I-Annex 2: Essential Elements of Institution-Specific Cross-border Cooperation Agreements

Cross-border cooperation agreements should help facilitate institution-specific crisis management planning and cooperation between relevant authorities, with a presumption in favour of cooperation in the event of the firm's resolution. They should support the preparation of RRPs and the effective implementation of resolution measures in a crisis by providing a framework for possible solutions to legal or other impediments that may exist. This will require firm-specific agreements involving all members of a firm's cross-border CMG, including the relevant authorities from the home and all key host jurisdictions. Bi-national agreements between the relevant authorities of the home and a host jurisdiction should set out how national legal and resolution regimes would interact given a firm's business. They may complement firm-specific multinational agreements among home and all key host jurisdictions.

The effectiveness of institution-specific cooperation agreements hinges on the home and host authorities having the necessary resolution powers in relation to the firm's operations, including the branch operation of a foreign firm (see Key Attribute 7).

The institution-specific cooperation agreement establishes a framework for the development of RRPs, based on the conduct of pre-crisis resolvability assessments, and for cooperation and coordination in a crisis in accordance with the agreed RRPs. Both RRPs and cooperation agreements are expected to be regularly updated and evolve over time.

Institution-specific cross-border cooperation agreements should, at a minimum, include the following elements.[9]

1. Objectives, nature and scope of the agreement

1.1 A declarative statement of its objectives and scope (for example, "we, as home and host authorities for [the firm], have signed this cooperation agreement setting out how we will work together with a view to facilitating institution-specific crisis management planning and cooperation between relevant authorities, with an emphasis on cooperation in the event of [the firm's] resolution....The objective is to minimise the impact of the failure of [the firm] in each of the jurisdictions represented by the Parties to the Agreements").

1.2 The home and host authorities that sign the agreement ("the Parties").

1.3 Description of the firm, parent or holding company and significant subsidiaries, branches and affiliates that are within the scope of the agreement.

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[9] These elements build upon the FSF's *Principles for cross-border cooperation in crisis management* as endorsed by the G20 Leaders Summit in London in April 2009.

1.4 The legal nature of agreement (that is, whether and to what extent the agreement is binding).

1.5 Rules on public disclosure (for example, whether and to what extent its content should be disclosed to the public).

2. General framework for cooperation

2.1 The roles, responsibilities and powers of the Parties "pre-crisis" (that is, in the recovery and resolution planning phases) and "in crisis" with respect to the firm, including the parent or holding company and significant subsidiaries, branches and affiliates that are within the scope of the agreement.

2.2 The components of the RRP for the firm, parent or holding company and significant subsidiaries, branches and affiliates that relate to the preparation and execution of resolution measures in a cross-border context (recognising that the plan is regularly reviewed and updated).

3. Commitments to cooperate

3.1 The Parties' agreement that the *Key Attributes* should guide their actions in any crisis management and resolution measures adopted in respect of the firm.

3.2 The Parties' commitment to implement resolution options that are aimed at pursuing financial stability, the protection of insured depositors, insurance policy holders and other retail customers, duly considering the potential impact of their resolution actions on financial stability of other jurisdictions.

3.3 The Parties' commitment to cooperate in the recovery and resolution planning process and share all relevant information, including RRPs pertaining to the group as a whole or to individual subsidiaries where plans of subsidiaries exist, in order to ensure that the plans are consistent and help prepare for a coordinated resolution of the whole firm.

3.4 The Parties' commitment to participate at the level of top officials in reviewing the firm's overall resolution strategy; and to participate through representation on the CMG at an appropriately senior level in the development and maintenance of the firm's group-wide resolution plan.

3.5 The Parties' commitment to engage in periodic (table top) simulation or scenario exercises within the CMG in order to ensure that the plans are viable and to help prepare for a coordinated resolution.

3.6 The Parties' commitment to conduct an assessment of the firm's resolvability, using the guidance on Resolvability Assessments set out in I-Annex 3, including the firm's demonstrated ability, as part of the recovery and resolution planning process, to produce the essential information needed to implement such plans in a timely fashion in a crisis; to share the results of the assessment and use them to inform the resolution planning process with respect to the implementation of cross-border resolution measures.

3.7 The agreed frequency of review and sharing of RRPs.

(i) The substantive resolution strategy for each G-SIFI should be subject, at least annually, to a review by top officials of home and relevant host authorities.

(ii) Each operational plan should be subject, at least annually, to a review by appropriate senior officials of the home and relevant host authorities.

3.8 The Parties' commitment to inform and consult each other in a timely manner before taking any crisis management or resolution measures (with precise definition of crisis management or resolution measures).

3.9 The Parties' commitment to inform each other promptly of material changes to their crisis management and resolution frameworks.

3.10 The Parties' commitment to share information at both senior and technical levels as appropriate subject to appropriate confidentiality arrangements. Where appropriate and necessary to respect the sensitive nature of information, information sharing may be restricted, but should be possible among the top officials of the relevant home and host authorities.

4. Home authority's commitments

4.1 The home (resolution or supervisory) authority's commitment to:

(i) coordinate in the CMG, with the benefit of the active participation of the other Parties, the assessment of the firm's resolvability in line with the guidance on Resolvability Assessments (see I-Annex 3) and the identification of actions that home or host authorities or the firm may need to take to ensure the resolvability of the firm;

(ii) facilitate and chair meetings of the CMG and lead the review of the firm's RRP within the CMG, with the active participation of the other Parties and in line with the Essential Elements of RRPs (see I-Annex 4);

(iii) alert other Parties without undue delay, so as to allow practical cooperation, if the firm encounters difficulties or if it becomes apparent that it is likely to enter the home authority's resolution regime;

(iv) take into account the overall effect on the group as a whole and on financial stability in other jurisdictions concerned and undertake best efforts to avoid taking actions that could reasonably be expected to trigger instability elsewhere in the group or in the financial system; and

(v) where possible and feasible, coordinate a resolution of the firm as a whole, with the aim of maintaining financial stability, and protecting depositors, insurance policy holders, and retail investors in all relevant jurisdictions.

5. Host authorities' commitments

5.1 The host authorities' commitments:

(i) to alert other Parties without undue delay if a local branch or locally-incorporated part of the firm encounters difficulties or if it becomes apparent that it is likely to enter the host authority's resolution regime;

(ii) to work with the other Parties towards the coordinated resolution of the firm as a whole, with the aim of maintaining financial stability and protecting depositors, insurance policy holders and retail investors in all relevant jurisdictions; and

(iii) not to pre-empt resolution actions by home authorities while reserving the right to act on their own initiative if necessary to achieve domestic stability in the absence of effective action by the home authority;

6. Cooperation mechanisms and information sharing framework

6.1 Provision for regular meetings of the Parties (for example, number of meetings per year, level of participants, ad hoc meetings in emergency situations and meetings upon request by Parties), and the relationship with existing cooperative structures (CMG, supervisory college).

6.2 The statutory and contractual bases for prompt information sharing, including sharing among the different CMG members, and with any host authorities that are not represented in the CMG; existing constraints and how these could be addressed.

6.3 The level of detail in regard to information sharing; whether and how it would change "pre-crisis and "in crisis".

6.4 Procedures for information sharing at both senior and technical levels, tools of information exchange (for example, use of secured website).

6.5 Commitment to maintain up-to-date contact lists with contact details for key senior and working-level staff covering multiple means of communication.

6.6 Commitment to maintain confidentiality of shared information and measures to ensure confidentiality (for example, limiting the personnel with access to the data; confidentiality agreement signed by all relevant personnel; procedure and responsibility if confidentiality is breached).

7. Cross-border implementation of resolution measures

7.1 Process for the evaluation of the application of resolution options and processes to the firm, including the parent or holding company and significant subsidiaries, branches and affiliates that are within the scope of the agreement.

7.2 Commitments to address the legal and operational impediments to cross-border implementation of resolution actions; and commitments to specify legal and operational procedures for implementing resolution strategies in a cross-border context. For example:

(i) Procedural requirements and conditions for (a) recognition of the transfer to a bridge or third party purchaser of assets and liabilities relating to branches of the failed firm in the host jurisdiction; (b) recognition of the transfer to a bridge or third party purchaser of assets or shares of majority or wholly owned subsidiaries in the host jurisdiction; and (c) execution of a bail-in within resolution;

(ii) Identification of types of financial contracts and assets that cannot be transferred with legal certainty (for example, contracts governed by the law of a jurisdiction where the firm does not have a physical presence) and implications for the successful application of the resolution tool;

(iii) Availability of funding arrangements in home and host jurisdictions to support the implementation of the resolution measures and restore market confidence; and

(iv) Application of insurance schemes (for depositors, insurance policy holders, and retail investors) and of applicable segregation and customer asset protection rules.