Fund, IMF）、國際清算銀行（Bank for International Settlements, BIS)、IADI 等國際組織之代表。中央存款保險公司由副總經理賴文獻與清理處科長王亮之參加。茲將本次國際研討會重點內容歸納摘述如后，俾供經驗交流。

貳、銀行處理架構之重要元素

銀行業營業性質特殊，譬如：資產方面在瀕臨倒閉時價值易迅速跌落；負債方面主要來自大眾存款，存款依其性質又有到期日不穩定之特性；在對社會及經濟的影響方面，因同業間互有拆放存入，支付不能時易波及同業，存款人未能及時領取存款時，易波及經濟活動之日常支付等。職是之故，銀行業倒閉，相較於一般產業，影響至深且遠。

一般公司的破產法制，因破產宣告法律介入的門檻太慢，破產管理人對銀行業務運作不見得全盤了解，加上漫長的破產程序易引發存款大眾不耐，甚而對於其他健全銀行之信心產生動搖，因此適用於銀行業時，無法維繫金融穩定，且因涉及金融穩定及經濟活動之順暢運作，銀行業倒閉經常需公共資金之挹注，因此需要一套有效審慎的處理架構。

銀行倒閉的處理架構需考量的要素，包括：政府部門需先期介入瀕臨失敗銀行，先予以自行改善機會，如：自行籌措資本增資；萬一自救無效，政府部門亦須有取代董、監事會之法定授權，以利掌控其營運，防止資產價值惡化，並維持金融體系之安定；若無法避免時，則需建構專責清理人法制，以提高清理效能。此外，尚須具備多項彈性處理工具，以供不同環境下之選擇，如：強制合併，資產、負債及(或)營業移轉，資本重建，有秩序的清理過程等等。另尚需許多不可或缺的配套機制，如：法定的公共資金財務協助、存款人優先受償、延緩償付機制等；在政府機構介入時亦需建立明確的法定職掌與授權，且須由主管機關、監理機關、中央銀行與存款保險機構間相互協調運作。

西元 2008 年美國雷曼兄弟倒閉事件所引發的金融海嘯，令各國加強大型金融公司(Systemically Important

Financial Institutions, SIFIs)的監理，所建立之處理架構，亦捨棄傳統「大到不能倒」(Too Big To Fail)的觀念，務求不增加納稅人的負擔,有秩序的處理 SIFIs 之倒閉事件。

叁、國際組織之決議與規範

過去世界各地發生過多次的金融危機，如：1990 年左右美國儲貸機構危機、1994 年墨西哥金融危機、1997 年亞洲金融風暴，以及 2007 年以後的美國次貸危機、全球金融海嘯、歐洲主權債信危機等。

針對歐美各地 2008 年以後所引發的金融海嘯及歐洲主權債信危機，許多國際組織針對全球之金融穩定，通過決議、訂定準則，俾供遵循。茲摘述本次研討會介紹之國際組織決議及規範如下：

一、G20 坎城高峰會(G20 Cannes Summit)界定全球系統重要性金融機構（Global systemically important institutions, G-SIFIs）

2011 年 11 月 G20 坎城高峰會界定 29 家巨型金融集團（詳附錄一）為 G-SIFIs，爾後將逐年更新，目前僅包括跨足銀行業之集團，未來將擴大至未跨足銀行業之金融集團。由於 G-SIFIs 之經營失敗對全球經濟影響重大，須採行較嚴格之監理措施，如： G-SIFIs 於 BASEL III 的架構上，依個別集團不同，需另予計提 1%~3.5%的「大型金融公司緩衝」(SIFIs Buffer）作為資本需求、2012 年底前需提出萬一瀕臨經營危機時之「處理計畫」(Resolution Plan）等。

二、「有效的金融機構處理制度主要特性」(Key Attributes of Effective Resolution Regimes for Financial Institution，以下簡稱「主要特性」，附錄二）

「主要特性」係由G20 高峰會轄下之金融穩定委員會（Financial Stability Board, FSB）[1]所釐訂，於 2011 年

[1] Financial Stability Board,源於 1999 年G7 之Financial Stability Forum,於 2009 年G20 設立。

11 月通過，目的係為建立有效的金融機構處理制度，要求各國之處理權責機構應以有秩序的方式、不增加納稅人的負擔、維持經濟運作的延續性為考量，全文不含序言及前言共分 12 章，包括：適用範圍(Scope)，處理權責機關(Resolution authority)，處理之權力（Resolution power），抵銷、結算、擔保品、客戶資產之隔離（Set-off, netting, collateralisation, segregation of client assets），安全防護（Safeguard），處理之資金籌措（Funding of firms in resolution）、跨國合作之法律架構條件（Legal framework conditions for cross-border cooperation）、危機管理團隊（Crisis Management Groups, CMGs）、特定機構跨國合作協議（Institution-specific cross-border cooperation agreements）、處理可行性評估(Resolvability assessments）、自救暨處理計畫（Recovery and resolution planning, RRP）、資訊取得暨資訊共用（Access to information and information sharing）等，並將「特定機構跨國合作協議」必要之元素、「處理可行性評估」之準則、「恢復暨處理計畫」必要之元素，以及「暫緩（交易對手）提前解約之權力」（Temporary stay on early termination rights）之細則，詳載於附錄供各國參酌。茲歸納其重點：

（一）適用範圍（Scope）

G-SIFIs以及任何具系統重要性之金融機構，包括其控股公司、集團內重要之地下營運實體及海外分公司均適用，且包括金融市場之基礎機構（Financial market infrastructures. FMIs）[2]，以下通稱適用金融機構。此外，

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[2] FMIs係指為了記錄、清算或交割現金、證券、衍生性金融商品或其它金融性交易而設立之中心組織，譬如各國之證券交易所、櫃檯買賣中心等。

適用範圍尚明確揭示處理制度至少需備妥「恢復暨處理計畫」、執行「處理可行性評估」，簽訂「特定機構跨國合作協議」。

（二）處理權責機關（Resolution authority）

各國均須指派主要權責機關，協調其他處理機關執行處理權力，以金融穩定，金融服務不中斷，保護存款人、保單持有人及投資人的利益，避免資產價值減損追求成本最小，並須考量對其他國家金融穩定之衝擊等做為處理之原則。處理之權責機關須具備與他國簽訂協議之職權。

（三）處理之權力（Resolution power）

須明訂進入處理程序的指標，時間需及時並及早，處理之權責機關須具備廣泛之職權，包括：適用金融機構人事之撤換、指派管理及經營人力、優於股東會的權力以促成合併、出售資產負債、訴訟當事人資格、設立過渡機構與資產管理機構、為維持營業不中斷所需之入股或資本重建、有秩序的清理與及時的存款賠付或移轉、暫緩交易對手提前解約之權力、資產負債及營業之移轉，處理保險業時毋須取得保單持有人共識即可移轉保險業務等。

（四）抵銷、結算、擔保品、客戶資產之隔離（Set-off, netting, collateralisation, segregation of client assets）

法令所規範之抵銷權行使、結算交割、抵押權契約及客戶資產之隔離須確切、透明並具強制性，且不能阻礙處理方法之施行。此外，儘管各金融契約之交易對手可對處理中之適用金融機構，行使提前解約及加速條款，處理之權責機關在一定條件下，仍可暫緩該項提前解約及加速條款之運用，這些條件包括：

1.交易對手純粹係因為該適用金融機構已進入處理程序而行使。

2.嚴格規定暫緩的期限。

3.處理機關移轉同一交易對手之金融合約時，必須將該交易對手的所有合約全部移轉，不能選擇性移轉，且其交割結算條件不變。

4.因為適用金融機構於處理前違約或於暫緩期間違約，交易對手仍保有提前解約及運用加速條款的權力。

（五）安全防護（Safeguard）

1.在透明合理與公開的原則下，依債權順位清償，並由股東先行吸收損失。

2.須遵守「債權人權益不惡化」原則（No creditors worse off principle)，意即清算後，債權人權益不應比清算前惡化，即使分配有未受清償部份，仍保有債權。

3.適用金融機構之主管及員工，依照處理權責機關決定，辦理各項事務時，需有免於受債權人及股東提告之保障。

4.某些國家的法律，處理倒閉金融公司仍須經由法院核准，因此處理時需考量該國法律程序之正當性。

5.為維持市場信心，各國應允許暫停或暫緩資訊之公佈。

(六)處理之資金籌措（Funding of firms in resolution）

1.各國應具備處理適用金融機構之法制及政策，不應僅依賴公共資金或紓困資金。

2.為有秩序的處理而暫時支付之費用，應由股東負擔，或在不違反「債權人權益不惡化」原則下，由無擔保債權人負擔，必要時亦可由金融體系負擔。

3.各國應具備存款保險基金或自金融產業籌措處理基

金。

4.資金籌措需防範道德風險並係基於維持金融穩定而為。

5.適用金融機構若需暫時公有化，未來出售合併時需回收費用。

（七）跨國合作之法律架構條件（Legal framework conditions for cross-border cooperation）

1.處理權責機關須具備有力之法定職掌，法制需鼓勵處理權責機關積極與外國處理權責機關合作處理。

2.處理權責機關對於境內外國金融機構之分公司須具備處理權力，處理方式可依照母國處理權責機關之方式，萬一母國之處理方式無法維持分公司所在國之金融穩定時，亦得依自己方式處理，惟若依自己方式處理時，須先知會、諮詢分公司之母國處理權責機關。

3.處理之法制不應歧視債權人之國籍及其求償地點，債權順位須透明公開。

4.各國應提供透明而迅速的處理程序，俾於外國處理權責機關處理。

5.處理權責機關需具法人資格，在足夠的保密原則下，與相關的外國處理權責機關共用資訊，譬如：RRP、CMG 的成員等。

（八）危機管理團隊（Crisis Management Groups, CMGs）

CMGs 之成員包括 GSIFIs 母國及主要營業所在國之監理機關、中央銀行、處理權責機關、財政部、公營保證機構等對處理具關鍵性影響的實體，其設置目的在於加強跨國危機發生前之準備，並促成跨國危機處理之效率。CMGs 須保持機動，審查下列事項：

1.CMGs 成員與未加入 CMGs 之營業所在國間，彼此協調及資訊共用之進度。

2.在「特定機構跨國合作協議」的架構下，GSIFIs 擬定 RRPs 的進度。

3. GSIFIs 處理的可行性。

上述審查結果需適時陳報FSB與FSB 監督委員會（FSB Peer Review Council）[3]。

（九）特定機構跨國合作協議（Institution-specific cross-border cooperation agreements）

最低限度，GSIFIs 的母國及營業所在國之處理權責機關須簽署本項協議。訂定該協議之目的在於促使各國跨越法律障礙，通力合作，於危機未發生時，支持 RRP，並於發生 G-SIFIs 倒閉危機時，遵行處理方式。協議內容須包括：透過 CMGs 的合作建立處理目標與處理步驟；界定危機前及危機發生時，處理權責機關的角色與責任；建立危機前及危機發生時資訊共用的步驟，載明各國有關資料保護及保密的國內法律；規劃 RRP 時，各國協調的流程與步驟；建立「處理可行性評估」之協調流程與步驟；母國與營業所在國間重大事項變更的通知與諮詢；對於特殊的處理方式，明訂適當的作業細節，包括設立過渡機構及入股資本重建等方式；至少每年一次的集會，由層峰官員審核處理策略，由資深官員審核執行情形。

(十)處理可行性評估（Resolvability assessments）

處理可行性評估係指在特定機構跨國合作協議架構下，由母國處理權責機關主導進行的評估，該項評估須協調 CMGs 進行，並考量營業所在國對於外國金融機構分公司的評

[3] FSB Peer Review Council係FSB轄下之組織，負責各國報告之審核。

估結果。評估結果可協助決定最佳處理方式，並以不造成金融系統崩解、不增加納稅人負擔並維持金融系統運作為原則。其重點如下：

1.處理權責機關應定期性，至少針對GSIFIs，進行處理可行性評估，評估GSIFIs處理策略的可能性，並著重GSIFIs倒閉對金融體系的衝擊及對總體經濟的影響，評估其可信度。

2.需與其他相關機關配合評估，尤需考量重要的金融服務、支付、清算及交割是否可運作？集團內部各營業實體相互間的往來關係，如果切斷彼此間的關係，對處理的衝擊如何？GSIFIs 的規模是否能及時提供正確的訊息？跨國合作與資訊共用的機制是否確實？

3.營業所在國對境內分公司的評估，應將 GSIFIs 視為一體，儘可能配合母國處理權責機關的評估。

4.為改進 GSIFIs 的處理可行性，監理機關及處理權責機關須有足夠的權力採行適當的處理方法，如:改變金融機構的營運常規、組織結構、降低其營運複雜度及昂貴的處理成本、充分考量對企業持續健全營運的影響等。處理權責機關尚須評估，集團內正常營運機構是否有必要合法與集團內問題機構隔離，以免受波及。

(十一)自救暨處理計畫(Recovery and resolution planning, RRP)

RRP 係指適用金融機構處理前，先進入自救階段。自救計畫內容須具備可靠的選擇方案，且須符合廣泛的模擬情境，包括機構特性與市場壓力，該等情境係指資本短缺及流動性不足時，在不同的壓力情境下，大型金融機構執行恢復方案的步驟。進入處理階段後則適用處理計畫，處理計畫係

為保護金融系統的重要功能，在不造成嚴峻的系統性崩解及不增加納稅人損失的原則下，幫助處理權責機關處理之計畫。應包括重要的處理策略，如何維持金融及經濟重要功能，及提出選擇方案或有秩序的退場方案，減少處理的潛在障礙，保護要保存款人與保險單持有人，並確保客戶資產能迅速回收。其重點如下：

1.各國至少需針對國內的適用金融機構，備妥持續的「自救暨處理計劃」。

2.各國應要求 RRP 的確實性與可靠性，考量個別適用金融機構的特性、複雜度、關聯性、可替代性及規模。

3.適用金融機構的資深管理階層，應負責提供予處理權責機關，有關自救計畫的評估，以及處理計畫所需預備資訊。

4.監理機關及處理權責機關須確保 RRP 至少一年更新一次，並由 CMG 定期審查；母國及營業所在國層峰官員審核其處理策略，高階官員審核其執行情形。

（十二）資訊取得暨資訊共用（Access to information and information sharing）

各國應確保監理機關、中央銀行、處理權責機關、財政部、公營保證機構等彼此間之資訊共用無法律及政策的障礙，相關的 RRP 須於平時及危機發生時皆備，且須達到本國與跨國皆能共用之程度。

三、巴塞爾銀行監理委員會（Basel Committee on Banking Supervision, BCBS）

國際清算銀行所屬之巴塞爾委員會為因應全球金融海嘯，對於銀行之資本適足性，再次訂定新的規範-Basel III。經長期諮商、討論、修訂後，於 2010 年 12 月 G20 首爾高峰

會後發佈。相較於 Basel II，新版資本協定，補強銀行在流動性風險及系統性風險的管理。簡介其內容如下:

(一)調升資本需求比例，計提資本緩衝

第一類資本佔風險加權資產（Risk Weighted Assets, RWAs)總額之比例，由 4%調升至 6%，其中普通股權益(Common Equity）比例由 2%調升至 4.5%，為避免對銀行業產生過大衝擊採取過渡期安排逐年調升，自 2013 年起逐年調升，至 2015 年 1 月達成上述標準。除此之外，為避免銀行在金融危機期間仍發放股利、紅利，分配保留盈餘，要求銀行計提「資本保留緩衝」(Capital Conservation Buffer)；另為避免景氣循環高峰期信用過度擴張，要求銀行計提「逆景氣循環資本緩衝」(Countercyclical Capital Buffer)，以動態調整資本緩衝之範圍區間。銀行需於 2016 年 1 月起，逐年以 0.625%的速度計提前述「資本保留緩衝」，至 2019 年 1 月資本緩衝需達到 2.5%的要求，作為銀行普通股權益的補充，至「逆景氣循環資本緩衝」則在 0~2.5%間由各國裁量。因此，加計 2015 年 1 月之 6%第一類資本，2019 年 1 月第一類資本佔 RWAs 總額比例至少將達 8.5%，若再加計第二類最低資本需求 2%，總資本需求至少將達 10.5%。

除此之外，Basel III 額外對 SIFIs 要求較大的損失承擔能力，依其重要性需計提 1~3.5%的「大型金融機構緩衝」（SIFI Buffer)，與前述資本緩衝一樣自 2016 年 1 月起逐年提高，至 2019 年 1 月正式實施，屆時 SIFIs 將按其重要性，總資本需求至少達 11.5%~13.5%。

(二)提高資本品質

強調普通股權益、保留盈餘及第一類資本之重要性，嚴格規範不得計入第一類資本之項目，如：創新資本工具不得

計入。另取消第三類資本，並明確定義第一類資本係在銀行持續經營時，用以吸收損失之資本，第二類資本則在銀行清算過程中具備吸收損失之能力。

(三)規範槓桿比例（Leverage Ratio）

槓桿比例係指銀行第一類資本佔銀行總資產之比例，係為避免銀行過渡操作財務槓桿而設，Basel III 要求 2018 年正式實施槓桿比例，並在 2013~2016 年間以必需高於 3%試行，2017 年作最終調整。

(四)流動性最低需求

修訂「流動性覆蓋比率」(Liquidity Coverage Ratio, LCR）與「淨穩定資金比率」(Net Stable Funding Ratio, NSFR)，以加強辨識及分析個別銀行及金融體系之流動性風險趨勢。LCR 之計算係由高流動性資產/30 天內淨現金流出，須大於或等於 100%，用以測度短期之流動性風險，自 2013 年年中完成修訂，2015 年 1 月起實施；NSFR 之計算係由可取得之穩定資金/所需資金，須大於或等於 100%，用以測度一年以上之流動性風險，自 2016 年年中完成修訂，2018 年 1 月起實施。

由於各國計算銀行資產風險加權之模型及方法不同，同一國之個別銀行亦有不同，容易產生不一致及比較上的困難，甚而有不公平競爭之疑慮，未解決此一情形，BCBS 正致力於降低各國及各銀行間 RWAs 計算之不一致性。

肆、各國經驗

美國於 1933 年之銀行流動性危機中取得小型銀行之處理經驗，2008 年取得大型金融機構之處理經驗；亞洲於 1997 年取得系統性危機之處理經驗，歐洲處理銀行經驗較為有限。本次研討會中，與會各國分別提出自身處理經驗，茲摘述如下：

一、美國

美國自 2008 年雷曼兄弟倒閉引發之金融海嘯後，通過陶德-法蘭克法案（the Dodd-Frank Act)，摘錄其金融改革措施如下:

(一)結合政府內與金融業有關之主要部門及獨立之保險專家等，成立金融穩定監督委員會(Financial Stability Oversight Council, FSOC)，負責監測和因應危及全國金融穩定之風險。

(二)要求大型金融公司於平時提交、更新「處理計劃」(Resolution Plan)，作為萬一瀕臨倒閉時之自救措施。建立聯邦存款保險公司（FDIC）擔任大型金融公司之法定清理人，並訂定「有序清理」(Orderly Liquidation）規則，作為大型金融公司倒閉清理之準則。

(三)建立伏爾克法則（Volcker Rule)，限制大型金融企業的自營交易，並限制銀行在對沖基金和私募股權投資基金中之投資需低於銀行資本的 3%，銀行所獲得之投資資金，不得用於彌補自身之資金缺口。

(四)以較嚴格之標準，要求大型金融公司之資本適足性。

(五)存款保險保額提高至美金 25 萬元。

FDIC 自 2008 年金融海嘯後，處理倒閉機構，主要以

全行標售移轉倒閉銀行之資產負債及營業予投資人，並約定在未來一定期限內，若資產減損，由 FDIC 與投資人按比例分攤損失。

二、英國

英國自 2007 年北岩銀行（Northern Rock）危機後金融改革措施如下：

(一)修改銀行法：設置問題金融機構特別處理機制（Special Resolution Regime），確立英格蘭銀行（Bank of England）為處理權責機構，賦予多樣之處理工具，如：財產移轉、過渡銀行、暫時國有等。

(二)提高存款保險保額自 18,000 英鎊至 35,000 英鎊。

(三)金融服務賠付基金（Financial Service Compensation Fund, FSCS）須於銀行倒閉後七日內辦理賠付保額內存款，且不需由存款人提出申請。

(四)增進金融安全網成員之協調合作。

(五)建立存款保險基金（Deposit Protection Fund）改採事前籌措（Ex-ante）機制，並可向財政部或英格蘭銀行融通。

三、歐盟

歐盟各國之銀行倒閉處理架構，在歐元區之主權債信危機發生後，更顯迫切，摘述其進程及內容如下：

(一)處理架構之建立

2009 年 10 月起，公開諮詢有關銀行業危機處理之跨國處理架構，並由各國協調、溝通處理資金之來源，2010 年 10 月再檢討原架構，並將所有金融業納入危機處理範圍，希望在 2011 年年底完成正式的危機處理建議及設置危機處理基金。

(二)目前進行中之建議內容

1.適用範圍包括收受存款及授信之機構、投資機構、金融控股公司。

2.規定各國須設置處理金融公司倒閉之權責機關。

3.金融機構須依自身規模大小及複雜度逐年提交自救計畫(Recovery Plan),由各國之管機關須評估其可行性,必要時得請其修改。

4.金融集團母公司及子公司間須訂定資金援助協定,該項協定經主管機關審核後,需由股東會決議,且必須基於集團之最大利益而為,主管機關於收到母子公司資金相互援助之通知時,得於48小時內禁止或限制該項資金援助。

5.金融集團須提交處理計畫(Resolution Plan)予處理權責機關。

6.若金融機構有倒閉之虞,主管機關得先期干預,任命特殊經理人(Special Manager)管理該金融機構,並執行回收計畫,防止其財務狀況繼續惡化,特殊經理人之任期最長為一年。

7.處理時需把握之原則包括股東與債權人需承擔損失,原經營階層需替換。另需具備多樣化之處理方法,如營業出售、過渡機構、資產分開出售、資本重整等。

8.處理權責機關具備之法定職掌:48小時之期限內得暫停支付負債、48小時之期限內得暫停營業等。

四、俄羅斯

為因應2008年金融海嘯,俄羅斯存款保險局(Deopsit Insurance Agency, DIA),採取下列措施:

(一)存款保險保障自 400,000 盧布提高至 700,000 盧布。

(二)廢除共保制度。

(三)降低存款保險費率，以支援銀行之流動性。

(四)賠付予存款人之期限，自撤銷銀行執照後 14 天內完成。

俄羅斯有關銀行倒閉之處理機制，係由其中央銀行撤銷倒閉銀行營業執照、指派法定管理人，並向法院申請清理，法院核准後，任命 DIA 為清理人。DIA 受命擔任清理人之任務後，賠付保額內存款、依評估價值出售資產，接受債權人申報債權並分配之。過去 DIA 已擔任過 271 家銀行之清理人。

除了清理之外，當有發生系統性危機之虞或成本小於清理程序時，DIA 得以提供財務協助尋求併購、出售資產負債移轉營業等方式處理倒閉銀行，過去 DIA 已依以此方式處理 31 家倒閉銀行。

五、墨西哥

本次金融海嘯迄 2011 年 10 月，墨西哥尚無銀行倒閉，該國之金融危機主要發生於 1994 年至 1995 年間，該次危機曾造銀行利率飆升，披索(Peso)劇烈貶值、外匯存底大幅滑落及全年 GDP 負成長，該次危機後，政府採取多項金融改革措施，包括:

(一)建立有效的監理法制

(二)設置銀行倒閉處理專責機構

(三)建置資訊平台，供金融安全網成員共用。

(四)於 1999 年創設存款保險機構 IPAB(the Institute for the Protection of Banking Savings)。

墨西哥現行之銀行倒閉處理機制，主要依照銀行之資本適足率啟動其措施，銀行資本適足率低於 8%時，主管機關依立即糾正措施限期命其補足資本、限制盈餘分配；低於 4%

時，主管機關得撤銷其營業執照，IPAB得依其董事會決議以最小成本原則，決定採行之處理方法，包括：存款賠付、購買與承受交易、過渡銀行等。

六、馬來西亞

馬來西亞受2008年金融海嘯影響，GDP自2008年第四季起雖呈現負成長，但2009年第四季起已始恢復正成長，銀行業並未受金融海嘯波及，且由於政府自2008年10月中至2010年年底，採取存款全額保障，並未引起恐慌。全額保障措施屆期後，馬來西亞存款保險公司(Malaysia Deposit Insurance Corporation, MDIC)旋於2011年起提高保額，自6萬馬幣至25萬馬幣，保障範圍擴大至外匯存款及保險單。

為因應此波金融海嘯可能之衝擊，馬來西亞於2009年11月完成中央銀行法修法，設置金融穩定執行委員會(Financial Stability Executive Committee)，加強監管，該次修法並准許馬來西亞央行與其他國家中央銀行約定，得援助馬來西亞本國銀行之海外分行流動資金。至MDIC本身則已具備提高存款保額、指定非要保機構加入存款保險、設置過渡銀行、勒令暫時停業、移轉資產負債及營業等法定職掌。

伍、心得

一、金融監理方面

(一)加強銀行流動性風險及系統性風險管理

新版資本協定除調升資本需求比例外，對資本品質要求亦更趨嚴格。此外，為避免銀行過渡操作財務槓桿，規範銀行之槓桿比例，為使流動性風險偵測更趨明確，修訂「流動性覆蓋比率」與「淨穩定資金比率」。在加強系統性風險承擔能力方面，則規定銀行資本緩衝之計提，另對於SIFIs則以「大型金融機構緩衝」，要求更大的損失承擔能力，並要求 SIFIs 平日即備妥「自救暨處理計畫」，定期由處理之權責機關審核，以求危機發生時能有秩序地清理，維持金融穩定。

(二)金融安全網成員配合更形密切

2008 年所引發的全球金融海嘯，所涉及的金融業非僅限於銀行業，尚包括保險、證券等非銀行業之金融機構，危機過後所進行之諸多金融改革，使金融安全網成員不論在資訊共用與資訊取得方面，或在彼此間業務聯繫及經驗交換方面，更須密切，俾利處理策略考量之周全。

(三)跨國合作議題益形重要

處理大型金融公司無可避免須與其母國之處理權責機構配合，2011 年 G20 界定之 GSIFIs，於我國境內多數設有分支機構，均涉及跨國合作處理及簽定特定機構跨國合作協議等事宜，有必要擴大與各國交流，俾利於處理之實效。

二、存款保險機構之角色方面

(一) 增加存保機構處理之法定職掌，增加存保基金籌資能力

過去因為金融危機的發生，讓世界各國的存款保險機構增加許多處理倒閉銀行的法定職掌，俾維持金融穩定。儘管各國存款保險機構之法定位階不盡相同，但是在銀行業發生危機時，存保機構受命擔任處理之權責機構，卻已普遍為各國所採行。以美國為例，有關危機發生時所依循之有序清理法制，係規定由 FDIC 擔任 SIFIs 的法定清理人，進行存保基金回復計畫（Restoration Plan)。

(二)存保機構在金融機構處理制度中的角色益形重要

IADI 代表於 2011 年初加入 FSB 處理指導團隊（FSB Resolution Steering Group）後，以原「有效存款保險制度國際核心原則」中有關要保機構倒閉處理的條文為藍本，如：原則 11「存保基金之籌措」，原則 15「及早偵測、立即糾正及處理措施」，原則 16「有效之處理程序」，原則 17「對存款人之賠付」，針對 FSB「主要特性」之目標，提供意見。在「主要特性」中亦處處可見與存保機構攸關的議題，茲舉例如下：

1.在「處理權責機關」乙章，明白揭示權責機關須保護存款人及保單持有人的利益。

2.在「處理之權力」乙章，對於處理工具，例舉建立暫時性的過渡機構、有秩序的清理、及時的存款賠付或移轉、與為維持營業不中斷所需之入股或資本重建等，係許多存保機構之法定職掌。

3.在「抵銷、結算、擔保品、客戶資產之隔離」乙章，明訂法令所規範之抵銷權行使須確切、透明並具強制性，且不能阻礙處理方法之施行

4.在「處理之資金籌措」乙章，明訂各國應具備存款保險基金或自金融產業籌措處理基金。

5.在「跨國合作之法律架構條件」乙章，明訂法制需鼓勵處理權責機關積極與外國處理權責機關合作處理，而存保機構又經常為處理權責機構之成員，各國存保機構間之合作將更形密切。

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附錄一

Annex

G-SIFIs

For which the resolution-related requirements will need to be met by end-2012[1]

Bank of America
Bank of China
Bank of New York Mellon
Banque Populaire CdE
Barclays
BNP Paribas
Citigroup
Commerzbank
Credit Suisse
Deutsche Bank
Dexia
Goldman Sachs
Group Crédit Agricole
HSBC
ING Bank
JP Morgan Chase
Lloyds Banking Group
Mitsubishi UFJ FG
Mizuho FG
Morgan Stanley
Nordea
Royal Bank of Scotland
Santander
Société Générale
State Street
Sumitomo Mitsui FG
UBS
Unicredit Group
Wells Fargo

[1] This initial list is based on the methodology set out in the BCBS document *Global systemically important banks: Assessment methodology and the additional loss absorbency requirement,* using data as of end-2009. The list of G-SIFIs will be updated annually and published in November every year. Therefore, the list will not be fixed – there can be new entries and exits every year and the number of G-SIFIs may change. The BCBS methodology will be reviewed every three years to capture changes in the banking system and progress in measuring systemic importance. The present list contains global systemically important banking groups; future lists may also contain G-SIFIs that are not banking groups. As from November 2012, the published list of global systemically important banking groups will show the allocations to buckets corresponding to the level of additional loss absorbency they would be required to meet had the requirements been in effect. The additional loss absorbency requirements will begin to apply from 2016, initially to those banks identified in November 2014 as globally systemically important using the allocation to buckets at that date.

附錄二

FSB FINANCIAL STABILITY BOARD

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.[1]

1.2 Financial market infrastructures ("FMIs")[2] 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.[3]

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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1 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).

2 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.

3 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.[4] 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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[4] 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 RRPs 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 RRPs, 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 RRPs 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 RRPs 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.[5]

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").

[5] 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 RRPs 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 RRPs:

(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 RRPs* (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 RRPs); 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[6]

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 RRPs that, if needed, will allow the firm to continue to provide uninterrupted payment services (including

[6] 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. RRPs should make no assumption that taxpayers' funds can be relied on to resolve the firm.

1.4 RRPs 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 RRPs 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 RRPs 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 Attribute11.6).

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 RRPs 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.[7] 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,

[7] 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).