I-Annex 1:
Information Sharing for Resolution Purposes

This Annex to the *Key Attributes of Effective Resolution Regimes for Financial Institutions* (the '*Key Attributes',* KAs)[7] provides implementation guidance for jurisdictions and national authorities on the standards on information sharing set out in KAs 7.6, 7.7 and 12 and for Crisis Management Groups (CMGs) that are developing institution-specific cross-border cooperation agreements (COAGs). It complements the provisions in Annex 2 of this Appendix on essential elements of COAGs and, in particular, the provisions in section 6 of that Annex on cooperation mechanisms and information sharing frameworks, by providing additional detail on elements of the framework to support information sharing as required by KAs 7.6, 7.7 and 12.[8]

Those elements are divided into two sections.

1. **Principles on information sharing for resolution purposes** – setting out principles for the design of national legal gateways and related confidentiality regimes to facilitate effective sharing of non-public information between domestic and foreign authorities for the purposes of carrying out functions relating to resolution. This first section elaborates on the standards for information sharing, confidentiality requirements and statutory safeguards set out in KAs 7.6, 7.7 and 12.

2. **Information sharing provisions for COAGs** – setting out the provisions relating to information sharing that should be included in a COAG, including information to be shared, confidentiality of information, procedures for information sharing, observance of the commitments to information sharing and regular review. This second section complements, and should be read with, I-Annex 2.

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7 http://www.financialstabilityboard.org/publications/r_111104cc.pdf

8 Where components of this Annex have been deemed important for purposes of assessing compliance with the *Key Attributes*, those components are explicitly reflected in the Key Attributes Assessment Methodology.

Glossary

'**Functions relating to resolution**' refer to resolution planning and preparing for, carrying out and coordinating resolution actions, including the activities set out in paragraph 1.9.

'**Information'** refers to non-public information including, but not limited to, client and counterparty information, information about financial institutions that has not been disclosed in accordance with normal disclosure requirements, and analyses, evaluations and other work products derived from non-public information.

'**Legal gateways**' refers to provisions set out in statute or other instruments with the force of law that enable the disclosure of non-public information to specified recipients or for specified purposes. Legal gateways may be contingent on, or supported by, memoranda of understanding ('MoUs') or other forms of agreement between the providing and recipient authorities.

'**Party**' refers to an authority that signs a COAG.

1. Principles on information sharing for resolution purposes

Legal gateways for disclosure of non-public information

1.1 Jurisdictions should ensure that their legal framework establishes clear legal gateways that authorise national authorities to disclose information in a timely fashion to other domestic and foreign authorities with functions relating to resolution where that information is necessary for the receiving authority to carry out functions relating to the resolution of the firm to which the information relates. Authorities with functions relating to resolution may include designated resolution authorities, supervisory authorities, central banks, Ministries of Finance and public bodies administering resolution funds, deposit insurance and other protection schemes.

1.2 Those legal gateways should permit authorities that do not have functions relating to resolution, such as purely supervisory authorities, to disclose information to domestic and foreign authorities where that information is necessary for the recipient authority to carry out functions relating to resolution.

1.3 Subject to any applicable requirements relating to data protection or banking secrecy, those legal gateways should permit commercially and legally sensitive information, such as information relating to customers or the counterparties of a firm, to be disclosed to domestic and foreign authorities if it is necessary for the recipient authority to carry out functions relating to resolution.

1.4 Disclosure under those legal gateways should be conditional on the recipient authority being subject to adequate confidentiality requirements and safeguards that are appropriate to the nature of the information and the level of sensitivity (see paragraphs 1.10 to 1.14).

1.5 The legal framework should be clear about the conditions (for example, prior approval of the originating supervisory authority) under which information received from a foreign authority may be disclosed to another domestic or foreign authority for purposes of the recipient authority's functions relating to resolution.

1.6 The legal framework should protect the authorities and their current and former employees and agents against criminal and civil actions for breach of confidentiality based on the disclosure of information if the disclosure was made in accordance with the legal gateways, including any applicable conditions or safeguards.

1.7 Where legal gateways are conditional on reciprocity (meaning that disclosure of information is only permitted if the jurisdiction of the recipient authority has comparable gateways that permit disclosure to the jurisdiction of the providing authority), the legal framework should set out clear criteria and procedures for determining comparability.

1.8 Legal gateways should not prevent or restrict the reasonable and effective use of information by a recipient authority to carry out functions relating to resolution (for example, by requiring that disclosure is subject to conditions on its handling and use by the recipient authority that are unduly restrictive).

Purposes for which information may be disclosed

1.9 The legal gateways should be sufficient to permit appropriate disclosure to authorities for the purposes of carrying out functions relating to resolution with regard to a firm, including:

(i) the assessment of resolvability;

(ii) the development of resolution strategies;

(iii) the development of operational resolution plans;

(iv) the conduct of simulation exercises and scenario analyses for the purposes of resolution planning;

(v) early detection and monitoring, and the supervision, regulation, and oversight of firms;

(vi) implementation of recovery measures;

(vii) the assessment of the effectiveness of recovery measures for restoring viability, the likelihood that resolution measures might be required and the possible timeframe in which those measures might be required;

(viii) preparation for the implementation of resolution measures; and

(ix) the exercise of resolution powers.

Confidentiality

1.10 Jurisdictions should ensure that their legal framework establishes a regime for the protection of confidential information that imposes adequate confidentiality requirements on authorities and their current and former employees and agents that receive or have received confidential information, and provides for effective sanctions and penalties for breach of confidentiality requirements. When considering whether a recipient authority is subject to adequate confidentiality requirements, authorities should take into account whether the recipient authority and its current and former employees and agents:

(i) are required to maintain the confidentiality of information received from another authority;

(ii) are required, and have the capacity, to restrict the use of information received from another authority to the purposes for which it was supplied, consistent with the terms under which it was provided;

(iii) can refuse to disclose information received from another authority to third parties that were not the original recipients of the information without prior notification to and express consent of the originating Party (unless the circumstances described in paragraph 2.4 (v) apply); and

(iv) are subject to effective sanctions and penalties for breach of confidentiality requirements.

Authorities should assist in any assessment of their own confidentiality requirements.

1.11 Authorities should not refuse disclosure of information for the purposes of functions relating to resolution for reasons of the confidentiality of the information where the recipient authority is subject to adequate confidentiality requirements, having regard to the nature and sensitivity of the information.

1.12 Access to confidential information received from other domestic or foreign authorities should be limited by law, policy or practice to officials, employees and agents of the recipient authority and any other persons retained by contract to provide services to that authority that (in every case) require that information in order to perform their functions relating to resolution.

1.13 Authorities should have in place technical safeguards and administrative policies and procedures to control and monitor the dissemination of all confidential information within the authority, under the responsibility and supervision of officials of appropriate seniority. Matters covered by those safeguards, policies and procedures should include access to, storage, modes of transmission reproduction, retention

periods and destruction of the information and maintenance of its physical security.

1.14 The legal framework should exclude the application of freedom of information legislation to information received from foreign authorities or to treat such information as falling within an exemption under the regime.

2. Information sharing provisions for COAGs

Minimum content

2.1 In order to support the commitments and provisions set out in I-Annex 2 (Essential Elements of Institution-Specific Cross-border Cooperation Agreements) in relation to information sharing, and in particular those in paragraphs 3.8, 3.9, 4.1(iii), 5.1(i), 6.3, 6.4 and 6.6 of that Annex, the COAG or an ancillary document should set out:

(i) the functions relating to resolution for which Parties may need to receive confidential information;

(ii) the circumstances in which Parties agree to share information on an ad hoc basis (for example, stress situations, implementation of recovery measures, imminent and actual entry into resolution or material changes in the legal framework affecting the operation of the COAG);

(iii) a generic description of the classes of information that will be shared on a routine or ad hoc basis;

(iv) the applicable confidentiality requirements, any relevant restrictions or conditions and any specific procedures and practices employed by the authorities for protection of confidential information (see paragraph 2.4);

(v) the procedures for information sharing between authorities within the CMG (for example, how information will be shared on a routine basis and how and to whom requests for additional or ad hoc information should be made) (see paragraphs 2.6 to 2.10);

(vi) the timeframes in which authorities agree to make all reasonable efforts to meet requests for information;

(vii) the means by which information will be communicated; and

(viii) the procedure for the regular review of operation of the COAGs and the firm-specific elements (see paragraph 2.14).

2.2 The terms for information sharing in COAGs should be framed in a purposive, outcome-oriented manner and be sufficiently flexible to accommodate changing circumstances.

2.3 The COAG should recognise that the type, extent and granularity of information

needed and the speed and frequency at which it is required vary in accordance with changes in the circumstances of the firm or external market conditions and can intensify as a crisis develops. The COAG, where relevant, should note such possible variations.

Confidentiality of information provided under the COAG

2.4 The COAG should set out the agreement of the Parties on the arrangements to protect the confidentiality of information shared under the COAG including, specifically, on the following topics:

(i) information provided by a Party to other Parties will only be used for the purposes of carrying out the functions relating to resolution;

(ii) dissemination of information received from a Party will be restricted internally within the recipient Party to personnel that require that information to carry out their functions relating to resolution;

(iii) information received by a Party from another will not be further disclosed by the recipient Party to other Parties that were not the original recipients of the information, or to third parties, without the prior notification to and express consent of the originating Party (unless the circumstances described in point (v) apply);

(iv) where an express consent for onward disclosure is given, the information should only be disclosed to the extent and for the purposes agreed by the originating Party; and

(v) where a Party is the subject of a legally enforceable demand (for example, by court order or a mandate from a legislative body) to disclose information received from another Party, it should, unless prohibited by law from doing so, promptly notify the originating authority and take all reasonable steps to resist disclosure of confidential information to the extent appropriate and permitted by applicable laws and legal process.

2.5 The Party providing information under the COAG should inform recipient Parties if it becomes aware that the information is no longer confidential.

Procedures for information sharing between Parties to the COAG

2.6 A request should generally specify the information sought and the purpose for which it is required and indicate the urgency of the request.

2.7 The Party that receives a request for information should make all reasonable efforts to respond in a timely manner and within any timeframe set out in the COAG, taking into consideration the urgency of the request.

2.8 As a general principle, information should be disclosed through secure modes of transmission appropriate to the information and its level of sensitivity.

2.9 COAGs may designate a central authority in the home jurisdiction to coordinate information exchange within the CMG. Jurisdictions may also designate a domestic authority to coordinate the exchange and flow of information at a domestic level.

2.10 Non-core operational details, such as contact details of the personnel in each authority that are designated as contact points for the exchange of information, may be provided in ancillary documents to the COAG to facilitate the procedure for updating those details (for example, to avoid the need for all parties to agree to a formal amendment of the COAG).

Observance of the COAG and regular review

2.11 Parties should use their best endeavours to comply with the terms of the COAGs. Where a Party encounters legal or operational obstacles to the disclosure of information in accordance with the COAG, it should consult the other Parties to identify appropriate measures to address those obstacles and take reasonable steps to remove the obstacles or find 'work-around' solutions.

2.12 Parties should inform other Parties through officials and employees at an appropriate level of seniority if they are unable to disclose material parts of resolution strategies and plans or other information relevant for resolution purposes and explain the obstacles to disclosure. Parties should use their best endeavours to comply with the terms of the COAGs.

2.13 Where obstacles arise from restrictions on the disclosure of information imposed by the legal framework that applies to an authority, that authority should take reasonable steps to alert the national legislative bodies to those obstacles and their effect on the ability of the authority to participate in the information sharing necessary for carrying out functions relating to resolution.

2.14 The provisions in COAGs on information sharing, including the classes of information to be shared on a regular basis and the frequency with which it is shared, should be reviewed regularly by appropriate staff members of all Parties. That review should be carried out in conjunction with the regular review of the resolution plan, and Parties should maintain processes to ensure that, where necessary, the provisions on information sharing in the COAG or ancillary documents are updated to ensure that their terms are consistent with any amendments to the plan and continue to support its execution.