Second Thematic Review on Resolution Regimes

Peer Review Report

18 March 2016

Thematic Review on Resolution Regimes

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Foreword

Financial Stability Board (FSB) member jurisdictions have committed, under the FSB Charter and in the *FSB Framework for Strengthening Adherence to International Standards,*[1] to undergo periodic peer reviews. To fulfil this responsibility, the FSB has established a regular programme of country and thematic peer reviews of its member jurisdictions.

Thematic reviews focus on the implementation and effectiveness across the FSB membership of international financial standards developed by standard-setting bodies and policies agreed within the FSB in a particular area important for global financial stability. Thematic reviews may also analyse other areas important for global financial stability where international standards or policies do not yet exist. The objectives of the reviews are to encourage consistent cross-country and cross-sector implementation; to evaluate (where possible) the extent to which standards and policies have had their intended results; and to identify gaps and weaknesses in reviewed areas and to make recommendations for potential follow-up (including through the development of new standards) by FSB members.

This report describes the findings of the second peer review on resolution regimes,[2] including the key elements of the discussion in the FSB Resolution Steering Group and the FSB Standing Committee on Standards Implementation (SCSI). It is the eleventh thematic review conducted by the FSB, and it is based on the objectives and guidelines for the conduct of peer reviews set forth in the *Handbook for FSB Peer Reviews*.[3]

The draft report for discussion by SCSI was prepared by a team chaired by Fernando Restoy (Bank of Spain), comprising Esther Brisbois (until June 2015; Bafin Germany), Eduardo de Andrade Castro (from June 2015; Central Bank of Brazil), Evrim Apan Ceylan (Savings Deposit Insurance Fund, Turkey), Marc Dobler (International Monetary Fund), Kenton Fox (U.S. Federal Deposit Insurance Corporation), José Reynaldo de Almeida Furlani (until June 2015; Central Bank of Brazil), Mathieu George (French Prudential and Resolution Authority), Chris Gower (Australian Prudential Regulation Authority), Michael Kohler (from June 2015; Bafin Germany), Mike Mercer (Canada Deposit Insurance Corporation), Jan Philipp Nolte (World Bank) and Liu Qin (People's Bank of China). David Hoelscher, Samuel Smith, Costas Stephanou and Ruth Walters (FSB Secretariat) provided support to the team and contributed to the preparation of the peer review report.

1 See http://www.fsb.org/wp-content/uploads/r_100109a.pdf.

2 The first resolution peer review report was published in April 2013; see http://www.fsb.org/wp-content/uploads/r_130411a.pdf.

3 See http://www.fsb.org/wp-content/uploads/FSB-Peer-Review-Handbook-12-March-2015.pdf.

Definitions of key terms used in the report[4]

"**Administrator**' includes receivers, trustees, conservators, liquidators or other officers appointed by a resolution authority or court, pursuant to a resolution regime, to manage and carry out the resolution of a firm.

"Bail-in within resolution" – restructuring mechanisms (howsoever labelled) that enable loss absorption and the recapitalisation of a firm in resolution or the effective capitalisation of a bridge institution through the cancellation, write-down or termination of equity, debt instruments and other senior or subordinated unsecured liabilities of the firm in resolution, and the conversion or exchange of all or part of such instruments or liabilities (or claims thereon) into or for equity in or other instruments issued by that firm, a successor (including a bridge institution) or a parent company of that firm.

"Bank" – any firm that takes deposits or repayable funds from the public and is classified under the jurisdiction's legal framework as a deposit-taking institution. For the purposes of this report a bank may mean, as appropriate in the context, an individual institution or a banking group.

"Bridge institution" – an entity that is established to temporarily take over and maintain certain assets, liabilities and operations of a failed firm as part of the resolution process.

"Critical functions" – activities performed by a firm for third parties, where failure would lead to disruption of services critical to the functioning of the real economy and for preserving financial stability.[5]

"Entry into resolution" - the determination by the relevant authority that a firm meets the conditions under the applicable resolution regime for the exercise of resolution powers and that it will be subject to the exercise of such powers.

"Financial firm" or "financial institution" – any entity the principal business of which is the provision of financial services or the conduct of financial activities, including, but not limited to, banks, insurers, securities or investment firms and financial market infrastructure firms. References in this report to "firm" refer to a financial firm or financial institution.

"Financial group" – a group composed of entities the primary activities of which are financial in nature.

"Firm in resolution" – a firm in relation to which resolution powers are being exercised. Where resolution powers have been or are being exercised in relation to a firm, that firm is considered to be "in resolution" for as long as it remains subject to measures taken or supervised by a resolution authority or to insolvency proceedings initiated in conjunction with resolution.

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

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4 The definition of key terms is based on the October 2014 version of the draft assessment methodology for the FSB *Key Attributes of Effective Resolution Regimes for Financial Institutions*. An earlier version of the draft methodology was circulated for public consultation in August 2013 (http://www.fsb.org/wp-content/uploads/r_130828.pdf).

5 See the July 2013 FSB *Guidance on Identification of Critical Functions and Critical Shared Services*, http://www.fsb.org/wp-content/uploads/r_130716a.pdf.

"Holding company" – a company that is formed to control financial firms. This concept covers direct, intermediate and ultimate control, and includes a parent company that itself carries out financial operations.

"Home jurisdiction" – the jurisdiction where the operations of a financial group are supervised on a consolidated basis.

"Legal framework" – the comprehensive legal system for a jurisdiction established by any combination of the following: a constitution; primary legislation enacted by a legislative body that has authority in respect of that jurisdiction; subsidiary legislation (including legally binding regulations or rules) adopted under the primary legislation of that jurisdiction; or legal precedent and legal procedures of that jurisdiction.

"Public ownership" – full or majority ownership of an entity by the State or an emanation of the State.

"Resolution" – the exercise of resolution powers, including in particular the exercise of a resolution power specified in KA 3, by a resolution authority in respect of a firm that meets the conditions for entry into resolution, with or without private sector involvement, with the aim of achieving the statutory objectives of resolution set out in KA 2.3. The exercise of resolution powers may include or be accompanied by an insolvency proceeding with respect to the firm in resolution (for example, to wind up parts of that firm).

"Resolution authority" – a public authority that, either alone or together with other authorities, is responsible for the resolution of firms established in its jurisdiction (including resolution planning functions). References in this document to a "resolution authority" should be read as "resolution authorities" in appropriate cases.

"Resolution powers" – powers available to resolution authorities under the legal framework for the purposes of resolution and exercisable without the consent of shareholders, creditors, debtors or the firm in resolution, including in particular those set out in KA 3.

"Resolution regime" – the elements of the legal framework and the policies governing resolution planning and preparing for, carrying out and coordinating resolution, including the application of resolution powers.

"Supervisor" or "supervisory authority" – the authority responsible for the supervision or oversight of a financial institution. References include, as relevant, prudential and business or market conduct supervisors, and oversight authorities in the case of FMIs.

"Systemically important financial institution" – a financial institution or group that, because of its size, complexity and systemic interconnectedness, would, in the view of the relevant authorities, cause significant disruption to the domestic or broader financial system and economic activity if it were to fail in a disorderly manner.

"Systemically significant or critical" - a financial firm is systemically significant or critical if its failure could lead to a disruption of services critical for the functioning of the financial system or real economy.

Abbreviations

ADIs	Authorised Deposit-taking Institutions (Australia)
BRRD	Bank Recovery and Resolution Directive (EU)
CMG	Crisis Management Group
DFA	Dodd-Frank Act (United States)
D-SIBs	Domestic Systemically Important Banks
EBA	European Banking Authority
EU	European Union
FDI Act (FDIA)	Federal Deposit Insurance Act (United States)
FMI	Financial market infrastructure
FSB	Financial Stability Board
G-SIBs	Global Systemically Important Banks
G-SIFIs	Global Systemically Important Financial Institutions
IMF	International Monetary Fund
KAs	*Key Attributes of Effective Resolution Regimes for Financial Institutions*
P&A	Purchase-and-assumption transactions
RRP	Recovery and Resolution Plan
SCSI	Standing Committee on Standards Implementation (FSB)
SRF	Single Resolution Fund (EU)
SRM	Single Resolution Mechanism (EU)
TPO	Temporary public ownership
UK	United Kingdom
US	United States

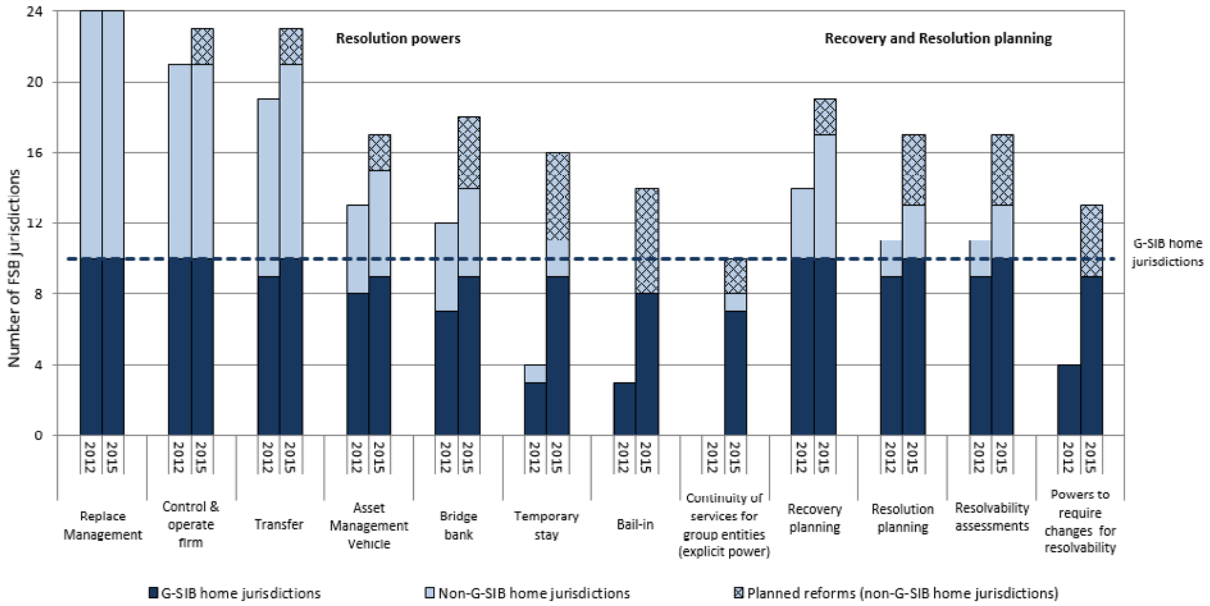
Executive Summary

At present, only a subset of the FSB membership – primarily home jurisdictions of global systemically important banks (G-SIBs) – has a bank resolution regime with a comprehensive set of **powers** that are broadly in line with the FSB *Key Attributes of Effective Resolution Regimes for Financial Institutions* (*Key Attributes* or KAs). In particular (see Graph 1):

- The six FSB jurisdictions that are European Union (EU) Member States and Switzerland have the full range of resolution powers covered by this review. In the EU case, this is a result of the implementation of the Bank Recovery and Resolution Directive (BRRD).
- One jurisdiction (US) has all the resolution powers apart from an explicit power for the resolution authority to require continued provision of critical shared services by group companies ('continuity power').
- Six other jurisdictions (Australia, Canada, Japan, Korea, Mexico, Singapore) have all but two or three of the powers. The powers lacking are continuity powers, bail-in or a stay on the exercise of early termination rights.
- The remaining ten jurisdictions have four or fewer of the required resolution powers.

A number of jurisdictions still rely largely on supervisory powers or sector-specific insolvency law without a designated administrative resolution authority with a broad range of powers and the ability to exercise them without prior shareholder or creditor approval.

Graph 1: Availability of bank resolution powers, recovery and resolution planning and resolvability assessments in FSB jurisdictions



Note: The bars for 2012 reflect the availability of powers, recovery and resolution planning and resolvability assessments at the time of the 2013 Thematic Review (which was based on data as of December 2012). The shaded column indicates planned reforms by non-G-SIB FSB jurisdictions that have already been issued for consultation or submitted to the legislature. See the text below and Annexes G and I-K for details and clarifications.

Progress in **reforming the legal frameworks** for bank resolution in FSB jurisdictions has slowed since the 2013 Thematic Review – indeed, many of the shortcomings identified in this review are similar to the ones of the previous peer review. The main source of improvement has been the transposition of the BRRD into national law by the six FSB jurisdictions that are EU Member States.[6] Thirteen jurisdictions (Australia, Brazil, Canada, China, Hong Kong, India, Indonesia, Korea, Russia, Saudi Arabia, Singapore, South Africa, Turkey) report that they have ongoing or planned reforms to their regimes, although the timelines for implementation are not generally known. Even after the implementation of reforms that have been issued for consultation or submitted to the legislature, a number of FSB jurisdictions – both home jurisdictions of G-SIBs and those that are not – will still have gaps in bank resolution powers compared with the *Key Attributes*.

In the large majority of FSB jurisdictions, **resolution regimes apply broadly to all types of commercial banks**.[7] By contrast, there is much greater variance in scope of application of regimes and associated resolution powers for holding companies of banks, branches of foreign banks and material non-regulated operational entities within a financial group. While the *Key Attributes* specify that the scope of the resolution regime should extend to all of these entities, it does not always specify which powers should be available for which type. For example, it is not clear that direct bail-in powers or powers to impose stays on early termination rights are relevant in relation to branches. Further work is needed by the FSB to clarify this point in order to ensure consistent application (and assessment) of the *Key Attributes*.

There is significant variation in FSB jurisdictions on the **conditions for use of resolution powers** and their level of detail. The conditions are a combination of one or more of three broad types of criteria: (i) criteria based on a determination of (likely or actual) failure, default or insolvency; (ii) criteria related to the public interest; and (iii) criteria aimed at establishing that the use of powers is necessary and proportionate. This substantial divergence risks impeding coordinated resolution action across jurisdictions in relation to a cross-border bank. Further analysis of the conditions for entry into resolution across FSB jurisdictions is desirable, with a view to increasing understanding of current practices and the approaches that are most likely to support timely and early entry into resolution before a bank is balance-sheet insolvent, as specified in the *Key Attributes*.

Bail-in remains one of the resolution tools that is least well established. Only the EU Member States, Switzerland and the US are currently able to achieve a creditor-financed resolution to support continuity of critical functions. As specified in the *Key Attributes*, this may be achieved either by recapitalising the entity that provides those functions, or by capitalising a newly established entity or bridge institution to which the functions have been transferred, through powers to write down liabilities and convert them to equity. All of the jurisdictions with bail-in powers are able to combine them with other resolution powers, although approaches differ with regard to the scope of liabilities covered and the safeguards that apply to their use.

All jurisdictions that have the power to control and operate a bank in resolution also have the ability to **ensure continuity of shared services** by that bank to a successor entity. However, only eight jurisdictions (EU Member States, Singapore, Switzerland) have an explicit statutory

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[6] This review has not evaluated the extent to which national transposition is fully consistent with the EU Directive.

[7] The exceptions are: Brazil, where the regime does not apply to federal government-owned banks; and India, where state-owned commercial banks are governed by special acts.

power to ensure continued provision of services by group entities, whether regulated or not. Some other jurisdictions report that they can secure continuity of services by virtue of the corporate control exercised by the resolution authority on the bank. This approach may have limitations if service providers are not wholly or majority-owned subsidiaries of the bank, for example, if they are sister entities or have entered into insolvency and are no longer subject to corporate direction. The FSB will clarify the nature of the powers that resolution authorities should have in such cases.

Eleven jurisdictions have statutory provisions for the imposition of **temporary stays** on the exercise of contractual early termination rights (Canada, EU Member States, Japan, Mexico, Switzerland, US). In all cases, the power is exercisable by the resolution authority with no court involvement. The features of the regimes for temporary stays differ across jurisdictions in a number of respects (e.g. classes of contracts covered, types of contractual rights that may be stayed, duration of stay, safeguards etc.), although in general that variation falls within the ambit of the stay power as set out in the *Key Attributes*.

Progress in **recovery planning** has continued since the 2013 Thematic Review, albeit at a slower pace. Seventeen jurisdictions (Australia, Canada, China, EU Member States, Hong Kong, Japan, Mexico, Russia, Switzerland, Singapore, South Africa, US) report that they have put in place a requirement – either through statute or guidance – for banks to develop recovery plans. In most cases the requirements apply to all banks, although the focus to date has largely been on G-SIBs and D-SIBs. Given the increasing use of recovery planning, it would be useful for authorities to explicitly embed such planning in 'business as usual' supervision.

By contrast, less progress has been made in putting in place processes for **resolution planning** and **resolvability assessments**. Thirteen jurisdictions are engaged in resolution planning, most of which are home jurisdictions of G-SIBs (Canada, China, EU Member States, Japan, Mexico, Singapore, Switzerland, US).[8] The alignment between jurisdictions carrying out resolution planning and those undertaking resolvability assessments is not surprising: experience has shown that the two form part of an iterative process by which resolvability assessments can both inform resolution plans and test their feasibility. Given the early stage of development and the number of common challenges identified by jurisdictions, it is important for the FSB to encourage more sharing of knowledge and experiences across its membership in these areas. This can be achieved via targeted workshops and technical assistance, in collaboration with international financial institutions and other relevant bodies as appropriate. A particular focus of such work would be the development of resolution plans, the conduct of resolvability assessments and the adoption of measures to improve resolvability.

Only nine jurisdictions (EU Member States, Japan, Switzerland, US) currently have explicit statutory **powers to require banks to adopt appropriate measures where necessary solely in order to improve their resolvability**. Even where these powers exist, no jurisdiction reports that it has exercised them. Nine other jurisdictions report that supervisory authorities have some powers to require supervised banks to make changes to their business organisation and legal structure, but the purposes for and circumstances under which authorities can exercise such powers vary. Given the intrusive nature of these measures and the fact that they should take effect in advance of any deterioration in a bank's condition, a clear power is necessary for

8 Russia has a statutory requirement for resolution planning, but its implementation is pending more detailed guidance that is currently being developed.

supervisory or resolution authorities to require changes to a bank's business practices, structure or organisation explicitly for the purposes of improving resolvability.

Recommendations

Based on the above findings of the peer review, there are three sets of recommendations for implementation by the FSB itself or relevant member jurisdictions.

Recommendation 1: Full implementation of the *Key Attributes*

FSB member jurisdictions should undertake the following actions to revise their resolution regimes for banks in order to fully implement the KAs in the areas covered by the peer review:

a. Introducing missing powers (particularly bail-in and temporary stay powers and powers to require continuity of critical shared services by non-regulated group entities) in their resolution regimes;

b. Extending the resolution regime to holding companies;

c. Introducing recovery and resolution planning requirements for all banks that are potentially systemic in failure; and

d. Adopting powers to require banks to take measures solely to improve resolvability.

***By December 2016 jurisdictions should report to the FSB what actions they have undertaken, or plan to undertake (including implementation timeframes), in order to close the identified gaps on each of the above issues*.**

Recommendation 2: Additional clarification and guidance on the application of the KAs

The FSB will provide additional clarification and guidance (e.g. in the form of refinements to explanatory notes in the assessment methodology, surveys of current practices or additional guidance where appropriate) to assist jurisdictions in implementation and ensure consistent application of the KAs in the following areas:

a. Criteria to facilitate timely and early entry into resolution;

b. Resolution powers that should be available for branches of foreign banks; and

c. Nature of the powers that resolution authorities should have to require non-regulated group entities to support continuity of services and functions in resolution.

Recommendation 3: Supporting implementation of the KAs

The FSB, in collaboration with international financial institutions and other bodies as appropriate, will support implementation of the KAs by enhancing the sharing of experiences and practices (e.g. via workshops and technical assistance), particularly on the development of resolution plans, the conduct of resolvability assessments and the adoption of measures to improve resolvability.

I. Introduction

1. Background

In November 2011, the FSB issued the *Key Attributes of Effective Resolution Regimes for Financial Institutions* (*Key Attributes* or KAs) as part of the package of policy measures to address the moral hazard risks posed by systemically important financial institutions. The *Key Attributes*, which were endorsed by the G20 Leaders at the Cannes Summit, set out the core elements of effective resolution regimes that apply to any financial institution that could be systemically significant or critical in the event of failure. In October 2014, the FSB published sector-specific implementation guidance (covering financial market infrastructures, insurers and the protection of client assets in resolution), which has been incorporated as annexes to the Key Attributes.[9]

The FSB has identified resolution regimes as a priority area for implementation monitoring. To ensure effective implementation, the FSB decided to carry out a series of iterative peer reviews in this area. The first such review was completed in April 2013 (hereafter referred to as "2013 Thematic Review"), and it included recommendations for the FSB (in terms of additional guidance) and its member jurisdictions (in terms of enhancements to their resolution regimes).[10] This report presents the findings and recommendations of the second thematic peer review on resolution regimes, based on information as of January 2016.

2. Objectives and scope of the review

The objective of this peer review is to examine the range and nature of resolution powers that are available in FSB jurisdictions for the banking sector (KA 3); and to take stock of any requirements for recovery and resolution planning and resolvability assessments for domestically incorporated banks in FSB jurisdictions (KAs 10 and 11). The aim of the review is not to assess compliance with the *Key Attributes*[11] or the overall effectiveness of the resolution regime,[12] but rather to: take stock of the current state of play and of any planned changes in these areas; evaluate progress since the first resolution peer review; review the range of approaches to achieving the outcomes specified in KA 3; highlight any good practices and lessons of experience in reforming national resolution regimes; identify material inconsistencies or gaps (compared with the *Key Attributes*) in these areas that are common across jurisdictions and would need to be addressed; and identify ways to further improve the explanatory notes in the draft assessment methodology.

The primary sources of information for the review were the responses by FSB member jurisdictions to a questionnaire, including follow-up with jurisdictions for clarifications or additional information. The review also made use of available official sector reports (e.g. FSB

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9 See http://www.fsb.org/wp-content/uploads/r_141015.pdf.

10 See http://www.fsb.org/wp-content/uploads/r_130411a.pdf.

11 The inclusion of the *Key Attributes* in the International Monetary Fund (IMF)-World Bank standards assessment programme, subject to approval of their respective Boards once the assessment methodology is finalised, will enable such compliance assessments to take place.

12 In particular, the peer review does not assess the extent to which, based on available resolution powers and provisions, a jurisdiction may be effective in achieving the outcomes that are intended under the *Key Attributes*.

country peer reviews and progress reports, IMF technical notes) relating to resolution regimes in FSB jurisdictions. In carrying out this work, the review team drew on the essential criteria in the draft assessment methodology for KAs 3, 10 and 11, and those criteria and related explanatory notes have served as a reference to evaluate the degree to which national resolution regimes (and any planned reforms to them) are consistent with specific KAs.

The report is structured as follows:

- Section II describes the current legal and institutional framework for bank resolution regimes in FSB jurisdictions and planned reforms;
- Section III examines the extent to which the resolution powers set out in KA 3 are available for the banking sector, and evaluates the nature of those powers; and
- Section IV summarises the existence, nature and scope of legislative requirements and other rules requiring recovery and resolution planning and resolvability assessments, including any powers to require banks to adopt measures to improve their resolvability.

In addition, Annex A provides a list of abbreviations of financial authorities in FSB jurisdictions, while Annexes B to K consist of tables in support of the analysis.

II. Bank resolution regimes

Any financial institution that could be systemically important or critical if it fails should be subject to a resolution regime that has the attributes set out in the FSB *Key Attributes*. The scope of resolution regimes should extend to holding companies of a firm, non-regulated operational entities within a financial group or conglomerate that are significant to the business of the group or conglomerate and branches of foreign firms (KA 1). The regime should designate an administrative resolution authority (or authorities) responsible for exercising the resolution powers over firms within the scope of the resolution regime, with clear coordination arrangements where the resolution-related roles and responsibilities are divided between two or more authorities (KA 2).

This section summarises the scope and framework of bank resolution regimes in FSB jurisdictions, including the legal basis of the regime; the types of entity covered; and the institutional framework in terms of the authorities responsible for different aspects of the resolution. It also describes ongoing and planned reforms to bank resolution regimes in FSB jurisdictions. This summary is complemented by Annexes A to D that set out, respectively, the authorities in FSB jurisdictions with responsibility for bank resolution; the legal and institutional frameworks for resolution; the scope of resolution powers across different types of entity; and planned reforms.

1. Legal and institutional frameworks

At present, only a subset of the FSB membership has a resolution regime with a comprehensive set of powers covered in this peer review that are broadly in line with the *Key Attributes* (see below). Most of these are home authorities for G-SIBs and, given that they were among those most affected by the global financial crisis, had incentives to introduce reforms to their resolution regimes at an early stage.

Since the 2013 Thematic Review, progress in reforming the legal frameworks for resolution has slowed. In particular, twelve jurisdictions – China, Japan, the six EU member States transposing the BRRD into national law, Mexico, Russia, Singapore, Switzerland – have subsequently introduced legislative reforms to their resolution regimes for banks. In only some of these cases, however, the reforms were comprehensive in the sense of adopting the full suite of powers and other requirements set out in the *Key Attributes*.[13]

Several other jurisdictions have some limited resolution powers that pre-date the financial crisis, although they do not yet encompass the full range of powers specified by the *Key Attribute*s (see section III below). In a number of other cases, jurisdictions still do not have resolution regimes in the sense envisaged by the *Key Attributes*. In particular, some jurisdictions' regimes for managing failed banks rely largely on supervisory powers or existing sector-specific insolvency law rather than a separate resolution regime having a designated administrative resolution authority with a broad range of powers and the ability to exercise them without prior shareholder or creditor approval. Table 1 presents a brief overview of the nature of resolution regimes in FSB jurisdictions.

The institutional arrangements for resolution and the role of resolution authorities vary across FSB jurisdictions (see Annex B). In ten jurisdictions[14] there is a single authority that is responsible for all (or substantially all)[15] aspects of resolution, including determining that conditions for entry into resolution are met, resolution planning and implementing the resolution. In all of these cases, except the US, that authority is also the main banking supervisor.

13 Mexico introduced the Special Bankruptcy Regime for Banks in January 2014; Japan introduced an enhanced framework for the orderly resolution of financial institutions in March 2014; Singapore extended the resolution powers of MAS in April 2013 to cover holding companies and non-regulated operational entities; Russia introduced a new law at end-2014 that consolidates the existing laws on bank insolvency and rehabilitation into a single instrument and extends available powers; China established the Deposit Insurance Fund Management Agency (DIFMA) in May 2015 to act as the receiver of failed financial institutions, when appointed by the CBRC; and Switzerland approved legislative reforms that broaden the scope of the resolution regime to holding companies and material group companies as well as widen the temporary stay on termination rights. See Annex 1 of the November 2014 FSB progress report to the G20 on resolution (http://www.fsb.org/wp-content/uploads/Resolution-Progress-Report-to-G20.pdf) and the February 2015 FSB peer review report of Russia (http://www.fsb.org/wp-content/uploads/Russia-peer-review-report-final.pdf) for more details on some of these reforms.

14 Argentina, Australia, Brazil, Hong Kong, India, Russia, Saudi Arabia, Singapore, Switzerland, US.

15 In some cases the authority may consult with other bodies or authorities, but will retain primary responsibility for exercising the resolution action.

Table 1: Bank resolution regimes in FSB jurisdictions

Jurisdiction	Nature of bank resolution regime
Argentina	Administrative regime under which BCRA decides between revocation of licence and liquidation or restructuring options, which include booking of losses and write down of equity, capitalisation, increase in capital, transfer of ownership, sale, and exclusion of assets and liabilities. Shareholder consent is only required for sales of shares or capital increases and where shares are pledged as collateral for liquidity assistance. BCRA may either implement restructuring measures directly or ask the court for appointment of a trustee where the measures include an exclusion of assets and liabilities.
Australia	The relevant powers are conferred under the supervisory framework. Regime is based on three types of APRA powers: business transfer powers (subject to Ministerial consent); powers to appoint statutory manager to control and operate a firm under APRA's directions; and powers to direct banks or management to take certain actions to facilitate resolution, including to remove and replace management or recapitalise an institution, without any requirements for shareholder approval. Different conditions must be met for exercise of direction powers, business transfers and appointment of statutory manager.
Brazil	Administrative resolution regime under which the BCB takes all relevant decisions. Resolution is carried out through an administrator appointed and monitored by the BCB with broad powers to manage and reorganise the bank and transfer (sell) assets and liabilities. The BCB directs and approves the actions of the administrator but has no direct resolution (e.g. transfer) powers.
Canada	Administrative resolution regime distinct from insolvency regime for financial institutions. Deposit insurer (CDIC) is resolution authority for all CDIC member institutions. Prudential supervisor (OSFI) has certain resolution-related powers (e.g. to take control of bank or assets). Governor in Council may vest shares and subordinated debt of failing bank in CDIC, appoint CDIC as receiver or direct the MoF to establish a bridge institution (owned by CDIC), in order to confer CDIC control for purposes of resolution. Certain CDIC actions (e.g. transfer to bridge or forced sale) require an order of the Governor in Council. Shareholder rights are overridden if the CDIC is appointed to take control of the bank.
China	The PBC, as lender of last resort and with responsibility of maintaining financial stability and mitigating systemic risks, is involved in the resolution process in practice, and has been the lead authority for the resolution of financial groups. The CBRC has supervisory powers under the regulatory framework to put a failing bank into receivership, while DIFMA may restructure a failing bank as receiver and use the Fund to provide financial support (e.g., through asset purchase or assumption of liabilities) or to facilitate purchase-and-assumption (P&A) transactions, e.g. through financial assistance, guarantees and loss sharing. Transfers may be effected without shareholder and creditor consent, although there is a procedural expectation that creditors (other than depositors) will be notified.
EU: SRM jurisdictions*	Administrative resolution regime with (pre-insolvency) conditions for entry into resolution based on non-viability. Resolution authority is divided between the SRB and national resolution authority, depending on size and EU cross-border activity of bank (application of SRM). The ECB is responsible for determining if a bank is failing or likely to fail (though the SRB may also make this determination in certain circumstances). Administrative powers are exercisable without court involvement and overriding shareholders. Powers are exercised directly by the national resolution authority in each jurisdiction, and that authority may also appoint a special administrator that it supervises and may direct.
Hong Kong	Limited regime for intervention by HKMA in failing institutions based on supervisory powers to give directions to authorised deposit-taking institutions or appoint a Manager to operate an institution and manage and control its business and assets to achieve the objective(s) set out by HKMA in the Manager's instrument of appointment. Manager cannot transfer, sell or dispose of business or property without consent of shareholders or relevant third parties (where such consent is required).
India	Limited regime which relies largely on supervisory powers of RBI, rather than a separate resolution regime. RBI has limited powers to remove and replace management and appoint an administrator. Transfers only possible under a statutory scheme.
Indonesia	Resolution authority shared between various authorities. Regime is based on power for the deposit insurer (LPS) to take over control of firm and operate it. Powers for LPS, after takeover, to transfer assets and liabilities without shareholder and creditor consent, and merge or sell the bank. Where a failing bank under LPS control represents a systemic risk, the resolution option is open bank assistance.
Japan	Two types of intervention available: (1) 'Measures against financial crisis', involving financial assistance or temporary nationalisation, available on a determination of systemic risk by the Prime Minister; and (2) Orderly Resolution, whereby DICJ takes over control of bank, under supervision and direction of JFSA. After taking control, DICJ may manage the bank

	and transfer assets and liabilities to a third party purchaser or a bridge bank owned and administered by the DICJ. Actions by DICJ including reduction of capital and transfers of business require court approval (in which case any shareholder rights are overridden).
Korea	Administrative resolution regime, distinct from insolvency regime. Resolution authority shared between FSC and KDIC. Resolution is triggered upon determination of actual or likely insolvency. Transfer and bridge powers available and shareholder and creditor rights can be overridden. Bridge bank is owned by KDIC, which provides capital from deposit fund. Resolution can also be conducted through administrator, under direction of FSC.
Mexico	Administrative regime with powers for deposit insurer (IPAB) to take control of a bank after the CNBV revokes its license based on specified capital and liquidity triggers. The IPAB either pays out insured deposits or transfers assets and liabilities to a purchaser or to a bridge bank owned and operated by IPAB, in which case it guarantees all liabilities transferred to the bridge bank and may provide it with financial support through credits. As an exception, if the Banking Stability Committee (CEB) determines that the revocation of the license would have systemic consequences, deposit insurance coverage may be expanded to uninsured liabilities. If less than 100% of liabilities are guaranteed, IPAB may choose between pay-out or transfer assets and liabilities to a purchaser or to a bridge bank. Where 100% of liabilities are guaranteed, the license is not revoked and IPAB provides open bank assistance, taking shares as guarantee, or a capital injection and takeover of shares by IPAB, and appointment of a provisional administrator.
Russia	Administrative regime under which 'bankruptcy prevention measures' are available where the Bank of Russia (BoR) determines that the failure of a bank can have a systemic impact. The Deposit Insurance Agency (DIA) may then take the following actions, agreed with the BoR: acquire a controlling interest and provide financial assistance; conduct P&A transactions and provide financial assistance to an acquirer; and sell all or part of the bank's assets and liabilities. Transfer powers exercisable without shareholder consent. DIA may also operate a bank as administrator (appointed by BoR).
Saudi Arabia	No specific resolution regime. The prudential regulator (SAMA) has broadly-framed but far-reaching supervisory powers which have been used to avert bank failures through managed sales and mergers or dilution of shareholders through recapitalisation. Such powers are not set out explicitly in the legal framework and rely on a wide interpretation of supervisory intervention powers, although the exercise has never been the subject of legal challenge.
Singapore	Administrative regime with (pre-insolvency) conditions for entry based on non-viability and public interest considerations. MAS has powers to take control of and operate a failing bank, require continued provision of services by non-regulated affiliates and transfer assets and liabilities (including to a bridge bank or asset management vehicle). Powers may be exercised directly without shareholder or creditor consent. MAS may also appoint and direct a statutory manager.
South Africa	Limited regime based on curatorship of failing banks. MoF puts bank into curatorship on proposal of Registrar of Banks (RoB). Curator, acting under supervision and direction of RoB, controls and manages the bank and in that capacity may transfer assets and liabilities without shareholder approval. A moratorium is imposed on all enforcement actions against bank during curatorship. Acquisition of shares by the Reserve Bank is also possible.
Switzerland	Administrative resolution regime distinct from ordinary insolvency with FINMA as resolution authority. Resolution is based on implementation of a restructuring plan, generally through a restructuring agent appointed and supervised by FINMA. The consent of shareholders is not necessary for the implementation of a restructuring plan, and creditors can only reject the plan in the case of banks not designated as systemically important by the Swiss National Bank (SNB).
Turkey	Administrative resolution regime, under which the BRSA decides whether a bank that meets the conditions for resolution will be liquidated or resolved, and resolution measures are chosen and implemented by SDIF, after BRSA has transferred to it control and management of the failing bank. The SDIF has powers to take over the bank's shares and to restructure it; to transfer assets and liabilities; to effect a sale or merger; to ask the BRSA to revoke the banking licence for liquidation; and, where it has acquired a majority of the shares, provide financial support. These powers are exercisable without court involvement or shareholder consent.
UK	Administrative resolution regime with (pre-insolvency) conditions for entry into resolution based on non-viability. BoE is resolution authority, but HMT is responsible for exercise of TPO. BoE exercises powers directly without court approval or shareholder or creditor consent, and may also appoint a resolution administrator which it supervises and may direct.
USA	Distinct resolution regimes for systemically important financial companies (Title II of Dodd-Frank Act (DFA)) and for insured depository institutions (FDI Act (FDIA)). Application of DFA requires determination by Treasury Secretary. Under both regimes the FDIC is the resolution authority and appointed as receiver (with an expedited court procedure if the financial company does not consent under DFA, without court approval under FDIA). Powers are exercised administratively with no requirements for shareholder or creditor consent.

* SRM jurisdictions are EU Member States that participate in the Single Resolution Mechanism (SRM). FSB jurisdictions that participate in the SRM are France, Germany, Italy, Netherlands and Spain.

For other jurisdictions, responsibility for resolution action is divided between two or more authorities. In several of these cases, the authority that determines if the conditions for entry into resolution have been met is different from the authority that plans and implements the resolution. For the five FSB jurisdictions that are EU Member States and within the Single Resolution Mechanism (SRM),[16] responsibility is divided between the Single Resolution Board (SRB) and national resolution authorities in individual Member States (Box 1 and Figure 1).

In eight jurisdictions,[17] ministerial or other government authorities are also explicitly involved to varying degrees in the process for triggering entry into resolution or the use of resolution powers. That involvement takes the form of consent to the proposed actions, direct determination by the political authorities that the conditions for resolution are met, or placement of a bank into resolution by the Minister of Finance at the request of the regulator. In addition, under the EU's SRM, the European Council is consulted on the resolution scheme proposed by the SRB for a failing bank where the scheme entails use of the Single Resolution Fund and may veto the scheme in certain circumstances.

The *Key Attributes* do not prescribe a particular institutional configuration, although different forms of arrangement give rise to different issues for consideration. For example, where supervisory and resolution functions are combined under a single authority, there is a need for clarity on how to manage the transition from going concern supervision to entry into resolution (see also section III.2 on the use of supervisory powers to achieve resolution objectives). Where there are multiple authorities, there is a need for coordination and a clear allocation of responsibilities between the relevant authorities.

[16] France, Germany, Italy, Netherlands, Spain.

[17] Canada, Japan, Hong Kong, Saudi Arabia, Singapore, South Africa, UK and US (for financial companies under DFA).

Box 1: Institutional arrangements for resolution under the SRM

The Single Resolution Mechanism (SRM) has created the Single Resolution Board (SRB), a new agency responsible for resolution of the largest banks headquartered in the European banking union area, and a Single Resolution Fund (SRF).

SRB structure. The SRB includes a plenary and an executive board. The chair and the five full time members of the executive board are chosen on the basis of an open selection procedure involving the European Commission (EC), the EU Parliament and the Council.

The plenary board, which includes representatives of all Member States, primarily decides on the use of the SRF and can, under specific circumstances, decide on the resolution scheme and on the board's internal structures, budget and work program.

The executive board, which includes six permanent members, prepares and approves resolution plans, determines the minimum requirement for own funds and eligible liabilities that entities and groups need to meet, and adopts resolution schemes for institutions under its direct responsibility. When exercising its responsibilities in relation to an entity established in a participating Member State, a member appointed by that Member State participates in the decision making process.

Scope and coverage. The SRB is responsible for resolution planning and resolution decision making for all banks supervised directly by the ECB and all cross-border banks established within participating Member States. National resolution authorities are responsible for implementing the SRB's decisions, but remain responsible for resolution planning and the resolution of all other banks unless the SRF is used, in which case the SRB will be responsible. Resolution colleges (or equivalent groups or colleges) are established for cross-border banks established within EU Member States. Decisions on resolution planning (e.g. on the group resolution plan, resolvability assessment and measures to address impediments to resolvability) are made through a joint decision process.

Resolution process (see Figure 1). The ECB is principally responsible for determining whether an entity is failing or likely to fail (Condition 1), whilst the SRB is principally responsible for determining whether Conditions 2 and 3 (the absence of any reasonable prospect that any alternative private sector measures would prevent its failure and that a resolution action is necessary in the public interest, respectively) are met.

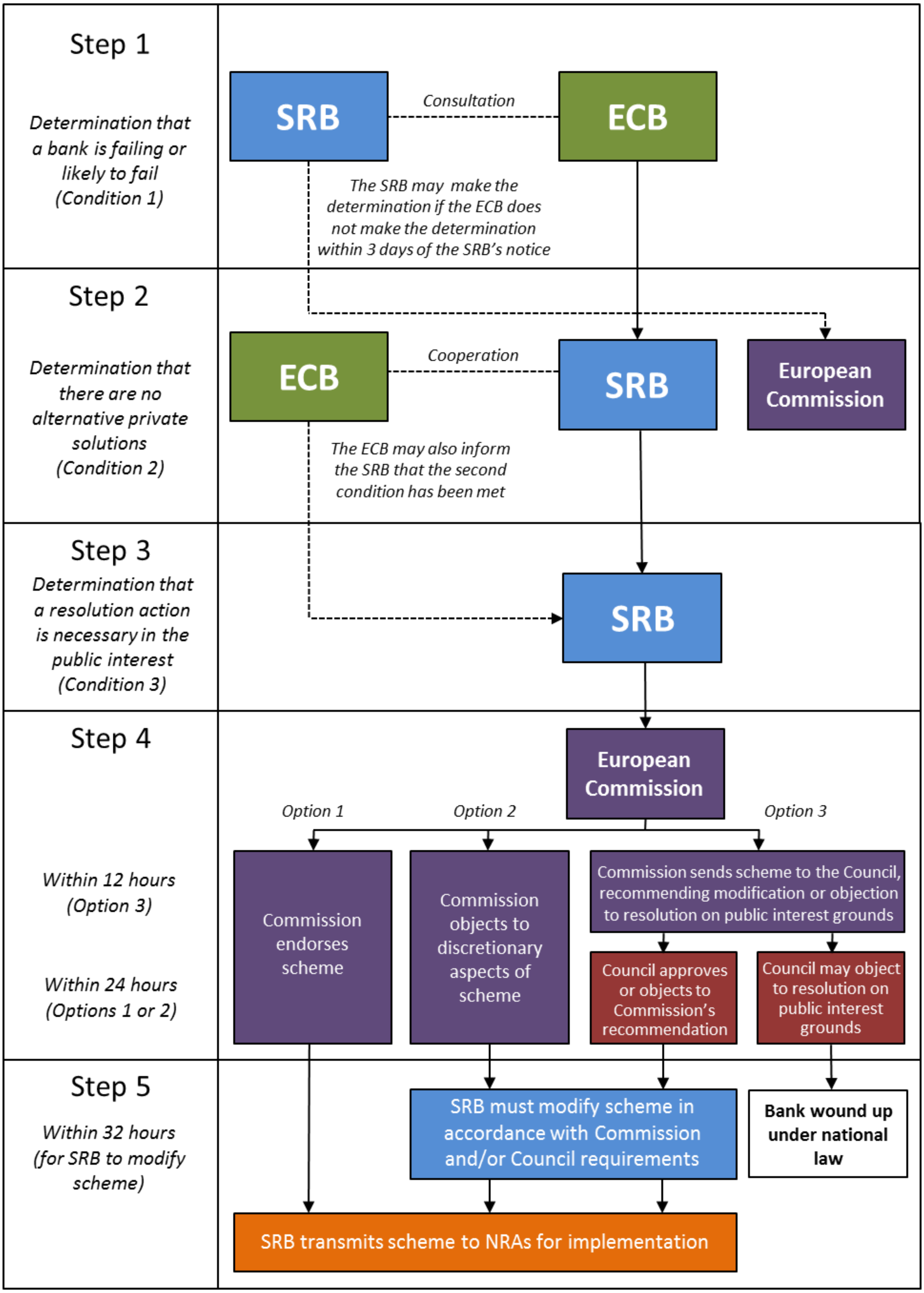
The SRB will then prepare a resolution scheme (i.e. establishing which resolution tools will be used including, if applicable, any use of the SRF) that must be validated by the EC in the following 24 hours. The EC may, in the first 12 hours, involve the European Council for decisions regarding the use of the SRF or the public interest condition. The resolution scheme enters into force 24 hours from the transmission by the Board if no objection has been expressed by the Council or by the EC. In addition, the resolution scheme cannot be implemented until the EC has adopted a positive or conditional decision on the compatibility of the resolution action with the internal market and the State aid regulation. The scheme is subsequently implemented by national resolution authorities.

Funding of resolution process. Within the resolution scheme, the SRF may be used only to the extent necessary to ensure the effective application of the resolution tools, namely:

- To guarantee the assets or the liabilities of the institution under resolution;
- To make loans or to purchase assets to the institution under resolution;
- To make contributions to a bridge institution and an asset management vehicle;
- To pay compensation to shareholders or creditors who suffered greater losses than they would have if the bank had been wound up under the applicable insolvency regime(s).

The SRF may also make a contribution to the institution under resolution in lieu of the write-down or conversion of liabilities of certain creditors under exceptional circumstances. The SRF will be built up during 2016-2023 and shall reach at least 1% of covered deposits (approximately €55bn by end-2023). During the transitional period, national compartments are created within the SRF for use in resolution, but these cease to exist from 2024 onwards.

Figure 1: Entry into resolution under the SRM



2. Scope of regimes

In the large majority of FSB jurisdictions, resolution regimes apply broadly to all types of commercial banks, including those that are state-owned.[18] The exception to this is Brazil, where the regime does not apply to federal government-owned banks; and India, where state-owned commercial banks are governed by special acts.

The United States has two distinct resolution regimes with similar sets of powers. Title II of the Dodd-Frank Act (DFA) established the Orderly Liquidation Authority to provide a resolution regime for systemically important financial companies[19] in the event that resolution under the ordinary insolvency regime would have serious adverse effects on financial stability. Insured depository institutions, including those identified as systemic, are outside the scope of Title II of the DFA and are instead resolved under the FDI Act.

There is much greater variance in scope of application of resolution regimes and associated resolution powers for holding companies of banks, branches of foreign banks and material non-regulated operational entities within a financial group or conglomerate (see Annex C). In particular, the application of the resolution powers available under the regime to these types of entities – identified as a recommendation in the 2013 Thematic Review – remains limited.

Only fifteen jurisdictions report that their resolution regime and associated powers extend to holding companies,[20] and in some cases (Korea, Singapore, Australia and Mexico for certain powers)[21] these powers only apply to regulated holding companies. In Canada and Saudi Arabia, holding companies are not present (i.e. the bank is the ultimate corporate parent).

The application of the resolution regime to non-regulated operational entities is also limited. Only four jurisdictions report that their resolution regime and associated powers explicitly extend to such entities.[22] A further twelve jurisdictions[23] report that authorities can achieve the outcomes envisaged by certain resolution powers indirectly by means of the authorities' control of a parent regulated entity in resolution.

Nineteen jurisdictions report that resolution regimes and all associated powers apply to domestic branches of foreign banks.[24] Three jurisdictions (Australia, Canada, US) report that most or all resolution powers do not apply to branches, whilst in Mexico and Russia such

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[18] This does not include state-owned development banks, which are typically not funded by deposits and are excluded from the scope of resolution regimes in a number of jurisdictions.

[19] The definition of "financial company" and thereby scope of application of Title II are: (i) bank holding companies; (ii) nonbank financial companies that are supervised by the Federal Reserve Board (FRB); and (iii) financial companies that are predominantly engaged in activities that are financial in nature or incidental thereto as set forth in FRB regulations.

[20] Australia (except for power to control and operate a bank), Brazil, France, Germany, Italy, Japan, Korea, Mexico, Netherlands, Singapore, Spain, Switzerland, Turkey, UK, US.

[21] According to the Financial Groups Law in Mexico, holding companies of financial groups can be intervened by an administrator appointed by the financial authorities when non-compliance with regulatory requirements is affecting the stability, solvency or liquidity of the holding company or its financial subsidiaries.

[22] Singapore, Switzerland (for material subsidiaries), UK, US. For the other EU jurisdictions that have adopted the BRRD (France, Germany, Italy, Netherlands, Spain), only the power to ensure continuity of services and functions is directly available for non-regulated operational entities. The other resolution powers can only be applied to such entities indirectly by virtue of the corporate control exercised by the resolution authority over the subsidiaries of the bank in resolution.

[23] Australia, Brazil, Canada, China, France, Germany, Italy, Japan, Netherlands, Spain, Saudi Arabia, Turkey.

[24] Argentina, Brazil, China, France, Germany, Hong Kong, India, Indonesia, Italy, Japan, Korea, Netherlands, Saudi Arabia, Singapore, South Africa, Spain, Turkey, Switzerland, UK.

branches are not permitted and foreign banks must operate by way of locally incorporated subsidiaries, which are subject to the domestic resolution regime.

While the *Key Attributes* specify that the scope of the resolution regime should extend to all of these entities, it does not always specify which powers should be available for which type. For example, it is not clear that direct powers to write down and convert liabilities to equity (bail-in) or to impose stays on early termination rights are relevant in relation to branches.[25] Further work is needed by the FSB to clarify this point and thereby ensure consistent application (and assessment) of the *Key Attributes* in this area.

By contrast, in the case of non-regulated operational entities, the draft assessment methodology indicates that not all the powers in KA 3.2 (e.g. transfer and bail-in) need to apply directly to these entities. This clarification recognises that the main objective of bringing these types of entities within the scope of resolution powers is to secure the continued provision of critical shared services that support the critical functions performed by the affiliated firms in resolution. Similarly, the draft assessment methodology specifies that the resolution regime should extend to holding companies insofar as that is necessary to resolve the financial institution or a financial group as a whole, and that the powers should be exercisable irrespective of whether a holding company itself carries on regulated financial activities or whether it is licensed or authorised under the jurisdiction's legal framework. This clarification addresses instances in which the extension of resolution powers to holding companies may not be necessary for effective resolution of banks in a jurisdiction.[26]

3. Planned reforms

Thirteen jurisdictions report that they have ongoing or planned reforms to their bank resolution regimes. These reforms, which are detailed in Annex D, aim at bringing their resolution regimes more in line with the *Key Attributes*:

- Three jurisdictions[27] plan to broaden the scope of their resolution regime;
- Twelve jurisdictions[28] plan to adopt new resolution powers; and
- Twelve jurisdictions[29] plan to introduce powers to require recovery and resolution plans (RRPs) and/or resolvability assessments. Eight of those jurisdictions are also proposing reforms that allow authorities to require changes that improve a bank's resolvability.[30]

Nine of these jurisdictions[31] are at a more advanced stage of their reform process since they have published reform proposals or submitted draft legislation to the legislature, although the

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[25] The powers to give effect to foreign resolution actions are particularly relevant in the context of branches, but they are not covered by the scope of this peer review.

[26] Mexico noted that the extension of resolution powers to holding companies is not necessary for effective resolution of banks, given the form and structure of banking groups established and operating in its jurisdiction. The peer review did not evaluate the scope that the regime should have to ensure effective resolution in all conceivable scenarios, which can best be addressed in onsite compliance assessments of the *Key Attributes*.

[27] Australia, Hong Kong, South Africa.

[28] Australia, Brazil, Canada, China, Hong Kong, India, Indonesia, Korea, Saudi Arabia, Singapore, South Africa, Turkey.

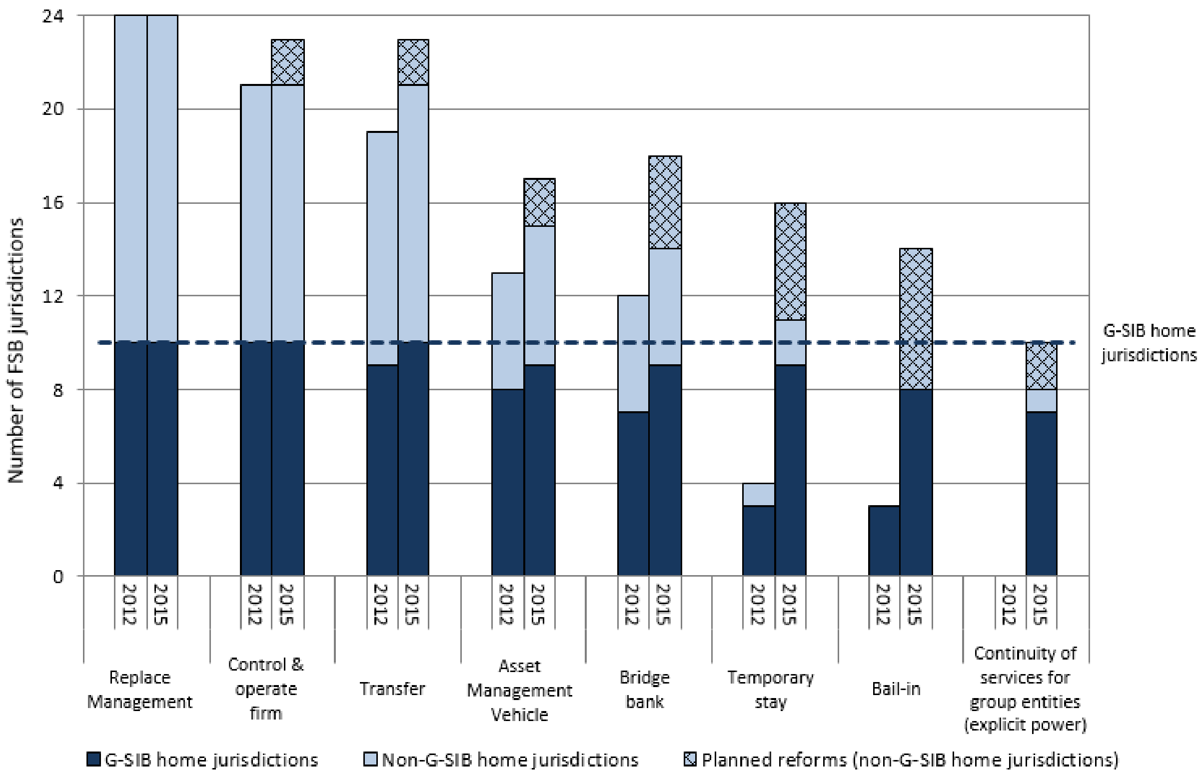
[29] Australia, Brazil, China, Hong Kong, India, Indonesia, Korea, Russia, Saudi Arabia, Singapore, South Africa, Turkey.

[30] Australia, Brazil, China, Hong Kong, Saudi Arabia, Singapore, South Africa, Turkey.

[31] Canada, China, Hong Kong, Korea, Saudi Arabia, Singapore, South Africa, Switzerland, Turkey.

timelines for implementation are not generally known; in the remaining cases, these reforms are at an early stage of discussion. Graph 2 shows that even after the implementation of reforms that have been issued for consultation or submitted to the legislature, a number of FSB members – both home jurisdictions and non-home jurisdictions of G-SIBs – will still have gaps in relation to the bank resolution powers that are covered in this peer review. The main gaps, once the reforms that have been issued for consultation or submitted to the legislature are taken into account, relate to an explicit power to ensure continuity of shared services and functions by other entities (whether or not regulated) within the same financial group as the bank in resolution (fourteen jurisdictions);[32] the power to write down and convert liabilities (ten jurisdictions);[33] and the power to impose a temporary stay (eight jurisdictions).[34]

Graph 2: Availability of bank resolution powers in FSB jurisdictions



Note: The bars for 2012 reflect the availability of powers at the time of the 2013 Thematic Review (which was based on data as of December 2012). The shaded column indicates planned reforms by non-G-SIB FSB jurisdictions that have already been issued for consultation or submitted to the legislature. See the text below and Annexes D and G for details and clarifications.

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32 Argentina, Australia, Brazil, Canada, China, India, Indonesia, Japan, Korea, Mexico, Russia, South Africa, Turkey, US.

33 Argentina, Australia, Brazil, China, India, Indonesia, Japan, Mexico, Russia, Turkey.

34 Argentina, Australia, Brazil, China, India, Indonesia, Russia, Turkey.

III. Resolution powers

The *Key Attributes* require jurisdictions to adopt the range of resolution powers set out in KA 3, including the following powers:

- Powers to control and operate a firm, or to conduct resolution through an administrator;
- Powers to remove and replace management;
- Powers to ensure continuity of services and functions in resolution;
- Powers to transfer assets and liabilities, and establish and operate temporary bridge banks and asset management vehicles;
- Powers to impose temporary stays on the exercise of early termination rights; and
- Powers to write down and convert liabilities (bail-in).

This section describes the availability of those powers for banks in FSB jurisdictions. It also reviews the extent to which temporary public ownership (TPO) is available for bank resolution and, where it is available, whether its use is subject to particular conditions; and it briefly describes court involvement in resolution. While a role for the courts in resolution is not precluded in the KAs, statutory judicial remedies should not constrain the implementation of, suspend or reverse measures taken by the resolution authority in good faith and acting within its legal powers (KA 5).

1. Conditions for use of resolution powers

The *Key Attributes* contain a high-level provision on the conditions for entry into resolution, specifying only that the conditions should permit early resolution when a firm is no longer viable (or likely to become so) and before it is insolvent (based on the definition of insolvency used in the applicable insolvency regime).[35]

In all FSB jurisdictions, the legal framework specifies conditions for use of resolution powers or extraordinary intervention powers in relation to banks. However, as shown in Annexes E and F, there is significant variation in those conditions and their level of detail, including the extent to which they rely on quantitative and qualitative criteria. Broadly speaking, the conditions are based on one or more of three broad types of criteria: (i) criteria based on a determination of (likely or actual) failure, default or insolvency; (ii) criteria related to the public interest; and (iii) criteria aimed at establishing that the use of powers is necessary and proportionate.

Conditions based on (likely or actual) failure, default or insolvency

All jurisdictions have triggers based on a deterioration in the financial or other condition of the bank that results in default or risk of default, or affects its continuing viability. However, there is considerable variation in the way such conditions are formulated and the stage of deterioration that needs to have been reached. Most jurisdictions include criteria based on general concepts of solvency (i.e. whether the value of assets exceeds a bank's liabilities) and

[35] See KA 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."

liquidity (i.e. whether the bank is or will be able to meet its debts as they fall due). In spite of these commonalities, however, there is considerable variation in the extent to which the criteria are forward-looking and require supervisory judgement based on both quantitative and qualitative factors. For example, in four jurisdictions[36] there are explicitly defined capital adequacy thresholds in the conditions. In Mexico and Russia, there are also explicit quantitative triggers for breaches in liquidity requirements.

In several jurisdictions, the conditions are defined on a more qualitative basis by reference to failure (or likely failure) to meet obligations or to total liabilities exceeding (or being likely to exceed) assets, which may require an assessment of actual or imminent insolvency. In other jurisdictions, conditions of this type require an assessment that a bank is failing or likely to fail, which involve considerations such as ongoing financial viability and/or ability to comply with conditions of authorisation in addition to actual or likely default or insolvency. For example, in eight jurisdictions,[37] the conditions include an actual or likely breach of prudential requirements or banking laws, but the severity of the breach required, or the levels of capital that would justify an intervention, are not always explicitly defined. Furthermore, in Canada and the six EU Member States, determinations that the conditions are met can take into account excessive reliance on extraordinary financial assistance.

In twelve jurisdictions[38] the conditions include prospective assessments by referring to likely default, likely breach of prudential regulation or failure to meet authorisation requirements, or material risk of deterioration in a bank's financial condition.

The more closely the conditions for entry into resolution are based on insolvency, the more uncertain it is that they will support timely intervention. Forward-looking criteria provide greater flexibility for authorities to intervene at an earlier stage (e.g. "likely to be …") and are therefore more likely to support the objectives of resolution – although much also depends on the approach of authorities and their willingness in practice to take early action.

Conditions relating to public interest considerations

The regimes in seventeen jurisdictions[39] include a requirement that use of resolution tools is in the public interest, either as a condition that must be satisfied in addition to other necessary conditions based on (for example) non-viability,[40] or as a condition that on its own justifies resolution action.[41] The concept of 'public interest' is defined, variously, to include the protection of financial stability, of public confidence in the stability of the national banking system, or of the protection of depositors.[42]

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[36] Indonesia, Korea, Mexico and Russia.

[37] Argentina, Australia, Brazil, Hong Kong, Indonesia, Russia, Saudi Arabia, Switzerland.

[38] Australia, Canada, the six EU Member States, Hong Kong, Singapore, Turkey, US.

[39] Australia, Canada, China, France, Germany, Hong Kong, India, Italy, Japan, Korea, Netherlands, Russia, Singapore, Spain, Turkey, UK, US. In Mexico, all actions and decisions taken by authorities in the resolution process are considered of public and social interest; however, it is not a condition that must be satisfied as a pre-requisite for the use of resolution tools, nor a condition that on its own justifies resolution action.

[40] Canada, China, France, Germany, Italy, Japan, Netherlands, Russia, Spain, UK, US.

[41] In five jurisdictions (Australia, Hong Kong, India, Singapore, Turkey) resolution action or extraordinary intervention is possible on the basis of a public interest-related condition alone, without the need for other conditions to be met.

[42] The requirement for a determination of risks to financial stability as a condition for use of resolution powers is distinct from the question of the scope of the resolution regime. If the regime applies potentially to all banks, or any of a wide category, but powers can only be exercised in an individual case if, in the circumstances of the actual failure, conditions

Condition that the use of powers is necessary and proportionate

The six EU Member States, Canada, Singapore and the US include a condition that resolution is a necessary and proportionate measure. A condition of this kind requires a determination by an authority that there must be no reasonable prospect that any alternative private sector measures or supervisory measures (other than resolution) would prevent failure or restore viability in a reasonable timeframe, and that the measures taken do not go beyond what is needed to achieve the objectives of resolution.

This substantial divergence in the conditions relating to deterioration, risk of default and non-viability risks impeding coordinated resolution action across jurisdictions in relation to a cross-border bank. Further analysis of the conditions for entry into resolution across FSB jurisdictions is desirable. Such analysis would increase understanding of current practices and the approaches that are most likely to support timely and early entry into resolution before a bank is balance-sheet insolvent, as specified in the *Key Attributes*.

2. Overview of powers and overarching issues

As Graph 2 (see section II.3) and Annex G indicate, the availability in FSB jurisdictions of the resolution powers specified in the *Key Attributes* varies and progress is uneven:

- The six FSB jurisdictions that are EU Member States and Switzerland have the full range of resolution powers covered by this peer review. This increase (from one jurisdiction at the time of the 2013 Thematic Review)[43] is a result of implementation of the BRRD (Directive 2014/59/EU) by the EU Member States.
- One jurisdiction (US) has all the resolution powers apart from an explicit[44] power for the resolution authority to require continued provision of critical shared services by group companies ('continuity power').
- Six other jurisdictions[45] have all but two or three of the powers that were assessed. The powers lacking in those cases are continuity powers, bail-in or a stay on the exercise of early termination rights.[46] Bail-in and stays on early termination rights are likely to be particularly relevant for resolving large, complex banks.
- Ten jurisdictions have only four or fewer of the required resolution powers.[47]

relating to systemic risk or financial stability are met, that requirement relating to conditions for entry into resolution is not a limitation of scope.

43 The 2013 Thematic Review found that only the US regime included all the resolution powers examined in that review. However, that peer review did not cover explicit powers for resolution authorities to require an entity (whether or not regulated) in the same group as the bank in resolution to provide critical shared services to that bank or to a successor entity to which critical functions of that bank have been transferred. For a recent review of the US resolution regime, see the July 2015 FSAP technical note on this topic (http://www.imf.org/external/pubs/ft/scr/2015/cr15171.pdf).

44 The US relies on fact of control by the resolution authority of the entity in resolution to achieve continued provision of shared services by group entities. See discussion of continuity powers below

45 Australia, Canada, Japan, Korea, Mexico, Singapore.

46 Australia, Canada (continuity powers, bail-in and temporary stays); Japan, Korea, Mexico (continuity powers and bail-in); and Singapore (bail-in and temporary stays).

47 Argentina, Brazil, China, Hong Kong, India, Indonesia, Russia, Saudi Arabia, South Africa, Turkey.

The peer review also examined some of the characteristics of the resolution powers reported by jurisdictions. The main focus, in particular, was on the features set out in the draft Key Attributes assessment methodology that distinguish resolution powers from supervisory powers (which generally do not permit an authority to interfere with third party rights) and from ordinary corporate insolvency regimes – namely, that the powers are exercisable by an administrative authority; they enable the authority to interfere with third party rights; and they can be exercised without shareholder or creditor consent (see Box 2). Those features reflect the understanding that, for resolution powers to be effective, they need to be deployed quickly, override property rights and need to allocate losses to creditors and shareholders without entailing lengthy court procedures.[48] The peer review identified some overarching themes regarding the exercise of resolution powers, which are briefly set out below.

Box 2: Characteristics of Resolution Powers (excerpt from the draft assessment methodology for the *Key Attributes*)

The availability of powers should be assessed on the basis of the ability to achieve the outcome specified in the relevant Essential Criterion (EC), rather than the terminology used in the legal framework, which may differ between jurisdictions. Powers that achieve the outcomes specified in KA 3.2 may not necessarily be labelled as 'resolution powers'. Nevertheless, in order to comply with KA 3.2 and to enable authorities to deliver their statutory resolution objectives and achieve the necessary outcomes, the powers should have certain features that distinguish them from powers used for ordinary supervisory purposes, and from ordinary corporate insolvency regimes.

Ability to interfere with third party rights - Resolution powers enable the resolution authority to interfere with third party rights (for example, by imposing a moratorium on the enforcement of claims and imposing a temporary stay on early termination rights) and to allocate losses to creditors and shareholders.

Exercisable by an administrative authority - Resolution powers should be exercisable by an administrative resolution authority (either directly or through an appointed administrator with appropriate objectives (see Explanatory Note (EN) 3 (j)). While it is not necessarily inconsistent with the *Key Attributes* if the resolution regime makes provision for a court order or confirmation for the exercise of resolution powers to be effective, it is important to ensure that any requirement for court approval does not impede rapid intervention and the ability to achieve the specified objectives of resolution. (See KA 5.4, which requires authorities to take account of the time needed for court processes in resolution planning so as not to compromise effective implementation of resolution measures, and EN 5 (d), which indicates how provision for court involvement might be consistent with the speed and flexibility necessary for effective resolution powers.)

Exercisable without shareholder or creditor consent - Resolution powers must not require or be contingent on the cooperation of the failing firm or its shareholders, and should be exercisable without the consent of the firm, its shareholders or its creditors. It is critical for effective resolution that all resolution powers be exercisable by authorities without any need for shareholder consent or triggering any other third party rights that prevent, impede or interfere with resolution (subject to the safeguards described in KAs 4 and 5). A requirement for the consent of the entity receiving transferred assets and liabilities (including the consent of its shareholders) is not inconsistent with effective resolution powers.

Use of supervisory powers to achieve resolution objectives

Some jurisdictions rely on powers in their supervisory framework to achieve certain outcomes specified in the *Key Attributes*, rather than having separate resolution-specific powers. The most

[48] The extent to which resolution powers are subject to the safeguards in KA 5 has not been examined in this peer review.

common example of this is the power to remove or replace management of a failed bank, which in some jurisdictions is vested in the supervisory authority under the supervisory framework. Such cases could potentially give rise to challenges in implementation. For example, there may be a lack of clarity over the conditions for the use of the power, potential trade-offs between going-concern and gone-concern interests that may delay timely intervention, requirements to notify certain stakeholders, the potential for the bank's management to have conflicting duties that are not automatically overridden, and a higher risk of shareholder objections and legal challenge. The peer review did not examine in detail the particular context in which supervisory powers are used to achieve resolution objectives in FSB jurisdictions and the types of issues that may arise. However, where jurisdictions rely on such powers for resolution purposes, it is important that the powers can be used in a flexible and timely manner; are sufficiently legally certain in their outcome; and that the limitations in their application, for example to regulated entities, do not constrain the resolution measures that may be taken or the ability of the resolution authority to achieve resolution objectives.

Use of alternative means to achieve a specified outcome in the absence of particular resolution powers

In some instances where resolution regimes lack an explicit resolution power, the authorities report that they can achieve the intended outcome of that power through other means. Those alternative means fall into two broad categories: (i) the use of other resolution powers; and (ii) reliance on corporate control over other entities within the group of the bank in resolution.

The clearest example of the first is the use of other powers of the resolution authority to achieve the intended outcome of bail-in in the absence of specific statutory provision for bail-in (consisting of explicit write-down and conversion powers) under the resolution regime. This is discussed in more detail in subsection III.7 below.

An example of the second is the reliance, in the absence of explicit powers to ensure continuity of services by non-regulated group entities, on corporate control of operational subsidiaries in the group by the bank in resolution to enable the resolution authority (through its control of that bank) to secure continued provision of services that are necessary to support critical functions to the bank in resolution, other regulated group entities, or a bridge institution or purchaser to which those functions have been transferred. This approach and its possible limitations are discussed in subsection III.4 below.

The *Key Attributes* are not prescriptive as to how resolution regimes should enable the specified outcomes to be achieved and do not require that the powers and tools available under the regime use the same terminology as and replicate KA 3. However, where alternative means are used, it is important that those means can achieve the outcomes envisaged by the powers specified in the *Key Attributes* for all covered firms, irrespective of their structure, and are not subject to limitations that could restrict their effectiveness in particular circumstances.

Court involvement in resolution

The role of the court in relation to the implementation of resolution measures and powers appears minimal in FSB jurisdictions, with the exception of actions such as the appointment of administrators.[49] In particular, no jurisdiction reports that it requires a court order to apply

[49] Court orders are required in many jurisdictions for the recognition of foreign resolution measures, although this is outside the scope of this peer review.

resolution actions,[50] although there are exceptions in specific circumstances. For example, in the US a court order may be required if the Board of Directors of a financial company does not acquiesce to the appointment of the resolution authority as receiver under Title II of the DFA.[51]

Similarly, in most jurisdictions, the circumstances under which the implementation of such measures could be constrained, suspended or reversed are limited. While the legislation in ten jurisdictions[52] provides for judicial remedies that may suspend or reverse resolution actions, in all cases such remedies are only available where the resolution authority has acted unreasonably or outside of its legal powers (*ultra vires*), and the application for judicial review does not automatically suspend the action(s) of the resolution authority. This is consistent with the *Key Attributes*, which do not require jurisdictions to limit statutory judicial remedies in relation to actions by resolution authorities that are unlawful, or constrain the inherent powers of court. For some of these jurisdictions there is also an additional provision that compensation may be the only means of recourse if overturning the decision of the resolution authority ruled as ultra vires is not possible.

Where there is no ability of court to suspend or overturn the actions of the resolution authority,[53] the only statutory remedy provided under the resolution regime is the award of compensation. This is consistent with the requirement in the *Key Attributes* specifying that remedies in connection with resolution measures that are within the legal powers of the resolution authority and taken in good faith should be limited to compensation.

3. Powers to control and operate a bank in resolution and replace management

Twenty-one FSB jurisdictions report that the regime includes powers for an authority to take temporary control of and operate a bank in resolution, either directly or indirectly (i.e. through an appointed person such as an administrator, trustee or statutory manager).[54] These powers enable the authority to *inter alia* enter into, continue, terminate and assign contracts, and to purchase and sell assets. In one jurisdiction (Argentina), a court order is required to confer control to the resolution authority or appoint the trustee.

Where this power is achieved indirectly through an appointed person, it is important that the resolution authority retains appropriate oversight and adequate control over the actions of that person, and that the latter has objectives that are aligned with those of the resolution authority. In some cases, the terms and objectives of the third party officer may be set by the court and the control of the resolution authority over the process may be reduced. Notwithstanding this, jurisdictions report that the resolution authority is generally able to direct the officer and require

50 A court order is required in a number of jurisdictions to place a bank into liquidation or insolvency proceedings, but this is distinct from the exercise of administrative resolution actions under the resolution regime.

51 It should be noted that an expedited procedure is in place for obtaining the court order.

52 Argentina, Australia, Brazil, Canada, India, Mexico, Netherlands, Saudi Arabia, Spain, Turkey.

53 Both in cases the remedies for *ultra vires* actions are limited to damages, and where an action challenged is not found to be *ultra vires* but the court awards redress for other reasons.

54 Argentina, Australia, Brazil, Canada, China, France, Germany, Indonesia, Italy, Japan, Korea, Mexico, Netherlands, Russia, Singapore, South Africa, Spain, Switzerland, Turkey, UK, US. Only Canada reports limitations on the powers of the authority (no power to terminate contracts).

that officer to report to it.[55] In addition, in a number of jurisdictions the framework requires approval from the resolution authority for specific actions by the appointed officer.[56]

All jurisdictions report the ability to remove and replace management of a bank in resolution, although the means by which this can be achieved vary and the exercise of this power in some cases is carried out by an authority in a supervisory capacity.[57]

4. Powers to ensure continuity of services and functions in resolution

The peer review examined two aspects of continuity of provision of shared services by entities of a bank in resolution.

The first involves continuity of services by the bank in resolution to a successor entity, such as a bridge bank or a third party purchaser to which critical functions of that bank that are supported by those services have been transferred. Since the ability to ensure continued provision of services by a bank in resolution should be achievable by virtue of the control of that bank by the resolution authority (directly or indirectly through an administrator), all jurisdictions that report power to control and operate a bank in resolution also have this power.

The second aspect involves powers to ensure continuity (subject to reimbursement) of shared services that support critical functions by service providers within the same financial group as the bank in resolution to that bank or a successor to which critical functions of that bank have been transferred. While most jurisdictions report that their resolution regime includes a power to require entities within the same group to continue to provide services, only eight of those jurisdictions (EU Member States, Singapore, Switzerland) have an explicit statutory power for the resolution authority to ensure continued provision of services by group entities, irrespective of whether those entities are regulated. Of the others, eight jurisdictions[58] report powers that are available only in relation to regulated group entities. Some other jurisdictions note that the resolution authority can secure continuity of services where the service provider is a subsidiary of the bank in resolution by virtue of the corporate control exercised by the resolution authority.

Reliance on powers that are available only in relation to regulated entities may be insufficient to enable authorities to secure continuity of critical shared services where those services are provided by unregulated intra-group service companies. The jurisdictions that report that the resolution authority can achieve continuity through means of corporate control rely on the fact that, through other measures, the resolution authority or an administrator succeeds to all the rights, titles, powers and privileges of the failed bank and can take measures to ensure that affiliated entities over which the failed bank has control by virtue of ownership continue to provide services. While this approach may be effective where the service companies in question are wholly or majority-owned subsidiaries of the bank in resolution, it will have limitations if

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55 In some jurisdictions, the alignment of objectives, the power to direct and reporting requirements are not specified by law but are assumed to exist in practice.

56 Appointment of certain officers (Hong Kong, UK); mergers and transfer of assets (Brazil, Japan); for any action potentially detrimental to the financial system (Australia); and certain actions specified by statute (Italy). In Argentina and South Africa, the resolution authority does not have the power to remove the administrator but can recommend this action to the relevant authority.

57 In Mexico, IPAB can exercise powers of administration without a court order where a bank has not been declared insolvent. Where a court has made an order of insolvency, IPAB may be appointed to administrate the liquidation.

58 Australia, Canada, China, Hong Kong, Indonesia, Japan, Mexico and Turkey (for entities in the same financial holding).

service providers are not under the control of the bank in resolution,[59] sister entities or those that have entered into insolvency and therefore are no longer subject to corporate direction.

5. Powers to transfer assets and liabilities, establish temporary bridge institutions and asset management vehicles

Statutory transfer powers as specified in the *Key Attributes* are now available in twenty-one jurisdictions.[60] Such powers were already well established at the time of the 2013 Thematic Review and, since the end of 2012, only three jurisdictions (China, France and South Africa) have introduced this power. In all twenty-one jurisdictions, the power covers assets and liabilities, but in three of those jurisdictions[61] the power does not extend to the transfer of ownership (shares) of the bank in resolution.

Similarly, while the ability to use bridge banks as a resolution measure exists in more than half of the FSB jurisdictions, only two jurisdictions (France and Italy) have adopted this power since the 2013 Thematic Review. A statutory power for an administrative authority[62] to establish and operate a bridge institution exists in fourteen[63] jurisdictions. In eight of those jurisdictions (six EU Member States, Japan, Singapore), the resolution authority has an explicit statutory power to transfer assets or liabilities back ('reverse transfer power') from a bridge bank to the bank in resolution, its estate or to another entity such as an asset management vehicle. In three other jurisdictions,[64] reverse transfers are achieved through provision in the transfer instrument rather than by means of a statutory power.

In those jurisdictions that provide for the use of bridge banks, the regime generally specifies the power to establish, govern and regulate a bridge bank, the term of its operation and requirements for its sale or wind-down. In one jurisdiction (Australia), the general operating framework is not specified in any detail. For those jurisdictions that specify the framework, there are a range of practices: in three jurisdictions, a bridge bank is exempt from some regulatory capital requirements (Canada, Mexico, US), while in one jurisdiction (Canada) a bridge bank is exempt from certain bank supervisory requirements. Ownership or control of a bridge bank usually resides with the resolution authority or other authority, although the precise structure of this ownership or control varies.[65] Limitations on the period a bridge bank may remain active vary considerably, ranging from six months to five years. These limits often can be extended by the authorities for additional one- or two-year periods.

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[59] For example, where the entity in resolution is not the group holding company and the services providers are 'sister companies' held in a different sub-group. It is acknowledged that such questions of firm structure and control relate to resolvability and that those jurisdictions that rely on corporate control to secure operational continuity may address such issues in resolution planning and resolvability assessments.

[60] The exceptions are Hong Kong, India, Saudi Arabia.

[61] Australia, Argentina, Brazil. In the case of Australia, transfer of ownership can be achieved through powers of a statutory manager, although APRA has no direct powers to transfer ownership (shares) of the bank in resolution.

[62] In all but one jurisdiction, the power to establish a bridge bank is conferred on the resolution authority. The exception is Australia, where the bridge bank would be established by the Government.

[63] Australia, Canada, France, Germany, Italy, Japan, Korea, Mexico, Netherlands, Singapore, Spain, Switzerland, UK, US.

[64] Canada, Switzerland, US.

[65] In Switzerland it is not required by law that the ownership of a bridge bank resides with the resolution authority.

A statutory provision for the establishment of an asset management vehicle for resolution purposes exists in fifteen jurisdictions.[66] Only France and the UK have introduced this power since the 2013 Thematic Review. The BRRD requires that EU Member States implement this power restrictively, so that an asset management vehicle can only be used in conjunction with another resolution tool and where at least one of a number of specified conditions is met.[67]

6. Powers to impose temporary stay on the exercise of early termination rights

The number of jurisdictions with statutory provision for the imposition of temporary stays on the exercise of contractual early termination rights that meet the conditions specified in the *Key Attributes*[68] has increased to eleven[69] from four at the time of the 2013 Thematic Review, although in one jurisdiction (Canada) the power is only available in connection with a transfer to a bridge bank. That progress is mainly a result of implementation of the BRRD[70] and the jurisdictions that now have provisions for temporary stays in resolution are predominantly the G-SIB home jurisdictions. In all cases, the power is exercisable by the resolution authority with no court involvement.

The features of the regimes for temporary stays differ across jurisdictions in a number of respects (see Annex H), although in general that variation falls within the ambit of the stay power as set out in the *Key Attributes.* The classes of contracts covered includes, variously, any type of contracts with a bank in resolution,[71] specified classes of financial contracts[72] or contracts with early termination rights and relevant to financial system.[73] The types of contractual rights that may be stayed generally include early termination, acceleration, close out and netting rights. However, cross default rights are covered in all cases in only three jurisdictions[74] and in more limited circumstances in seven jurisdictions.[75] The duration of the temporary stay also varies. While in most cases the duration of the stay is specified in statute and is either limited to one[76] or two[77] business days, in Japan it is specified by the Prime Minister on a case-by-case basis. In the majority of cases, the stay regimes also include explicit

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66 Australia, Canada, France, Germany, Italy, Japan, Korea, Mexico, Netherlands, Singapore, Spain, Switzerland, Turkey, UK, US. The power of the Hong Kong authorities to establish an asset management vehicle is limited to the extent that in seeking to transfer assets neither the Monetary Authority nor a Manager can disregard any requirements for consent or novation that would otherwise apply.

67 This restriction is motivated by concerns about the potential risks relating to moral hazard and anti-competitive impact associated with the use of this power.

68 Those conditions include that the regime: limits the stay to two business days or fewer; requires satisfaction of certain payment and delivery obligations during the stay; requires protection of all netting and set-off rights under the applicable agreements; and requires the party in resolution (or its transferee) to remain subject to the same obligations under the applicable agreement as prior to the resolution intervention.

69 Canada, France, Germany, Italy, Japan, Mexico, Netherlands, Spain, Switzerland, UK, US.

70 France, Germany, Italy, Japan, Mexico, Netherlands and UK have adopted temporary stay powers since 2012.

71 EU Member States (in accordance with the BRRD), Switzerland.

72 Canada, Mexico and US apply the stay regime to a defined category of eligible financial contracts.

73 Japan.

74 Canada, Japan and Switzerland.

75 The six EU Member States and US. See footnotes 2 and 3 in Annex H for details of those circumstances.

76 Canada, the six EU Member States, US.

77 Mexico, Switzerland.

provision for the counterparty safeguards specified in the *Key Attributes* (see I-Annex 5), including restrictions on the splitting of netting sets[78] and preservation of rights to terminate for failure of payment and delivery obligations.[79]

7. Powers to write down and convert liabilities (bail-in)

Bail-in remains one of the resolution tools that is least well established. With the adoption and national implementation of the BRRD, the number of jurisdictions with explicit statutory powers to write down and convert a broad range of unsecured liabilities[80] to equity ('bail-in') has increased to seven.[81] One further jurisdiction (US) does not have an explicit statutory provision in its resolution regime, but the resolution authority reports that it is able to achieve the objective of bail-in specified in the *Key Attributes* through the write-down of unsecured claims using general powers to allocate losses to creditors, combined with compensation of those creditors with equity or other instruments of ownership in a successor entity or bridge bank. This is made possible because of a number of features of the regime that include: a statutory requirement that the value of the assets transferred to a bridge institution exceed the liabilities; an administrative power for the resolution authority to determine creditor claims; and the ability to satisfy those claims with instruments of ownership or other securities issued by the bridge institution to which assets of the failed bank have been transferred.

The *Key Attributes* specify that the objectives of bail-in (a creditor-financed resolution to support continuity of critical functions) may be achieved by alternative means: either recapitalising the entity that provides those functions; or by capitalising a newly established entity or bridge institution to which the functions have been transferred. Whichever of these approaches is taken, KA 3.5 requires that resolution authorities should have powers both to write down liabilities and to convert creditors' claims into equity or other instruments of ownership of the firm (or its successor).

All of the jurisdictions with bail-in powers are able to combine them with other resolution powers (for example, removal of problem assets, replacement of senior management). Approaches differ, however, with regard to the scope of liabilities covered and the safeguards that apply to their use:

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[78] This is explicitly prohibited in Canada, the six EU Member States, Switzerland and the US. There are no explicit statutory restrictions in Mexico and Japan

[79] In Canada, the six EU Member States, Japan and Switzerland, such rights may be exercised during the period of the stay. In Mexico they are only exercisable before and after the stay period, and in the US such rights are only exercisable during the stay by clearing organisations as counterparties under Title II of the DFA, and otherwise may only be exercised after the stay.

[80] Some jurisdictions referred in their response to the ability, achieved through legal contract, to write down or convert regulatory capital debt instruments at the point of non-viability, which is a requirement of Basel III. However, this falls short of the bail-in power as specified in KA3.5 which requires it to apply to both senior "unsecured and uninsured creditor claims" and "contingent convertible or contractual bail-in instruments".

[81] The EU Member States (France, Germany, Italy, Netherlands, Spain, UK) and Switzerland. At the time of the 2013 thematic review, only one jurisdiction – Switzerland – had explicit powers to write down and convert liabilities in its resolution regime, and Spain had limited powers to bail-in subordinated debt (which expired in 2013). In addition, the 2013 Peer Review reported that the US was able to achieve one of alternative outcomes of bail-in specified by the *Key Attributes* – capitalisation of a bridge institution – through transfer powers. This is further discussed in this subsection.

- *BRRD jurisdictions:* The BRRD defines the range of liabilities covered by the bail-in tool by reference to excluded liabilities that are specified in the directive[82] and requires it to be applied in a manner that respects the hierarchy of claims while permitting departure from that principle where necessary to protect financial stability or to maximise value for the benefit of all creditors. It also provides that creditors and shareholders that receive less in resolution than they would have received in liquidation have a right to compensation (a "no creditor worse off safeguard").
- *Switzerland:* The Swiss resolution regime requires that share capital must first be completely written down and other capital instruments (including subordinated debt and contingent convertible bonds) converted, before senior debt can be bailed in. Privileged deposits (i.e. those not exceeding CHF 100,000) and secured claims are excluded from the scope of the bail-in powers. The resolution regime does not explicitly provide for discretion to depart from *pari passu* treatment of creditors or compensation arrangements for creditors that incur higher losses as a result of bail-in than they would have in liquidation.
- *United States:* In the resolution of a financial company under Title II of the DFA, claims must be paid pursuant to the statutory hierarchy of claims, which effectively allocates losses first to equity holders and then to creditors. The powers to settle claims apply to all financial liabilities and departure from *pari passu* treatment is allowed if necessary for financial stability purposes or to minimise losses, but not for the purpose of preserving the financial company. The legislation includes a no creditor worse off safeguard.

8. Temporary public ownership

The *Key Attributes* do not require resolution regimes to include a power to take failed banks into temporary public ownership (TPO). Rather, they specify that if the regime provides for TPO, its use should be subject to conditions to minimise risks of moral hazard. Fourteen jurisdictions provide for TPO and subject its use to specific conditions.[83]

The most common conditions imposed on the adoption of TPO are that it must be used as a last resort and to preserve the stability of the financial system. Eight of the jurisdictions that provide for TPO[84] restrict its use to situations that threaten financial stability. Among these, France, Germany, Netherlands and the UK (in accordance with the BRRD) require that TPO be used only as the last resort to preserve financial stability.[85] Some jurisdictions impose different or additional conditions, such as the protection of public interest or, more specifically, the interest of depositors (Australia, India, UK); and the minimisation of costs to resolution or to the deposit insurance fund (Korea, Singapore). In Switzerland, nationalisation is an emergency power under the Constitution to counter existing or imminent threats to public order or internal or external security.

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82 EU Member States are required to extend bail-in powers to all unsecured liabilities that are not excluded under the BRRD. Excluded liabilities include: deposits protected by a deposit guarantee scheme; short-term inter-bank lending (less than seven days remaining maturity); liabilities clearing houses and payment and settlement systems with a remaining maturity of less than seven days; client assets; and liabilities associated with salaries, pensions or taxes.

83 Australia, Canada, France, Germany, India, Indonesia, Japan, Korea, Netherlands, Russia, Singapore, South Africa, Turkey, UK.

84 Australia, France, Germany, Indonesia, Japan, Netherlands, Singapore, UK.

85 Italy and Spain have not implemented the Government Financial Stabilisation tools of the BRRD, which include TPO.

There is no provision relating to TPO in the legal frameworks of ten jurisdictions, although this does not necessarily preclude the ability to take a failed bank into public ownership if required in extreme circumstances.[86] In Argentina and Mexico, public ownership of a bank in resolution may result if the bank fails to repay extraordinary financial support provided by the State against the bank's shares as collateral and the State enforces that collateral.

IV. Recovery and resolution planning and resolvability assessments

KA 11 requires jurisdictions to develop and maintain RRPs for all domestically incorporated banks that could be systemically significant or critical if they fail. I-Annex 4 to the KAs sets out guidance on the development and maintenance of RRPs. KA 10 requires jurisdictions to undertake regular resolvability assessments, at least for G-SIFIs, that evaluate the credibility and feasibility of firm-specific resolution strategies. The resolvability assessments should be conducted in accordance with the guidance set out in I-Annex 3 to the KAs, and in coordination with other authorities responsible for the firm in question. Supervisory or resolution authorities should have powers to require firms to adopt appropriate measures, such as changes to a firm's business practices, structure or organisation, where necessary to improve their resolvability.

1. Recovery plans

The progress in recovery planning identified in the 2013 Thematic Review has continued, albeit at a slower pace. A further three jurisdictions (Hong Kong, Mexico and Russia) report that they have put in place a requirement for banks to develop recovery plans, bringing the total to seventeen jurisdictions (see Annex I and Graph 3). Of those, ten jurisdictions[87] impose a requirement through statute or rules, while seven[88] rely on guidance or letters issued by supervisory authorities using general supervisory powers. All seven jurisdictions that do not require recovery planning report plans to adopt such a requirement in the future, although in most cases those plans are not yet sufficiently advanced.

The scope of banks covered by the recovery planning requirement varies across jurisdictions. Ten jurisdictions[89] apply the requirement to all banks (albeit proportionately to smaller banks). Russia and Canada[90] apply the requirements beyond domestic systemically important banks (D-SIBs) on a case-by-case basis, while Australia has included several mid-sized banks in its recovery planning exercise. Three other jurisdictions[91] apply them to G-SIBs and, in addition (as applicable), to other systemically important banks. In the US, the requirement to develop recovery plans applies only to G-SIBs; however, other banks above a threshold based on asset

86 Argentina, Brazil, China, Hong Kong, Italy, Mexico, Saudi Arabia, Spain, Switzerland, US.

87 France, Germany, Italy, Mexico, Netherlands, Russia, South Africa, Spain, Switzerland, United Kingdom.

88 Australia, Canada, China, Hong Kong, Japan, Singapore, US.

89 China (banking groups), France, Germany, Hong Kong, Italy, Mexico, Netherlands, South Africa, Spain, UK.

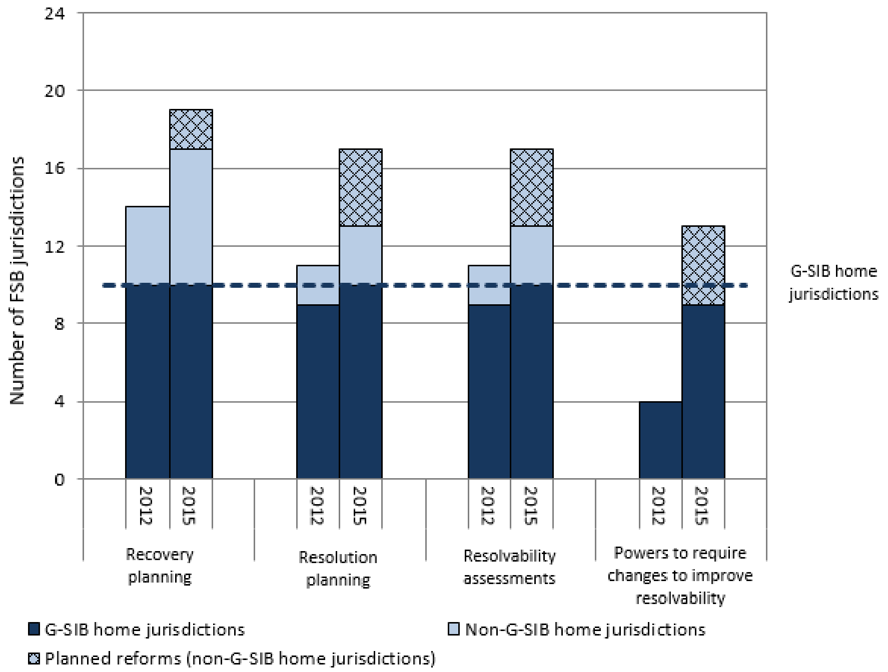
90 Canada is running a recovery planning pilot for five non-conglomerate banks that have not been identified as D-SIBs.

91 Japan, Singapore and Switzerland. Switzerland does not distinguish between G-SIBs and D-SIBs, but has so far focused on G-SIBs and is in the process of extending its framework to other D-SIBs.

size (US$50 billion) are subject to a supervisory expectation that they will engage in recovery planning that may involve the development of recovery plans.[92]

Recovery plans are generally expected to be updated annually. The only exception to this is Russia, where there is no stipulation in the legislation regarding the frequency of plans.[93] In addition, most jurisdictions require *ad hoc* updates when material changes occur and also at the request of the supervisor.

Graph 3: Recovery and resolution planning and resolvability assessments in FSB jurisdictions



Note: The bars for 2012 reflect practice at the time of the 2013 Thematic Review (based on data as of December 2012). The shaded column indicates planned reforms by non-G-SIB jurisdictions that have already been issued for consultation or submitted to the legislature. See the text below and Annexes I-K for details and clarifications.

Jurisdictions take a different approach in communicating content requirements to banks. Eleven jurisdictions[94] have issued primary and secondary legislation, technical guidance or public statements that specify what banks should include in their plans. Five jurisdictions[95] provide content instructions by non-public means, such as supervisory letters. The peer review did not examine the extent to which the contents of such guidance are consistent with FSB requirements.

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[92] The Office of the Comptroller of the Currency (OCC) intends to make this supervisory expectation a regulatory requirement for insured institutions it supervises with total consolidated assets of US$50 billion or more. On 17 December 2015, the OCC issued a Notice of Proposed Rulemaking that would establish enforceable guidelines requiring such institutions to develop recovery plans appropriate for their individual risk profiles, size, activities and complexity, and to establish procedures for management and the board of directors to review the plans at least annually.

[93] The supervisory guidelines in China require regular updates of recovery plans but do not specify the time period; in practice, G-SIBs are currently required by CBRC through supervisory policy to update their recovery plans annually

[94] France, Germany, Hong Kong, Italy, Japan, Mexico, Netherlands, Spain, Switzerland, UK, US.

[95] Australia, Canada, China, Russia and Singapore.

In fourteen jurisdictions[96] supervisors approve or review recovery plans, while three other jurisdictions (Australia, South Africa, US) have no formal requirement but supervisors review the plans in practice. In all jurisdictions where recovery plans are currently required, authorities have the power to require banks to make changes to those plans, although some rely on general supervisory powers rather than powers specific to recovery planning. The peer review has not explored the extent to which recovery planning has been integrated in jurisdictions' ongoing supervisory processes. However, given the increasing use of such planning, it would be useful for authorities to explicitly embed it in 'business as usual' supervision.[97]

2. Resolution plans

Less progress has been made in putting in place processes for resolution planning than for recovery planning (see Annex J and Graph 3). Thirteen jurisdictions are currently engaged in resolution planning, most of which are home jurisdictions of G-SIBs. Of those, eight jurisdictions[98] have a statutory requirement for such planning, while five[99] carry it out as a matter of policy or practice.[100]

The scope of banks for which resolution planning is currently being undertaken varies. In the EU and Mexico, resolution planning is required for all banks, while in China resolution plans are only prepared for G-SIBs. In Canada, Japan, Singapore, Switzerland and the US, plans are prepared for other systemically important banks in addition to, as applicable, G-SIBs.[101]

In all jurisdictions where resolution plans are being developed, the plans are developed by the responsible authorities while banks are expected to provide the necessary information and analysis to assist authorities in that task. For example, in the UK banks are required to provide the authorities with a standardised baseline set of information detailing legal structure and critical functions and additional detailed information tailored to the preferred resolution strategy for the bank.[102] In the US, the information provided by banks in their Title I plans for their rapid and orderly resolution under the US Bankruptcy Code in the event of material financial distress or failure[103] is used by the FDIC as a resource for resolution planning.

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96 Canada, China, France, Germany, Hong Kong, Italy, Japan, Mexico, Netherlands, Russia, Singapore, Spain, Switzerland, UK. In the case of Canada, OSFI reviews recovery plans and has the power to request the institution to make any changes to its plan similar to other supervisory recommendations/requirements, but it does not approve the plans.

97 See also the April 2015 FSB thematic peer review on supervisory frameworks and approaches for SIBs (http://www.fsb.org/wp-content/uploads/Thematic-Review-on-Supervisory-Approaches-to-SIBs.pdf).

98 France, Germany, Italy, Mexico, Netherlands, Spain, Switzerland, UK.

99 Canada, China, Japan, Singapore, US.

100 Russia has a statutory requirement for resolution planning (article 57 of the Bank of Russia Law), but its implementation is pending more detailed guidance that is currently being developed.

101 In Canada, CDIC can also prepare resolution plans for other banks on a case-by-case basis.

102 See http://www.bankofengland.co.UK/pra/Documents/publications/policy/2013/resolutionplanning1913.pdf.

103 Pursuant to the Dodd-Frank Act and relevant implementing regulations, bank holding companies with US$50 billion or more in total consolidated assets and certain large, complex non-bank financial institutions that could pose a threat to the financial stability of the United States, as determined by the FSOC, are required to submit what are commonly referred to as "living wills" to the FDIC and the Federal Reserve Board. Those living wills are required to provide a broad range of information relevant to resolution planning and implementation including, for example, detailed descriptions of organisational structures, credit exposures and cross-guarantees, and supporting data. In addition, insured depository institutions with US$50 billion or more in total assets are required to provide similar information to the FDIC. See https://www.fdic.gov/regulations/reform/resplans/.

Nearly all of the thirteen jurisdictions require review of the resolution plans by senior officials from the resolution authority,[104] and most of them require the plans to be updated at least annually and after any material changes to the structure, business or financial position of the bank have taken place.[105]

Of the thirteen jurisdictions that currently undertake resolution planning, only the six EU Member States and Mexico have specified the minimum contents of plans in statute or publicly available guidance.[106] The most detailed description on the content of resolution plans (and on the assessment of resolvability) is found in the EU, where the European Banking Authority (EBA) has published detailed Regulatory Technical Standards addressed to national resolution authorities in the EU Member States.[107] The peer review did not examine the extent to which the contents of such guidance are consistent with FSB requirements.

3. Resolvability assessments

Little progress is reported in this area compared to the 2013 Thematic Review. Resolvability assessments are being carried out currently in only thirteen jurisdictions, and in several of them the process appears to be at a nascent stage.[108] Those jurisdictions include all G-SIB home authorities (prompted by the need to carry out the FSB's Resolvability Assessment Process), and all those currently undertaking resolution planning. That alignment is not surprising: resolution planning and resolvability assessments are intrinsically linked, and experience has shown that effective resolution planning is an iterative process by which resolvability assessments can both inform resolution plans and test their feasibility. Of the eleven jurisdictions that do not currently undertake resolvability assessments, two (Argentina and Russia) report no plans to carry these out in the future.

For those jurisdictions where authorities undertake resolvability assessments, seven[109] have put in place a statutory requirement, while in five[110] the authorities carry them out using existing powers (see Annex K and Graph 2). However, few jurisdictions have established explicit guidance about how resolvability assessments should be conducted and there is no formal framework for assessing resolvability outside the EU.

The six FSB jurisdictions that are EU Member States require resolvability assessments for all banks (subject to the principle of proportionality). For other jurisdictions the scope varies, with some jurisdictions carrying out resolvability assessments only for G-SIBs (China, Switzerland, US) and others for other systemically important banks as well (Canada, Japan, Singapore).

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[104] The only exceptions are Germany and Switzerland. While Swiss law does not provide for an explicit requirement for senior official review, this type of review represents existing practice.

[105] The only exceptions are Mexico and Switzerland.

[106] Singapore is currently preparing such guidelines.

[107] The EBA's approach is to identify eight categories of information that the resolution plan should contain. The Regulatory Technical Standard proposes a general requirement for any information necessary to enable the delivery of the preferred resolution strategy to be included in each category, as well as specific requirements in each category. See https://www.eba.europa.eu/documents/10180/933992/EBA-RTS-2014-15+%28Final+draft+RTS+on+Resolution+Plan+Contents%29.pdf.

[108] Canada, China, France, Germany, Italy, Japan, Mexico, Netherlands, Singapore, Spain, Switzerland, UK, US.

[109] China, France, Germany, Italy, Netherlands, Spain, UK.

[110] Canada, Japan, Singapore, Switzerland, US.

4. Challenges to resolution planning and resolvability assessments

In their responses, jurisdictions identify a number of common challenges in the preparation of resolution plans and resolvability assessments, including: lack of relevant data from banks (e.g. on legal entity level); lack of experience on how to use and filter large amounts of bank data; development of realistic scenarios; lack of clarity about the definition of resolvability or the criteria for assessing it, and lack of information needed to carry out these assessments. Moreover, the uneven progress in resolution planning and the absence of harmonised criteria, coordination protocols and lack of resolution tools in some jurisdictions pose a challenge in terms of meaningful home-host interactions.

Given the early stage of development and the common challenges identified by jurisdictions, and notwithstanding other work already carried out within the FSB, it is important to encourage greater sharing of knowledge and experiences in this area – both among G-SIB home authorities and more broadly across FSB members (e.g. jurisdictions implementing resolution-related reforms). This can be achieved via targeted workshops and technical assistance, in collaboration with international financial institutions and other relevant bodies. A particular focus of such work would be the development of resolution plans, the conduct of resolvability assessments and the adoption of measures to improve resolvability.

5. Powers to require banks to make changes to improve resolvability

Only nine jurisdictions[111] currently have explicit statutory powers to require banks to adopt appropriate measures where necessary solely in order to improve their resolvability (see Graph 3). Even where these powers exist, no jurisdiction reports that it has already exercised them.[112] Nine other jurisdictions[113] report that supervisory authorities have some powers to require supervised banks to make changes to their business organisation and legal structure,[114] but the purposes for and circumstances under which authorities can exercise such powers vary. In particular, in some cases the powers to require certain actions can only be exercised after a bank fails to meet specific regulatory requirements or comes close to meeting the conditions for resolution. In other cases, it is not clear whether the scope of those supervisory powers extend to altering a bank's business practices, structure or organisation solely as a means to improve resolvability. Given the intrusive nature of these measures and the fact that they should take effect in advance of any deterioration in a bank's condition, a clear power is necessary for supervisory or resolution authorities to require changes explicitly for the purposes of improving resolvability.

[111] France, Germany, Italy, Japan, Netherlands, Spain, Switzerland, UK, US.

[112] The UK authorities report that the Bank of England and the PRA are currently working to ensure that any structural or operational changes that banks make to comply with the ring-fencing rules under the UK Financial Services (Banking Reform) Act 2013 are in line with resolution objectives and facilitate post-resolution restructuring. The Dutch authorities report that DNB has started work on measures to improve resolvability under the pre-BRRD regime.

[113] Argentina, Australia, China, Hong Kong, Korea, Mexico, Saudi Arabia, Singapore, Turkey.

[114] These include, for example, the power to require the institution to: (i) change its legal or operational structure; (ii) divest specific assets; (iii) limit or cease specific existing or proposed activities; and (iv) restrict or prevent the development of new or existing business lines or sale of new or existing products.

Annex A: Abbreviations for financial authorities in FSB jurisdictions

Argentina
BCRA Central Bank of the Argentine Republic, central bank and banking supervisor

Australia
APRA Australian Prudential Regulation Authority, integrated financial regulator

Brazil
BCB Central Bank of Brazil, central bank and banking supervisor

Canada
CDIC Canada Deposit Insurance Corporation, deposit insurer and resolution authority
OSFI Office of the Superintendent of Financial Institutions, prudential supervisor

China
PBC People's Bank of China, central bank
CBRC China Banking Regulatory Commission, banking supervisor
DIFMA Deposit Insurance Fund Management Agency

European Union
SRB Single Resolution Board (part of SRM)

France
ACPR Autorité de Contrôle Prudentiel et de Résolution, prudential supervisor and resolution authority

Germany
BaFin Federal Financial Supervisory Agency, integrated financial regulator
FMSA Bundesanstalt für Finanzmarktstabilisierung, bank resolution authority

Hong Kong
HKMA Hong Kong Monetary Authority, monetary authority and banking supervisor

India
RBI Reserve Bank of India, central bank and banking supervisor

Indonesia
BI Bank Indonesia, central bank
LPS Indonesian Deposit Insurance Corporation
OJK Indonesian Financial Services Authority, integrated financial supervisor
FKSSK Financial System Stability Coordination Forum

Italy
BoI Bank of Italy, central bank, national resolution authority and banking supervisor

Japan
JFSA Japan Financial Services Agency, integrated financial regulator
DICJ Deposit Insurance Corporation of Japan

Korea
FSC Financial Services Commission, integrated financial regulator (with FSS)
KDIC Korea Deposit Insurance Corporation, deposit insurance and bank resolution agency

Mexico	
IPAB	Institute for the Protection of Banking Savings, deposit insurance and bank resolution authority
SHCP	Ministry of Finance
BANXICO	Bank of Mexico, central bank
CNBV	National Banking and Securities Commission, banking regulator and supervisor
Netherlands	
DNB	De Nederlandsche Bank, central bank, national resolution authority and integrated financial regulator
Russia	
BoR	Bank of Russia, central bank, resolution authority (with DIA) and banking supervisor
DIA	Deposit insurance and bank resolution authority (with BoR)
Saudi Arabia	
SAMA	Saudi Arabian Monetary Agency, central bank and prudential supervisor
Singapore	
MAS	Monetary Authority of Singapore, central bank, integrated financial regulator and resolution authority
South Africa	
SARB	South African Reserve Bank, central bank
Registrar of Banks	Prudential supervisor (within Reserve Bank)
Spain	
BdE	Banco de España, central bank, preventative resolution authority
FROB	Fund for Orderly Bank Restructuring, executive bank resolution authority
Switzerland	
SNB	Swiss National Bank, central bank
FINMA	Financial Market Supervisory Authority, integrated financial regulator
Turkey	
BRSA	Banking Regulation and Supervision Agency, prudential supervisor
SDIF	Savings Deposit Insurance Fund, deposit insurance and bank resolution authority
United Kingdom	
BoE	Bank of England, central bank, resolution authority
FCA	Financial Conduct Authority, securities regulator
PRA	Prudential Regulation Authority (subsidiary of the BoE, prudential supervisor)
HMT	Ministry of Finance
United States	
FDIC	Federal Deposit Insurance Corporation, deposit insurance and bank resolution agency
FRB	Federal Reserve Board, central bank and prudential supervisor
OCC	Office of Comptroller of the Currency, banking supervisor
SEC	Securities and Exchange Commission, securities regulator

Annex B: Legal and institutional frameworks for resolution

Jurisdiction	Institutional framework		
	Authority responsible for determining if conditions for resolution met	Authority responsible for deciding the resolution strategy and actions	Authority responsible for implementing the resolution
Argentina	BCRA	BCRA	BCRA
Australia	APRA	APRA with Council of Financial Regulators	APRA with Council of Financial Regulators
Brazil	BCB	BCB	BCB
Canada	OFSI	CDIC (however, certain bank resolution tools require authorisation of the Governor in Council)	CDIC
China	CBRC (consult PBC and DIFMA)	CBRC, PBC and DIFMA	DIFMA and PBC
France	ACPR, SRB and ECB*	SRB (consult ACPR)***	ACPR
Germany	FMSA, SRB and ECB*	SRB (consult FMSA)***	FMSA
Hong Kong	HKMA (consult Financial Secretary but not bound by advice)	HKMA (consult Financial Secretary but not bound by advice)	HKMA (consult Financial Secretary but not bound by advice)
India	RBI	RBI	RBI
Indonesia	OJK	FKSSK (for banks which pose a systemic impact), LPS (for banks which do not pose a systemic impact)	LPS
Italy	Bank of Italy, SRB and ECB*	SRB (consult Bank of Italy)***	Bank of Italy
Japan	JFSA, Prime Minister confirmation	JFSA	JFSA or DICJ (in case of orderly resolution)
Korea	FSC KDIC	FSC	FSC KDIC
Mexico	CNBV	IPAB (Banking Stability Committee (CEB) can influence if there are systemic consequences)	IPAB
Netherlands	DNB, SRB and ECB*	SRB (consult DNB)***	DNB
Russia	Bank of Russia	Bank of Russia (DIA participation possible)	Bank of Russia (DIA participation possible)
Saudi Arabia	SAMA	SAMA	SAMA
Singapore	MAS	MAS	MAS

South Africa	The Registrar of Banks	Curator with direction from the Registrar and Minister of Finance	Curator with direction from the Registrar
Spain	BdE and FROB, SRB and ECB*	SRB (consult FROB)***	FROB
Switzerland	FINMA	FINMA	FINMA
Turkey	BRSA	SDIF	SDIF
United Kingdom	PRA, BoE (consult FCA and HMT)**	BoE	BoE (HMT for temporary public ownership tool)
United States	For insured depository institutions, FDIC, OCC, applicable State authority. For systemic entities other than insured depository institutions, Treasury Secretary, in consultation with President, following recommendation from FRB and FDIC/SEC	FDIC (for Title II and FDI Act)	FDIC (for Title II and FDI Act)

* As of 1 January 2016, the responsibility for determining whether the conditions for entry into resolution are met is divided between European authorities (SRB and ECB) and national authorities, depending on whether the bank in question is within the scope of the SRM. See Box 1 and Figure 1 in the text.

- For significant banks (that is, those that are supervised by the ECB under the SSM), cross-border groups and any other banks for which the SRB is responsible (i.e. those where a resolution scheme foresees the use of the Single Resolution Fund), from 1st January 2016 responsibility for the three elements of the conditions for entry into resolution is allocated between the SRB and the ECB as follows:
  - The ECB has primary responsibility for determining whether a bank is failing or likely to fail (Condition 1). The SRB may make that determination only after informing the ECB of its intention, and only if the ECB has not reacted within 3 days of such notification by the SRB.
  - The SRB, in cooperation with the ECB, is responsible for the determination that there is no alternative private solution to resolution action (Condition 2).
  - The SRB is responsible for the determination that a resolution action is necessary in the public interest (Condition 3).
- For all other banks, the specified national authorities remain responsible.

** In the UK, responsibility for determining whether the conditions for entry into resolution are met is divided between the Bank of England, PRA, FCA and the Treasury (HMT). The PRA is responsible for determining that Condition 1 has been met, and is required to consult the BoE. The BoE is responsible for determining that Conditions 2 and 3 have been met, and is required to consult the PRA, FCA and HMT.

*** As of 1 January 2016, the SRB is responsible for resolution planning for banks within the scope of the SRM, with a duty to consult national supervisory and resolution authorities.

Annex C: Scope of resolution powers

NOHC = Non-operating holding company, DBFB = Domestic branch of foreign bank

= No such entity exists

Jurisdiction	Control & operate a firm		Replace manage-ment		Continuity of services and functions[3]		Transfer powers		Bridge bank		Asset Manage-ment Vehicle		Write down and convert liabilities		Impose temporary stay	
	NOHC	DBFB	NOHC	DBFB	NOHC	DBFB	NOHC	DBFB	NOHC	DBFB	NOHC	DBFB	NOHC	DBFB	NOHC	DBFB
Argentina		X		X				X								
Australia			X[1]		[1]	X	X[2]		X[2]		X[2]					
Brazil	X	X	X	X			X	X								
Canada																
China		X		X				X								
France	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Germany	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Hong Kong				X	[1]											
India				X												
Indonesia		X		X	[1]			X								
Italy	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Japan	X	X	X	X	[1]	[1]	X	X	X	X	X	X	[4]	[4]	X	X
Korea	X	X	X	X			X	X	X	X	X	X				
Mexico	X[1]		X[1]		[1]		X[1]									
Netherlands	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Russia																
Saudi Arabia				X												
Singapore	X[1]	X	X[1]	X	X[1]	X	X[1]	X	X[1]	X	X[1]	X				
South Africa		X		X				X								
Spain	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Switzerland	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Turkey	X	X	X	X	[1]		X	X			X	X				
United Kingdom	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
United States	X		X				X		X		X		X		X	

[1] *Power is only available for regulated group entities (or entities in the same financial holding in the case of Turkey).*

[2] *In the case of Australia, APRA can apply its powers relating to transfer of business to group entities, provided it is also making a transfer of the assets of the bank itself.*

[3] *The column only shows an explicit power for the resolution authority to require an entity (whether or not regulated) in the same financial group as the bank in resolution to provide critical shared services to that bank or to a successor entity to which critical functions of that bank have been transferred.*

[4] *The Japanese authorities report that they are able to achieve the economic objectives of bail-in by capitalising a bridge institution to which functions have been transferred and by liquidating the residual firm via powers to separate assets and liabilities of a failed institution. However, it is not clear that the resolution regime provides for powers to convert claims of creditors of the failed institution into equity of that institution or of any successor in resolution as required by KA 3.5 (ii).*

Annex D: Planned reforms to bank resolution regimes in FSB jurisdictions

Jurisdiction	Planned reforms			Current stage
	Scope of regime	Resolution powers	Recovery and resolution planning, resolvability assessments	
Reforms issued for consultation or submitted to the legislature				
Australia		Introduce temporary stay power		Reform or policy proposals published
Canada		Introduce bail-in power		Reform or policy proposals published
China			Introduce resolution planning requirements, resolvability assessments, and measures to allow authorities to require changes to improve resolvability	Draft rules submitted
Hong Kong	Broaden scope to include authorised institutions (including local holding companies)	Appoint HKMA as resolution authority. Introduce full range of stabilisation powers, powers to require changes to improve resolvability and a temporary stay	Introduce resolution planning requirements, resolvability assessments, and measures to allow authorities to require changes to improve resolvability	Draft legislation submitted
Korea		Introduce bail-in power and temporary stay power	Introduce recovery and resolution regime including resolution plans and resolvability assessments	Reform or policy proposals published
Saudi Arabia		Introduce resolution regime with all powers found in the *Key Attributes*	Introduce recovery and resolution planning regime, including resolvability assessments and powers to require measures to improve resolvability	Reform or policy proposals prepared (draft law submitted to Council of Ministers and is under review by Bureau of Experts)
Singapore		Introduce statutory bail-in power and temporary stay power	Introduce specific powers to require recovery and resolution planning and explicit power to make changes to remove barriers and impediments to resolvability	Reform or policy proposals published
South Africa	Broaden scope to include holding companies	Introduce bridge bank, bail-in and temporary stay powers	Introduce recovery and resolution planning requirements, resolvability assessments, and measures to allow authorities to require changes to improve resolvability	Reform or policy proposals published

Turkey		Introduce bridge bank and Purchase & Assumption (in bank liquidation) powers		Draft legislation submitted
Reforms under discussion				
Australia	Broaden scope to include increased powers over holding companies, branches and unregulated group companies	Strengthen existing statutory management and directions powers	Development of a formal framework for recovery and resolution planning and power to require changes to improve resolvability	Policy development pre-consultation
Brazil		Introduce bail-in, bridge bank and temporary stay powers	Require banks to prepare recovery plans and allow BCB to determine changes to banks' structures based on a resolvability assessment	Legislation being drafted
China		Introduce additional resolution powers, including bridge bank		Implementation rules being drafted
India		Introduce control and operate, transfer and bridge bank powers	Introduce recovery and resolution planning and resolvability assessments	Draft legislation prepared and put in public domain for consultation
Indonesia		Introduce additional resolution powers, including bail-in and bridge bank	Introduce recovery and resolution planning requirements (including resolvability assessments)	Legislation being drafted
Russia			Introduce Regulation (to replace Direction) of the Bank of Russia as a legally binding directive in relation to guidelines for the development of recovery plans	Draft regulation prepared
Turkey		Introduce bail-in and temporary stay powers	Introduce recovery and resolution planning, resolvability assessments and power to require changes to improve resolvability	BRSA and SDIF currently drafting legislative amendments

Annex E: Conditions for use of resolution powers

Conditions	Conditions for entry intro resolution/use of resolution powers
Argentina	The BCRA may either restructure a financial entity or revoke its license in circumstances specified in the general commercial law or legislation governing financial entities (e.g. loss of capital, unlawful activities, fundamental change in licensing conditions), severe liquidity and/or solvency deficiencies that cannot be addressed by 'regularisation and stabilisation plan'.
Australia	Different specific conditions apply for general direction powers, directions to recapitalise, transfers and statutory management powers. Conditions for general direction powers include: breach or likely breach of regulatory or prudential requirements; protection of interests of depositors; inability or likely inability to meet liabilities; material risk to assets; material risk of deterioration in financial condition; unsound or improper conduct of business; risks to financial stability. Conditions for directions to recapitalise: inability or likely inability to meet liabilities; material risk to assets; material risk of deterioration in financial condition; unsound or improper conduct of business; risks to financial stability. Conditions for compulsory business transfers: transfer appropriate having regard to interests of financial sector as whole and any other matters APRA considers relevant. In addition, where transfer is made to another ADI, at least one of the following conditions apply: breach or likely breach of regulatory or prudential requirements; inability or likely inability to meet liabilities; appointment by APRA of administrator, investigator or other person to control business of transferring ADI; and APRA considers the transfer appropriate in depositors' interests (additional conditions apply if the transfer is to be made to an entity other than an ADI). Conditions for statutory management powers: ADI is unable to meet obligations and suspends payment; informs APRA that this is likely; or APRA considers that in the absence of external support the ADI may be unable to meet its obligations, may suspend payment, or that there are risks to the interests of depositors or financial stability.
Brazil	The main conditions for entry are situations of severe economic and/or financial distress (insolvency or its imminence); and severe violation of Brazilian banking laws.
Canada	Determination by OSFI (prudential supervisor) that bank has ceased or is about to cease to be viable and viability cannot be restored using the Superintendent's powers. Determination to take into account the following considerations: excessive dependence on financial assistance such as loans or guarantees; loss of depositor or public confidence; actual or likely substantial deficiencies in regulatory capital; actual or likely failure to pay liabilities as they fall due; whether the actions would be in furtherance of CDIC's objectives. There exist separate conditions for OSFI to take control of a bank or its assets.
China	Conditions refer to when a bank has suffered or is likely to suffer a credit crisis, thereby seriously affecting the interests of the depositors or other customers.
EU Member States	The following conditions must all be met: (a) the institution is failing or is likely to fail; (b) having regard to timing and other relevant circumstances, there is no reasonable prospect that any alternative private sector measures, or supervisory action, including early intervention measures or the write down or conversion of relevant capital instruments taken in respect of the institution, would prevent the failure of the institution within a reasonable timeframe; (c) a resolution action is necessary in the public interest. An institution is deemed to be failing or likely to fail in one or more of the following circumstances: (a) the institution infringes or will in the near future infringe the requirements for continuing authorisation in a way that would justify the withdrawal of the authorisation by the competent authority; (b) the assets of the institution are or will in the near future be less than its liabilities; (c) the institution is or will in the near future be unable to pay its debts or other liabilities as they fall due; (d) extraordinary public financial support is required (excluding specified forms taken to address a serious disturbance in the economy of a member state or preserving financial stability).

Hong Kong	The HKMA may, after consulting with the Financial Secretary, take intervention actions in respect of an authorized institution in the following circumstances: (a) an authorized institution informs the HKMA that it is likely to become unable to meet its obligations or that it is insolvent or about to suspend payment; (b) an authorized institution becomes unable to meet its obligations or suspends payment; (c) the HKMA is of the opinion that: (i) an authorized institution is carrying on its business in a manner detrimental to the interests of its depositors or potential depositors, its creditors, or holders or potential holders of multi-purpose cards issued by it or the issue of which is facilitated by it; (ii) an authorized institution is insolvent or is likely to become unable to meet its obligations or is about to suspend payment; (iii) an authorized institution has contravened or failed to comply with any provisions of the Banking Ordinance; (iv) an authorized institution has contravened or failed to comply with any condition attached under the Banking Ordinance by the HKMA to its authorization or approval or specified in certain provisions in the Banking Ordinance; or (v) his power under the Banking Ordinance to propose to revoke the authorization of an authorized institution is exercisable; or (d) the Financial Secretary advises the HKMA that he considers it in the public interest to do so.
India	Generally invoked where it appears to the RBI and/or to the Central Government that it is necessary to take action in public interest, or in the interests of depositors, or to secure proper management of the banking company or in the interests of the banking system of the country as a whole.
Indonesia	If remedial measures prove insufficient to recover the bank's deteriorating conditions or the supervisor considers that the rapid deterioration endangers the banking system, the bank will be designated as unresolvable if: a) the bank's minimum capital ≤4% and could not be restored to 8%, and/or b) the statutory reserve in domestic currency ≤0% and is determined could not be restored to meet the central bank's requirement The designation will also be applied if the prescribed time limit to restore the bank's condition is exceeded and: a) the bank's minimum capital ratio is less than 8% and/or) the statutory reserve in domestic currency is less than 5%.
Japan	<u>Measures against financial crisis (i.e. financial assistance or temporary nationalisation)</u>: Where the Prime Minister, in consultation with the Financial Crisis Response Council, finds "that serious problems might arise in the maintenance of stability of the financial system of Japan or a particular region where the financial institutions concerned has its operations if measures are not taken". <u>Orderly resolution of the financial institution (control by DICJ, with powers to manage, dispose of property, transfer business, etc.)</u>: a bank is insolvent or likely to become so, or has suspended payments or is likely to do so, and the Prime Minister, based on the deliberation of the Financial Crisis Response Council, finds a risk "that severe disruption in the financial market and other financial system in Japan will arise unless specified measures are implemented."
Korea	Any one of the following conditions shall be met for the supervisory authorities to exercise resolution power: 1. Insolvent financial institutions; 2. The ratio of equity capital to risk weighted asset is less than 2/100; 3. When the financial institution already subject to the management improvement requirement seems to be in a difficult situation to continue its normal operation because it has not implemented, or can hardly implement material matters of its management improvement plan.
Mexico	There are three triggering events for resolution of banks: 1. If the capital adequacy ratio (CAR) of a bank falls to between 8% and 4.5%, it may apply to operate under a 'Conditional operating regime' (COR). Resolution process would begin if the bank under COR breaches provisions of the prompt corrective action regime. 2. Automatic entry into resolution where CAR falls below 4.5%; if the bank does not apply to the COR; or if it fails to comply with mandatory capital restoration plan. 3. A bank experiences serious liquidity problems (without is CAR falling below 8%). A bank is deemed to be illiquid if it fails to pay: (i) a specified amount (approx. USD 7 million) of interbank liabilities (including to the central bank) or liabilities due to issuance of securities; or (ii) a specified amount (approx. USD 700,000) of payments within a clearing system or at the bank's branches for more than 2 business days.

Russia	- Failure to satisfy creditors' claims within three days of the due date on more than one occasion over a 6-month period, or - failure to satisfy creditors more than three days of the due date; - decline of more than 20% in shareholder's equity over a 12 month period, where that decline breaches a regulatory ratio; - breach of any capital adequacy ratio; - breach of liquidity ration by more than 10% in preceding month.
Saudi Arabia	Any violation of law or regulation (including violation of capital or liquidity adequacy) and by any situation that may seriously affect the solvency or liquidity of a bank.
Singapore	MAS may exercise resolution powers where a bank is failing or is likely to fail and normal insolvency proceedings or the failure of the financial institution would cause widespread adverse effect on the financial system in Singapore or the economy of Singapore, or both; resolution may be necessary in the public interest or in consideration of any matter MAS considers relevant, for example to support resolution action initiated by the home authority of a cross-border group. In addition, specific conditions have to be satisfied for the exercise of each specific resolution power, for example: <u>Statutory management:</u> - The bank is or is likely to become insolvent, or likely to be unable to meet obligations, or has suspended or is likely to suspend payments; or - MAS believes that the bank is carrying on business in a way that is detrimental to specified persons, or has contravened regulatory provisions, or has failed to comply with licensing conditions. <u>Transfer powers (including bridge):</u> - consent of transferee; and - MAS is satisfied that transfer is appropriate, having regard to interests of depositors, financial stability in Singapore or any other matter that MAS considers relevant.
South Africa	The Registrar may request the Minister of Finance to place a bank under curatorship if the Registrar believes the bank cannot or will not be able to meet its obligations, including to depositors. Minister appoints curator if considers it in the public interest (as opposed to compulsory winding-up).
Switzerland	A justified concern that a bank is over-indebted, has serious liquidity problems, or no longer fulfils the capital-adequacy provisions after the expiry of a deadline set by the FINMA.
Turkey	Any of the following conditions shall be met for the BRSA to exercise its resolution powers: (a) A bank has not taken restrictive measures required by the Banking Regulation and Supervision Board of the BRSA or such measures have not strengthened the bank's financial structure; (b) The continuation of the bank's activities would endanger the rights of the owners of depositors and participation funds and the security and stability of the financial system; (c) The bank has not fulfilled its obligations as they fall due; (d) The total value of the liabilities of the bank exceeds the total value of its assets; (e) there has been fraudulent use of the bank's resources by dominant partners or bank managers in such a manner that jeopardises the sound operations of the bank
United States	Systemic financial companies can be resolved under the Dodd Frank Act (DFA) if the Treasury Secretary determines, among other things, that they are in default or in danger of default, considered to be if: (1) a case has been, or likely will promptly be, commenced under the Bankruptcy Code; (2) it has incurred, or is likely to incur, losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the company to avoid such depletion; (3) its assets are, or are likely to be, less than its obligations to creditors and others; or (4) it is, or is likely to be, unable to pay its obligations (other than those subject to a bona fide dispute) in the normal course of business. The FDI Act provides a wide range of triggers under which an insured depository institution (IDI) can be placed into resolution.

Annex F: Typology of conditions for use of resolution powers

Jurisdiction		Types of conditions			Conditions cumulative or alternative?*
		Actual or likely failure, default or insolvency	Public interest (incl. financial stability and depositor protection)	Use of powers is necessary and proportionate	
Argentina		X			
Australia		X	X		Alternative
Brazil		X			
Canada		X	X	X	Cumulative
China		X	X		Cumulative
France		X	X	X	Cumulative
Germany		X	X	X	Cumulative
Hong Kong		X	X		Alternative
India		X	X		Alternative
Indonesia		X			
Italy		X	X	X	Cumulative
Japan		X	X		Cumulative
Korea		X			
Mexico		X			
Netherlands		X	X	X	Cumulative
Russia		X	X		Cumulative
Saudi Arabia		X			
Singapore		X	X	X	Alternative
South Africa		X			
Spain		X	X	X	Cumulative
Switzerland		X		X	Cumulative
Turkey		X	X	X	Alternative
United Kingdom		X	X	X	Cumulative
US	DFA	X	X	X	Cumulative
	FDIA	X	X		Cumulative

* Cumulative means that each category of conditions must be met. Alternative means that the relevant powers may be exercised if at least one of the categories of conditions specified in the regime are met.

Annex G: Availability of bank resolution powers

Jurisdiction	Control and operate a bank	Replace management	Ensure continuity of services for group companies*	Transfer powers	Bridge bank	Asset Management Vehicle	Write down and convert liabilities (bail-in)	Impose temporary stay
Argentina	X	X		X				
Australia	X	X	[1]	X	X[2]	X		
Brazil	X	X		X				
Canada	X[3]	X	[1]	X	X	X		X[4]
China	X	X	[1]	X				
France	X	X	X	X	X	X	X	X
Germany	X	X	X	X	X	X	X	X
Hong Kong[5]		X	[1]	[6]	[6]	[6]		
India	[7]	X						
Indonesia	X	X	[1]	X				
Italy	X	X	X	X	X	X	X	X
Japan	X	X	[1]	X	X	X	[12]	X[8]
Korea	X	X		X	X[2]	X		
Mexico	X	X	[1]	X	X[9]	X		X
Netherlands	X	X	X	X	X	X	X	X
Russia	X	X		X				
Saudi Arabia[11]		X						

Jurisdiction	Control and operate a bank	Replace management	Ensure continuity of services for group companies*	Transfer powers	Bridge bank	Asset Management Vehicle	Write down and convert liabilities (bail-in)	Impose temporary stay
Singapore	X	X	X	X	X	X		
South Africa	X[11]	X		X				
Spain	X	X	X	X	X	X	X	X
Switzerland	X	X	X	X	X[2]	X	X	X
Turkey	X	X	[1]	X		X		
United Kingdom	X	X	X	X	X	X	X	X
United States	X	X		X	X	X	X	X

* The column 'Ensure continuity of services for group companies' shows an explicit power for the resolution authority to require an entity (whether or not regulated) in the same financial group as the bank in resolution to provide critical shared services to that bank or to a successor entity to which critical functions of that bank have been transferred.

1 Power is available only for regulated group entities (or entities in the same financial holding in the case of Turkey).
2 No reverse transfer power.
3 The CDIC does not have the power to terminate contracts.
4 The stay power is limited to circumstances of transfer to a bridge bank.
5 The HKMA has no general power to override rights of shareholders of an authorised institution in resolution; under EN 3.2(g), resolution powers must not require or be contingent on the cooperation of the failing bank or its shareholders, and should be exercisable without the consent of the bank, its shareholders or its creditors.
6 The HKMA is empowered to give directions and/or to appoint a Manager to manage the affairs, business and property of an authorised institution and the Manager is empowered to sell or dispose of the business or property of the authorised institution. However, in seeking to transfer assets, rights and liabilities, neither the HKMA nor the Manager has the legal authority to disregard any requirements for consent or novation that would otherwise apply.
7 RBI may supersede a bank's Board of Directors for a total period that shall not exceed twelve months. Provision for appointment of an Administrator (not being an officer of the Central or State Government) has been introduced in such instances. However, the bank is not in resolution and management continues to operate. Moreover, powers to enter into, continue, terminate and assign contracts and service agreements and to purchase or sell assets are not specifically mentioned in the statutes.
8 The duration of stay is not limited in legislation but is specified by the Prime Minister on a case-by-case basis.
9 No reverse transfer power. The IPAB may transfer back the assets of the bridge bank that has reached its maximum operation limit (1 year) to the bank in the liquidation process.
10 SAMA interprets the broad powers in Article 22 of the Banking Control Law as permitting, in appropriate cases, other resolution measures specified in the *Key Attributes*, such as transfer to a bridge bank or write down of liabilities. However, it has not hitherto taken such measures. There have been various instances in the past where shareholder rights have been overridden by SAMA measures, but these cases have not been contested and thus have not been subject to court review.
11 The ability to temporarily take control of and operate a bank in resolution is "subject to conditions and certain limitations".
12 The Japanese authorities report that they are able to achieve the economic objectives of bail-in by capitalising a bridge institution to which functions have been transferred and by liquidating the residual firm via powers to separate assets and liabilities of a failed institution. However, it is not clear that the resolution regime provides for powers to convert claims of creditors of the failed institution into equity of that institution or of any successor in resolution as required by KA 3.5 (ii).

Annex H: Characteristics of temporary stay powers

Jurisdiction	Specified stay period	Contracts covered	Remedies stayed in addition to early termination	Application to cross-defaults	Payment and delivery required during stay?	Right to terminate for failure of payment or delivery during stay?	Restrict splitting of netting sets ('no cherry-picking' rule)	Right to terminate if contracts remain in insolvent bank	Right to terminate if contracts with solvent bank
Canada [1]	One business day (ending 5pm) No limit if CDIC guarantees an eligible financial contract or transfers all obligations relating to that contract to a bridge bank	Eligible financial contracts (statutory definition includes swaps, other derivatives, repos)	Early close-out (for collateral), set-off, netting	Yes	Yes	Yes Exercisable during stay	Yes (including related security)	Yes	No: only on subsequent default
EU Member States	Maximum two business days (ending at midnight in Member State of resolution authority on the business day following the day on which the stay is announced)	Any contract with bank in resolution or (in some circumstances) a subsidiary[2]	Acceleration, close-out, set-off, netting, any similar provision[3]	Cross-defaults by subsidiary in specified circumstances only[2]	Yes[6]	Yes, exercisable during stay	Yes (including related collateral and guarantees)	Yes	No: only if continuing or subsequent default
Japan	Specified by Prime Minister as period necessary to avoid risk of severe disruption to financial system	Contracts with early termination rights and relevant to the financial system, decided on case-by-case basis	Acceleration, Close out netting	Yes	No statutory requirement	Yes, during and after stay period	No statutory provision	Yes[7]	No: only on subsequent default by bridge
Mexico	Two business days	Derivatives, repo, securities lending	Acceleration, close-out, netting	No	No: payment and delivery obligations stayed during period of stay	No, only before and after stay period. Not exercisable against acquirer if contracts transferred by P&A	No	Yes	No

Jurisdiction	Specified stay period	Contracts covered	Remedies stayed in addition to early termination	Application to cross-defaults	Payment and delivery required during stay?	Right to terminate for failure of payment or delivery during stay?	Restrict splitting of netting sets ('no cherry-picking' rule)	Right to terminate if contracts remain in insolvent bank	Right to terminate if contracts with solvent bank
Switzerland	2 business days	All contracts	Close-out netting / Realisation of collateral / Transfer rights	Yes	Yes	Yes Exercisable during stay	Yes	Yes (if bank does not fulfil licencing requirements after end of stay)	No (only if bank does not fulfil licencing requirements after end of stay)
United States	5pm on following business day	Qualified financial contracts (as defined in statute and FDIC regulation or order)	Any right to terminate, accelerate, close-out, set-off, liquidate or net	Cross-default rights in contracts of subsidiaries or affiliates in specified circumstances (Title II DFA only) [4]	No	Yes, with respect to clearing organisations as counterparties under Title II DFA[5] No: under FDI Act	Yes – DFA and FDI Act (including any related security and credit enhancement)	Yes, only on expiry of stay	No (only if separate default unrelated to appointment of FDIC, exercise of its power or financial condition of bank)

[1] Temporary stay power only exercisable in connection with transfer of assets and liabilities to a bridge bank.

[2] A temporary stay may apply to a contract with a subsidiary of a bank under resolution if:

- the obligations of the subsidiary are guaranteed or otherwise supported by the bank under resolution;
- the termination rights under the contract are triggered by the insolvency or the financial condition of the bank under resolution; and
- if a property transfer is made in relation to the bank under resolution:
  - all of the assets and liabilities related to the contract have been or are being transferred to, or assumed by, a single transferee, or
  - the resolution authority is providing adequate protection for the performance of the obligations of the subsidiary under the contract in any other way.

[3] That is, any provision that suspends, modifies or extinguishes an obligation or prevents and obligation from arising.

[4] As receiver for a financial company under Title II of the DFA, the FDIC has the power to enforce contracts (including QFCs) of subsidiaries or affiliates of a financial company in receivership, notwithstanding contractual provisions that give rise to termination, liquidation or acceleration rights based on the financial condition, insolvency or receivership of the financial company, where:

- the obligations under the contract are guaranteed or supported by, or linked to, the financial company in receivership;
- if the obligations are guaranteed or supported by the financial company, either
  - (i) the guaranty or other support, together with all related assets and liabilities, must be transferred to and assumed by a qualified transferee not later than 5:00 p.m. (Eastern Time) on the business day following the date of appointment of the FDIC as receiver, or
  - (ii) the FDIC must provide adequate protection to the counterparties to such contracts with respect to the financial company's support of the obligations or liabilities of the subsidiary or affiliate.

[5] Clearing organisations have the right to exercise its default remedies where failure to satisfy margin, collateral or settlement obligation during period of stay.

[6] EU resolution authorities also have a freestanding power to temporarily suspend payment and delivery obligations, which can be used in conjunction with temporary stays on termination rights.

[7] Under the Orderly Resolution Regime, early termination rights shall not be exercisable for derivative contracts or any other types of financial transactions that are subject to temporary stay, and it is assumed that those contracts would be transferred to the bridge institution where their obligations are to be performed as contracted. Because netting is not permitted for those contracts subject to stay during the stay period and because their obligations are to be performed once they are transferred to the bridge, cherry-picking by a receiver in the bankruptcy proceedings would not happen and the issue of splitting netting set would be avoided.

Annex I: Recovery plans

Jurisdiction	Source	Scope	Frequency of review and updates	Plan contents specified in statute or guidelines	Planned reforms
Argentina	No requirement				Implementation for identified D-SIBs will begin with recovery planning next year but no requirements are in place yet
Australia	Supervisory framework	D-SIBs and banks with assets greater than A$5 billion (currently 18)	Regularly and after material firm changes	Supervisory guidance	APRA intends to make recovery planning a formal component of its prudential framework
Brazil	No requirement				New resolution framework will include recovery plans; in the meantime, BCB intends to require recovery plans in regulation
Canada	Supervisory framework	D-SIBs (currently six), mid-size deposit taking institutions, and on a case-by-case basis[115]	At least annually and after material firm changes	Supervisory guidance	OSFI intends to make recovery planning a formal component of its supervisory framework
China	Regulatory framework	Banking groups	At least annually (for G-SIBs)	Regulations	Central bank and regulators are currently drafting RRP requirements
France	Statute	All banks (currently 10 + G-SIBs)	At least annually, after material firm changes or at request of supervisor	Statute and EBA guidelines	
Germany	Statute	All banks (currently 22 + G-SIB)	At least annually, after material firm changes or at request of supervisor	Statute and EBA guidelines	
Hong Kong	Supervisory framework	All banks (currently 19)	At least annually and after material firm changes	Supervisory guidance	
India	No requirement				Early plans to introduce resolution regime
Indonesia	No requirement				Included in resolution law being drafted
Italy	Statute	All banks (currently 12 + G-SIB)	At least annually, after material firm changes or at request of supervisor	Statute and EBA guidelines	
Japan	Supervisory framework	G-SIBs and other SIBs if necessary	At least annually and after material firm changes	Supervisory guidelines	

115 One Canadian subsidiary of a G-SIB and a small domestic bank have also been submitting recovery plans in recent years. Moreover, OSFI is running a recovery planning pilot for five non-conglomerate banks that have not been identified as D-SIBs.

Jurisdiction	Source	Scope	Frequency of review and updates	Plan contents specified in statute or guidelines	Planned reforms
Korea	No requirement				Reform or policy proposals have been published
Mexico	Statute	All commercial banks (currently 45, to submit by March 2016)	At least annually, after material firm changes or at request of supervisor	Statute and CNBV guidelines	
Netherlands	Statute	All banks (currently 26 banks + G-SIBs)	At least annually, after material firm changes or at request of supervisor	Statute and EBA guidelines	
Russia	Statute	D-SIBs and any other banks at request of supervisor (current list includes 10 D-SIBs)	Not specified	Non-binding supervisory guidance (Bank of Russia letter)	Bank of Russia developing legally binding directive to replace non-binding letter
Saudi Arabia	No requirement				SAMA intends to start the RRP process when D-SIB rules go into force (2016)
Singapore	Supervisory rules	D-SIBs and other banks notified by MAS	Annually	Legally binding directive	Legislative amendments planned to give MAS explicit powers to require banks to prepare and change recovery plans
South Africa	Supervisory rules	All banks and systemically important banking groups (currently 31 banks)	At least annually and after material firm changes	Legally binding directive	
Spain	Statute	All banks	At least annually, after material firm changes or at request of supervisor	Statute and EBA guidelines	
Switzerland	Statute	G-SIBs and D-SIBs	Annually	Supervisory guidance	
Turkey	No requirement				BRSA and SDIF are currently drafting legislative amendments
UK	Statute	All banks (currently all banks)	At least annually, after material firm changes or at request of supervisor	Statute, PRA and EBA guidelines	
United States	Supervisory rule	G-SIBs	At least annually	Non-binding supervisory guidance	The OCC has issued a proposal to promulgate enforceable guidelines applicable to insured supervised institutions with total consolidated assets of US$50 billion or more, requiring all such institutions to develop recovery plans

Annex J: Resolution plans

Jurisdiction	Source	Scope	Frequency of review and update	Plan contents specified in statute or guidelines	Plan review by senior officials	Planned reforms
Argentina	No requirement					Implementation will begin for identified D-SIBs but no dates have yet been set.
Australia	No requirement					APRA is currently developing a resolution planning framework for ADIs
Brazil	No requirement					BCB plans to prepare resolution plans
Canada	No requirement, but done in practice	D-SIBs and other institutions as deemed necessary by CDIC (currently 7)	Annually	No	Yes (summaries of plans)	
China	Regulatory framework	G-SIBs	At least annually	Regulations	Yes	Central bank and relevant regulators currently drafting RRP requirements
France	Statute	All banks (currently 10 + G-SIBs)	At least annually and after material firm changes	Statute, BRRD, SRM, EBA guidance	Yes	
Germany	Statute	All banks (currently 12 + G-SIB)	At least annually and after material firm changes	Statute, BRRD, SRM, EBA guidance	No	
Hong Kong[1]	No requirement					Plans to undertake industry consultation and then phase-in resolution plan requirements, starting with most important institutions.
India	No requirement					Early plans to introduce resolution regime
Indonesia	No requirement					Included in resolution law being drafted
Italy	Statute	All banks (currently 2 + G-SIB)	At least annually and after material firm changes	Statute, BRRD, SRM, EBA guidance	Yes (summaries of plans)	
Japan	Supervisory guidelines	G-SIBs and other SIBs if necessary	At least annually and after material firm changes		Yes	
Korea	No requirement					Reform or policy proposals have been published

Jurisdiction	Source	Scope	Frequency of review and update	Plan contents specified in statute or guidelines	Plan review by senior officials	Planned reforms
Mexico	Statute & guidelines	All commercial banks (currently 1 bank)	Not specified	Statute	Yes	
Netherlands	Statute	All banks (currently 7 + G-SIBs)	At least annually and after material firm changes	Statute, BRRD, SRM, EBA guidance	Yes	
Russia	Statute	D-SIBs (currently 10)	Guidance being developed			Draft regulation under preparation
Saudi Arabia	No requirement					SAMA intends to start the RRP process when D-SIB rules go into force (2016)
Singapore	Supervisory policy	D-SIBs (to be phased-in)	At least annually and after material firm changes	Guidelines (information pack under preparation)	Yes	Legislative amendments planned to give MAS explicit powers to require banks to provide information for resolution planning
South Africa	No requirement					Included in resolution law being drafted
Spain	Statute	All banks	At least annually and after material firm changes	Statute, BRRD, SRM, EBA guidance	Yes	
Switzerland	Statute	G-SIBs and D-SIBs	Not specified	No	No	
Turkey	No requirement					BRSA and SDIF are currently drafting legislative amendments
UK	Statute	All banks	At least annually and after material firm changes	Statute, BRRD, SRM, EBA guidance	Yes	
United States	No requirement, but done in practice	G-SIBs	Ongoing basis	No	Yes	

1 The HKMA is a member of eleven crisis management groups and is involved in the group resolution planning for those G-SIBs with the most material systemic presence locally, including four of the five D-SIBs in Hong Kong. For certain prioritised D-SIBs, the HKMA has been engaging with the firms directly and working with the relevant home/host authorities on the initial regional/local resolution planning as part of the group strategy.

Annex K: Resolvability assessments

Jurisdiction	Source	Scope	Frequency	Responsible authority	Guidance on assessments	Planned reforms
Argentina	No requirement					
Australia	No requirement					Included in resolution planning framework being developed
Brazil	No requirement					Included in resolution law being drafted
Canada	No formal requirement but pilot assessment	Intend to roll-out to all SIBs	Intend to do annually	CDIC	Draft guidance for pilot	
China	Regulatory framework	G-SIBs	Not specified (intend to do annually)	PBC and CBRC (through CMG)	Not yet	
France	Statute	All banks	Annual	ACPR and SRB	Yes	
Germany	Statute	All banks	Annual	FMSA and SRB	Yes	
Hong Kong	No requirement					Included in resolution law introduced into legislature
India	No requirement					Early plans to introduce resolution regime
Indonesia	No requirement					Included in resolution law being drafted (part of resolution planning)
Italy	Statute	All banks	Annual	Bank of Italy and SRB	Yes	
Japan	Supervisory guideline	G-SIBs and other SIBs if necessary	Annual	JFSA	Not yet	
Korea	No requirement					Reform or policy proposals published

Jurisdiction	Source	Scope	Frequency	Responsible authority	Guidance on assessments	Planned reforms
Mexico	Statute	All commercial banks	Not specified	IPAB and CNBV	No	
Netherlands	Statute	All banks	Annual	DNB and SRB	Yes	
Russia	No requirement					
Saudi Arabia	No requirement					Included in resolution law being drafted
Singapore	Policy	D-SIBs and any other banks notified by MAS	Annual	MAS	No	
South Africa	No requirement					Included in resolution law being drafted
Spain	Statute	All banks	Annual	Bank of Spain and SRB	Yes	
Switzerland	No, but statute grants an implicit requirement (upon request of firm)[116]	G-SIBs	Annual for G-SIBs (FSB process) and upon request for others	FINMA	No	
Turkey	No requirement					BRSA and SDIF are currently drafting the legislative amendments
UK	Statute[117]	All banks	Annual	Bank of England	Yes	
United States	No requirement	G-SIBs	Annual	FDIC	No	

[116] Banks have the right to request a rebate on their capital surcharge based on the assessed improvement of their global resolvability.

[117] The PRA also has resolvability requirements in its supervisory rules that are not based on UK or EU legislation.