FSB FINANCIAL STABILITY BOARD

Key Attributes of Effective Resolution Regimes for Financial Institutions

Revised version

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Foreword

The *Key Attributes of Effective Resolution Regimes for Financial Institutions* (the '*Key Attributes' KA*) set out the core elements that the FSB considers to be necessary for an effective resolution regime. Their implementation should allow authorities to resolve financial institutions in an orderly manner without taxpayer exposure to loss from solvency support, while maintaining continuity of their vital economic functions.

The FSB adopted the '*Key Attributes*' at its Plenary meeting in October 2011. The G20 Heads of States and Government subsequently endorsed the '*Key Attributes*' at the Cannes Summit in November 2011 as "a new international standard for resolution regimes".[1]

The *Key Attributes* set out twelve essential features that should be part of the resolution regimes of all jurisdictions. They relate to:

1. Scope
2. Resolution authority
3. Resolution powers
4. Set-off, netting, collateralisation, segregation of client assets
5. Safeguards
6. Funding of firms in resolution
7. Legal framework conditions for cross-border cooperation
8. Crisis Management Groups (CMGs)
9. Institution-specific cross-border cooperation agreements
10. Resolvability assessments
11. Recovery and resolution planning
12. Access to information and information sharing.

The 2024 version of the *Key Attributes* document

When the FSB adopted the *Key Attributes* in 2011 it was agreed to develop further guidance on the implementation of the *Key Attributes*, taking into account the need for implementation to accommodate different national legal systems and market environments and sector-specific

[1] Communiqué G20 Leaders Summit – Cannes – 3-4 November 2011, Section 13.

considerations (e.g., insurance, financial market infrastructures) to promote effective and consistent implementation across jurisdictions.

On 15 October 2014, the FSB adopted additional guidance that elaborates on specific KAs relating to information sharing for resolution purposes and sector-specific guidance that sets out how the *Key Attributes* should be applied for insurers, financial market infrastructures (FMIs) and the protection of client assets in resolution. These guidance documents were incorporated as annexes into the 2014 version of the *Key Attributes* document.

On 25 April 2024, the FSB adopted an update of the guidance on resolution of FMIs and FMI participants, which has been incorporated into this 2024 version (II-Annex 1 – Paragraphs 4.19-23).[2]

No changes were made to the text of the twelve Key Attributes of October 2011. The twelve Key Attributes remain the umbrella standard for resolution regimes covering financial institutions of all types that could be systemic in failure.

The FSB will continue its work to develop further guidance as needed to promote the effective and consistent implementation of the *Key Attributes*.

The Annexes to the Key Attributes

The Annexes to the *Key Attributes* provide guidance on implementing and interpreting the Key Attributes. They do not form part of the *Key Attributes* standard. Where components of the Annexes have been deemed important for purposes of assessing compliance with the *Key Attributes*, those components are explicitly reflected in the Key Attributes Assessment Methodologies.[3] The Annexes to the Key Attributes fall into two categories:

General guidance on the implementation of the Key Attributes (Appendix I):

I-Annex 1: Information sharing for Resolution Purposes (KAs 7 and 12)

I-Annex 2: Institution-specific Cross-border Cooperation Agreements (KA 9)

I-Annex 3: Resolvability Assessments (KA 10)

I-Annex 4: Recovery and Resolution Plans (KA 11)

I-Annex 5: Temporary Stays on Early Termination Rights (KA 4)

Sector-specific Guidance (Appendix II)

II-Annex 1: Resolution of FMIs and FMI Participants

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2 FSB (2024), *Financial Resources and Tools for Central Counterparty Resolution*, April

3 FSB (2016) *Key Attributes Assessment Methodology for the Banking Sector* (October) and FSB (2020) *Key Attributes Assessment Methodology for the Insurance Sector*, August..

II-Annex 1: Resolution of Insurers

II-Annex 1: Protection of Client Assets in Resolution

The sector-specific guidance recognises that not all Key Attributes are equally relevant for all sectors and that some require further explanation and interpretation, or some adaptation in order to be effectively implemented in a certain sector. The sector-specific guidance sets out how the *Key Attributes* should be understood in a sector-specific context. It complements the *Key Attributes,* and the sector-specific guidance on individual KAs should be considered in conjunction with the KA to which it relates. There should be no inference that a particular KA or element of a KA does not apply simply because there is no supporting provision in the relevant Annex.

Preamble

The objective of an effective resolution regime is to make feasible the resolution of financial institutions without severe systemic disruption and without exposing taxpayers to loss, while protecting vital economic functions through mechanisms which make it possible for shareholders and unsecured and uninsured creditors to absorb losses in a manner that respects the hierarchy of claims in liquidation.

An effective resolution regime (interacting with applicable schemes and arrangements for the protection of depositors, insurance policy holders and retail investors) should:

(i) ensure continuity of systemically important financial services, and payment, clearing and settlement functions;

(ii) protect, where applicable and in coordination with the relevant insurance schemes and arrangements such depositors, insurance policy holders and investors as are covered by such schemes and arrangements**,** and ensure the rapid return of segregated client assets;

(iii) allocate losses to firm owners (shareholders) and unsecured and uninsured creditors in a manner that respects the hierarchy of claims;

(iv) not rely on public solvency support and not create an expectation that such support will be available;

(v) avoid unnecessary destruction of value, and therefore seek to minimise the overall costs of resolution in home and host jurisdictions and, where consistent with the other objectives, losses for creditors;

(vi) provide for speed and transparency and as much predictability as possible through legal and procedural clarity and advanced planning for orderly resolution;

(vii) provide a mandate in law for cooperation, information exchange and coordination domestically and with relevant foreign resolution authorities before and during a resolution;

(viii) ensure that non-viable firms can exit the market in an orderly way; and

(ix) be credible, and thereby enhance market discipline and provide incentives for market-based solutions.

Jurisdictions should have in place a resolution regime that provides the resolution authority with a broad range of powers and options to resolve a firm that is no longer viable and has no reasonable prospect of becoming so. The resolution regime should include:

(i) stabilisation options that achieve continuity of systemically important functions by way of a sale or transfer of the shares in the firm or of all or parts of the firm’s business to a third party, either directly or through a bridge institution, and/or an officially mandated creditor-financed recapitalisation of the entity that continues providing the critical functions; and

(ii) liquidation options that provide for the orderly closure and wind-down of all or parts of the firm's business in a manner that protects insured depositors, insurance policy holders and other retail customers.

In order to facilitate the coordinated resolution of firms active in multiple countries, jurisdictions should seek convergence of their resolution regimes through the legislative changes needed to incorporate the tools and powers set out in these *Key Attributes* into their national regimes.

1. Scope

1.1 Any financial institution that could be systemically significant or critical if it fails should be subject to a resolution regime that has the attributes set out in this document ("Key Attributes"). The regime should be clear and transparent as to the financial institutions (hereinafter "firms") within its scope. It should extend to:

(i) holding companies of a firm;

(ii) non-regulated operational entities within a financial group or conglomerate that are significant to the business of the group or conglomerate; and

(iii) branches of foreign firms.[4]

1.2 Financial market infrastructures ("FMIs")[5] should be subject to resolution regimes that apply the objectives and provisions of the *Key Attributes* in a manner as appropriate to FMIs and their critical role in financial markets. The choice of resolution powers should be guided by the need to maintain continuity of critical FMI functions.

1.3 The resolution regime should require that at least all domestically incorporated global SIFIs ("G-SIFIs"):

(i) have in place a recovery and resolution plan ("RRP"), including a group resolution plan, containing all elements set out in I-Annex 4 (see Key Attribute 11);

(ii) are subject to regular resolvability assessments (see Key Attribute 10); and

(iii) are the subject of institution-specific cross-border cooperation agreements (see Key Attribute 9).

2. Resolution authority

2.1 Each jurisdiction should have a designated administrative authority or authorities responsible for exercising the resolution powers over firms within the scope of the resolution regime ("resolution authority"). Where there are multiple resolution authorities within a jurisdiction their respective mandates, roles and responsibilities should be clearly defined and coordinated.

2.2 Where different resolution authorities are in charge of resolving entities of the same group within a single jurisdiction, the resolution regime of that jurisdiction should identify

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4 This should not apply where jurisdictions are subject to a binding obligation to respect resolution of financial institutions under the authority of the home jurisdiction (for example, the EU Winding up and Reorganisation Directives).

5 For the purposes of this document, the term "financial market infrastructure" is defined as "a multilateral system among participating financial institutions, including the operator of the system, used for the purposes of recording, clearing, or settling payments, securities, derivatives, or other financial transactions". It includes payment systems, central securities depositories (CSDs), securities settlement systems (SSSs), central counterparties (CCPs), and trade repositories (TRs). See CPSS-IOSCO (2012), *Principles for Financial Market Infrastructures*, April.

a lead authority that coordinates the resolution of the legal entities within that jurisdiction.

2.3 As part of its statutory objectives and functions, and where appropriate in coordination with other authorities, the resolution authority should:

(i) pursue financial stability and ensure continuity of systemically important financial services, and payment, clearing and settlement functions;

(ii) protect, where applicable and in coordination with the relevant insurance schemes and arrangements, such depositors, insurance policy holders and investors as are covered by such schemes and arrangements;

(iii) avoid unnecessary destruction of value and seek to minimise the overall costs of resolution in home and host jurisdictions and losses to creditors, where that is consistent with the other statutory objectives; and

(iv) duly consider the potential impact of its resolution actions on financial stability in other jurisdictions.

2.4 The resolution authority should have the authority to enter into agreements with resolution authorities of other jurisdictions.

2.5 The resolution authority should have operational independence consistent with its statutory responsibilities, transparent processes, sound governance and adequate resources and be subject to rigorous evaluation and accountability mechanisms to assess the effectiveness of any resolution measures. It should have the expertise, resources and the operational capacity to implement resolution measures with respect to large and complex firms.

2.6 The resolution authority and its staff should be protected against liability for actions taken and omissions made while discharging their duties in the exercise of resolution powers in good faith, including actions in support of foreign resolution proceedings.

2.7 The resolution authority should have unimpeded access to firms where that is material for the purposes of resolution planning and the preparation and implementation of resolution measures.

3. Resolution powers

Entry into resolution

3.1 Resolution should be initiated when a firm is no longer viable or likely to be no longer viable, and has no reasonable prospect of becoming so. The resolution regime should provide for timely and early entry into resolution before a firm is balance-sheet insolvent and before all equity has been fully wiped out. There should be clear standards or suitable indicators of non-viability to help guide decisions on whether firms meet the conditions for entry into resolution.

General resolution powers

3.2 Resolution authorities should have at their disposal a broad range of resolution powers, which should include powers to do the following:

(i) Remove and replace the senior management and directors and recover monies from responsible persons, including claw-back of variable remuneration;

(ii) Appoint an administrator to take control of and manage the affected firm with the objective of restoring the firm, or parts of its business, to ongoing and sustainable viability;

(iii) Operate and resolve the firm, including powers to terminate contracts, continue or assign contracts, purchase or sell assets, write down debt and take any other action necessary to restructure or wind down the firm's operations;

(iv) Ensure continuity of essential services and functions by requiring other companies in the same group to continue to provide essential services to the entity in resolution, any successor or an acquiring entity; ensuring that the residual entity in resolution can temporarily provide such services to a successor or an acquiring entity; or procuring necessary services from unaffiliated third parties;

(v) Override rights of shareholders of the firm in resolution, including requirements for approval by shareholders of particular transactions, in order to permit a merger, acquisition, sale of substantial business operations, recapitalisation or other measures to restructure and dispose of the firm's business or its liabilities and assets;

(vi) Transfer or sell assets and liabilities, legal rights and obligations, including deposit liabilities and ownership in shares, to a solvent third party, notwithstanding any requirements for consent or novation that would otherwise apply (see Key Attribute 3.3);

(vii) Establish a temporary bridge institution to take over and continue operating certain critical functions and viable operations of a failed firm (see Key Attribute 3.4);

(viii) Establish a separate asset management vehicle (for example, as a subsidiary of the distressed firm, an entity with a separate charter, or as a trust or asset management company) and transfer to the vehicle for management and run-down non-performing loans or difficult-to-value assets;

(ix) Carry out bail-in within resolution as a means to achieve or help achieve continuity of essential functions either (i) by recapitalising the entity hitherto providing these functions that is no longer viable, or, alternatively, (ii) by capitalising a newly established entity or bridge institution to which these functions have been transferred following closure of the non-viable firm (the residual business of which would then be wound up and the firm liquidated) (see Key Attribute 3.5);

(x) Temporarily stay the exercise of early termination rights that may otherwise be triggered upon entry of a firm into resolution or in connection with the use of resolution powers (see Key Attribute 4.3 and Annex IV);

(xi) Impose a moratorium with a suspension of payments to unsecured creditors and customers (except for payments and property transfers to central counterparties (CCPs) and those entered into the payment, clearing and settlements systems) and a stay on creditor actions to attach assets or otherwise collect money or property from the firm, while protecting the enforcement of eligible netting and collateral agreements; and

(xii) Effect the closure and orderly wind-down (liquidation) of the whole or part of a failing firm with timely payout or transfer of insured deposits and prompt (for example, within seven days) access to transaction accounts and to segregated client funds).

Transfer of assets and liabilities

3.3 Resolution authorities should have the power to transfer selected assets and liabilities of the failed firm to a third party institution or to a newly established bridge institution. Any transfer of assets or liabilities should not:

(i) require the consent of any interested party or creditor to be valid; and

(ii) constitute a default or termination event in relation to any obligation relating to such assets or liabilities or under any contract to which the failed firm is a party (see Key Attribute 4.2).

Bridge institution

3.4 Resolution authorities should have the power to establish one or more bridge institutions to take over and continue operating certain critical functions and viable operations of a failed firm, including:

(i) the power to enter into legally enforceable agreements by which the authority transfers, and the bridge institution receives, assets and liabilities of the failed firm as selected by the authority;

(ii) the power to establish the terms and conditions under which the bridge institution has the capacity to operate as a going concern, including the manner under which the bridge institution obtains capital or operational financing and other liquidity support; the prudential and other regulatory requirements that apply to the operations of the bridge institution; the selection of management and the manner by which the corporate governance of the bridge institution may be conducted; and the performance by the bridge institution of such other temporary functions as the authority may from time to time prescribe;

(iii) the power to reverse, if necessary, asset and liability transfers to a bridge institution subject to appropriate safeguards, such as time restrictions; and

(iv) the power to arrange the sale or wind-down of the bridge institution, or the sale of some or all of its assets and liabilities to a purchasing institution, so as best to effect the objectives of the resolution authority.

Bail-in within resolution

3.5 Powers to carry out bail-in within resolution should enable resolution authorities to:

(i) write down in a manner that respects the hierarchy of claims in liquidation (see Key Attribute 5.1) equity or other instruments of ownership of the firm, unsecured and uninsured creditor claims to the extent necessary to absorb the losses; and to

(ii) convert into equity or other instruments of ownership of the firm under resolution (or any successor in resolution or the parent company within the same jurisdiction), all or parts of unsecured and uninsured creditor claims in a manner that respects the hierarchy of claims in liquidation;

(iii) upon entry into resolution, convert or write-down any contingent convertible or contractual bail-in instruments whose terms had not been triggered prior to entry into resolution and treat the resulting instruments in line with (i) or (ii).

3.6 The resolution regime should make it possible to apply bail-in within resolution in conjunction with other resolution powers (for example, removal of problem assets, replacement of senior management and adoption of a new business plan) to ensure the viability of the firm or newly established entity following the implementation of bail-in.

Resolution of insurers

3.7 In the case of insurance firms, resolution authorities should also have powers to:

(i) undertake a portfolio transfer moving all or part of the insurance business to another insurer without the consent of each and every policyholder; and

(ii) discontinue the writing of new business by an insurance firm in resolution while continuing to administer existing contractual policy obligations for in-force business (run-off).

Exercise of resolution powers

3.8 Resolution authorities should have the legal and operational capacity to:

(i) apply one or a combination of resolution powers, with resolution actions being either combined or applied sequentially;

(ii) apply different types of resolution powers to different parts of the firm's business (for example, retail and commercial banking, trading operations, insurance); and

(iii) initiate a wind-down for those operations that, in the particular circumstances, are judged by the authorities to be not critical to the financial system or the economy (see Key Attribute 3.2 xii).

3.9 In applying resolution powers to individual components of a financial group located in its jurisdiction, the resolution authority should take into account the impact on the group as a whole and on financial stability in other affected jurisdictions, and undertake best efforts to avoid taking actions that could reasonably be expected to trigger instability elsewhere in the group or in the financial system.

4. Set-off, netting, collateralisation, segregation of client assets

4.1 The legal framework governing set-off rights, contractual netting and collateralisation agreements and the segregation of client assets should be clear, transparent and enforceable during a crisis or resolution of firms, and should not hamper the effective implementation of resolution measures.

4.2 Subject to adequate safeguards, entry into resolution and the exercise of any resolution powers should not trigger statutory or contractual set-off rights, or constitute an event that entitles any counterparty of the firm in resolution to exercise contractual acceleration or early termination rights provided the substantive obligations under the contract continue to be performed.

4.3 Should contractual acceleration or early termination rights nevertheless be exercisable, the resolution authority should have the power to stay temporarily such rights where they arise by reason only of entry into resolution or in connection with the exercise of any resolution powers. The stay should:

(i) be strictly limited in time (for example, for a period not exceeding 2 business days);

(ii) be subject to adequate safeguards that protect the integrity of financial contracts and provide certainty to counterparties (see I-Annex 5 on Conditions for a temporary stay); and

(iii) not affect the exercise of early termination rights of a counterparty against the firm being resolved in the case of any event of default not related to entry into resolution or the exercise of the relevant resolution power occurring before, during or after the period of the stay (for example, failure to make a payment, deliver or return collateral on a due date).

The stay may be discretionary (imposed by the resolution authority) or automatic in its operation. In either case, jurisdictions should ensure that there is clarity as to the beginning and the end of the stay.

4.4 Resolution authorities should apply the temporary stay on early termination rights in accordance with the guidance set out in I-Annex 5 to ensure that it does not compromise the safe and orderly operations of regulated exchanges and FMIs.

5. Safeguards

Respect of creditor hierarchy and "no creditors worse off" principle

5.1 Resolution powers should be exercised in a way that respects the hierarchy of claims while providing flexibility to depart from the general principle of equal (*pari passu*) treatment of creditors of the same class, with transparency about the reasons for such departures, if necessary to contain the potential systemic impact of a firm's failure or to maximise the value for the benefit of all creditors as a whole. In particular, equity should absorb losses first, and no loss should be imposed on senior debt holders until subordinated debt (including all regulatory capital instruments) has been written-off entirely (whether or not that loss-absorption through write-down is accompanied by conversion to equity).

5.2 Creditors should have a right to compensation where they do not receive at a minimum what they would have received in a liquidation of the firm under the applicable insolvency regime ("no creditor worse off than in liquidation" safeguard).

5.3 Directors and officers of the firm under resolution should be protected in law (for example, from law suits by shareholders or creditors) for actions taken when complying with decisions of the resolution authority.

Legal remedies and judicial action

5.4 The resolution authority should have the capacity to exercise the resolution powers with the necessary speed and flexibility, subject to constitutionally protected legal remedies and due process. In those jurisdictions where a court order is still required to apply resolution measures, resolution authorities should take this into account in the resolution planning process so as to ensure that the time required for court proceedings will not compromise the effective implementation of resolution measures.

5.5 The legislation establishing resolution regimes should not provide for judicial actions that could constrain the implementation of, or result in a reversal of, measures taken by resolution authorities acting within their legal powers and in good faith. Instead, it should provide for redress by awarding compensation, if justified.

5.6 In order to preserve market confidence, jurisdictions should provide for flexibility to allow temporary exemptions from disclosure requirements or a postponement of disclosures required by the firm, for example, under market reporting, takeover provisions and listing rules, where the disclosure by the firm could affect the successful implementation of resolution measures.

6. Funding of firms in resolution

6.1 Jurisdictions should have statutory or other policies in place so that authorities are not constrained to rely on public ownership or bail-out funds as a means of resolving firms.

6.2 Where temporary sources of funding to maintain essential functions are needed to accomplish orderly resolution, the resolution authority or authority extending the temporary funding should make provision to recover any losses incurred (i) from shareholders and unsecured creditors subject to the "no creditor worse off than in liquidation" safeguard (see Key Attribute 5.2); or (ii) if necessary, from the financial system more widely.

6.3 Jurisdictions should have in place privately-financed deposit insurance or resolution funds, or a funding mechanism with ex post recovery from the industry of the costs of providing temporary financing to facilitate the resolution of the firm.

6.4 Any provision by the authorities of temporary funding should be subject to strict conditions that minimise the risk of moral hazard, and should include the following:

(i) a determination that the provision of temporary funding is necessary to foster financial stability and will permit implementation of a resolution option that is best able to achieve the objectives of an orderly resolution, and that private sources of funding have been exhausted or cannot achieve these objectives; and

(ii) the allocation of losses to equity holders and residual costs, as appropriate, to unsecured and uninsured creditors and the industry through ex-post assessments, insurance premium or other mechanisms.

6.5 As a last resort and for the overarching purpose of maintaining financial stability, some countries may decide to have a power to place the firm under temporary public ownership and control in order to continue critical operations, while seeking to arrange a permanent solution such as a sale or merger with a commercial private sector purchaser. Where countries do equip themselves with such powers, they should make provision to recover any losses incurred by the state from unsecured creditors or, if necessary, the financial system more widely.

7. Legal framework conditions for cross-border cooperation

7.1 The statutory mandate of a resolution authority should empower and strongly encourage the authority wherever possible to act to achieve a cooperative solution with foreign resolution authorities.

7.2 Legislation and regulations in jurisdictions should not contain provisions that trigger automatic action in that jurisdiction as a result of official intervention or the initiation of resolution or insolvency proceedings in another jurisdiction, while reserving the right of discretionary national action if necessary to achieve domestic stability in the absence of effective international cooperation and information sharing. Where a resolution

authority takes discretionary national action it should consider the impact on financial stability in other jurisdictions.

7.3 The resolution authority should have resolution powers over local branches of foreign firms and the capacity to use its powers either to support a resolution carried out by a foreign home authority (for example, by ordering a transfer of property located in its jurisdiction to a bridge institution established by the foreign home authority) or, in exceptional cases, to take measures on its own initiative where the home jurisdiction is not taking action or acts in a manner that does not take sufficient account of the need to preserve the local jurisdiction's financial stability.[6] Where a resolution authority acting as host authority takes discretionary national action, it should give prior notification and consult the foreign home authority.

7.4 National laws and regulations should not discriminate against creditors on the basis of their nationality, the location of their claim or the jurisdiction where it is payable. The treatment of creditors and ranking in insolvency should be transparent and properly disclosed to depositors, insurance policy holders and other creditors.

7.5 Jurisdictions should provide for transparent and expedited processes to give effect to foreign resolution measures, either by way of a mutual recognition process or by taking measures under the domestic resolution regime that support and are consistent with the resolution measures taken by the foreign home resolution authority. Such recognition or support measures would enable a foreign home resolution authority to gain rapid control over the firm (branch or shares in a subsidiary) or its assets that are located in the host jurisdiction, as appropriate, in cases where the firm is being resolved under the law of the foreign home jurisdiction. Recognition or support of foreign measures should be provisional on the equitable treatment of creditors in the foreign resolution proceeding.

7.6 The resolution authority should have the capacity in law, subject to adequate confidentiality requirements and protections for sensitive data, to share information, including recovery and resolution plans (RRPs), pertaining to the group as a whole or to individual subsidiaries or branches, with relevant foreign authorities (for example, members of a CMG), where sharing is necessary for recovery and resolution planning or for implementing a coordinated resolution.

7.7 Jurisdictions should provide for confidentiality requirements and statutory safeguards for the protection of information received from foreign authorities.

8. Crisis Management Groups (CMGs)

8.1 Home and key host authorities of all G-SIFIs should maintain CMGs with the objective of enhancing preparedness for, and facilitating the management and resolution of, a cross-border financial crisis affecting the firm. CMGs should include the supervisory

[6] This should not apply where jurisdictions are subject to a binding obligation to respect resolution of financial institutions under the authority of the home jurisdiction (for example, the EU Winding up and Reorganisation Directives).

authorities, central banks, resolution authorities, finance ministries and the public authorities responsible for guarantee schemes of jurisdictions that are home or host to entities of the group that are material to its resolution, and should cooperate closely with authorities in other jurisdictions where firms have a systemic presence.

8.2 CMGs should keep under active review, and report as appropriate to the FSB and the FSB Peer Review Council[7] on:

(i) progress in coordination and information sharing within the CMGs and with host authorities that are not represented in the CMGs;

(ii) the recovery and resolution planning process for G-SIFIs under institution-specific cooperation agreements; and

(iii) the resolvability of G-SIFIs.

9. Institution-specific cross-border cooperation agreements

9.1 For all G-SIFIs, at a minimum, institution-specific cooperation agreements, containing the essential elements set out in Annex I, should be in place between the home and relevant host authorities that need to be involved in the planning and crisis resolution stages. These agreements should, inter alia:

(i) establish the objectives and processes for cooperation through CMGs;

(ii) define the roles and responsibilities of the authorities pre-crisis (that is, in the recovery and resolution planning phases) and during a crisis;

(iii) set out the process for information sharing before and during a crisis, including sharing with any host authorities that are not represented in the CMG, with clear reference to the legal bases for information sharing in the respective national laws and to the arrangements that protect the confidentiality of the shared information;

(iv) set out the processes for coordination in the development of the RRPs for the firm, including parent or holding company and significant subsidiaries, branches and affiliates that are within the scope of the agreement, and for engagement with the firm as part of this process;

(v) set out the processes for coordination among home and host authorities in the conduct of resolvability assessments;

[7] The FSB has for the time being not established a Peer Review Council. Instead it launched a Resolvability Assessment Process (RAP). The objective of the RAP, which should be conducted by senior policy makers from CMG member authorities, is to facilitate adequate and consistent reporting on the resolvability of each G-SIFI and overall status of the resolution planning process.

(vi) include agreed procedures for the home authority to inform and consult host authorities in a timely manner when there are material adverse developments affecting the firm and before taking any significant action or crisis measures;

(vii) include agreed procedures for the host authority to inform and consult the home authority in a timely manner when there are material adverse developments affecting the firm and before taking any discretionary action or crisis measure;

(viii) provide an appropriate level of detail with regard to the cross-border implementation of specific resolution measures, including with respect to the use of bridge institution and bail-in powers;

(ix) provide for meetings to be held at least annually, involving top officials of the home and relevant host authorities, to review the robustness of the overall resolution strategy for G-SIFIs; and

(x) provide for regular (at least annual) reviews by appropriate senior officials of the operational plans implementing the resolution strategies.

9.2 The existence of agreements should be made public. The home authorities may publish the broad structure of the agreements, if agreed by the authorities that are party to the agreement.

10. Resolvability assessments

10.1 Resolution authorities should regularly undertake, at least for G-SIFIs, resolvability assessments that evaluate the feasibility of resolution strategies and their credibility in light of the likely impact of the firm's failure on the financial system and the overall economy. Those assessments should be conducted in accordance with the guidance set out in I-Annex 3.

10.2 In undertaking resolvability assessments, resolution authorities should in coordination with other relevant authorities assess, in particular:

(i) the extent to which critical financial services, and payment, clearing and settlement functions can continue to be performed;

(ii) the nature and extent of intra-group exposures and their impact on resolution if they need to be unwound;

(iii) the capacity of the firm to deliver sufficiently detailed accurate and timely information to support resolution; and

(iv) the robustness of cross-border cooperation and information sharing arrangements.

10.3 Group resolvability assessments should be conducted by the home authority of the G-SIFI and coordinated within the firm's CMG taking into account national assessments by host authorities.

10.4 Host resolution authorities that conduct resolvability assessments of subsidiaries located in their jurisdiction should coordinate as far as possible with the home authority that conducts resolvability assessment for the group as a whole.

10.5 To improve a firm's resolvability, supervisory authorities or resolution authorities should have powers to require, where necessary, the adoption of appropriate measures, such as changes to a firm's business practices, structure or organisation, to reduce the complexity and costliness of resolution, duly taking into account the effect on the soundness and stability of ongoing business. To enable the continued operations of systemically important functions, authorities should evaluate whether to require that these functions be segregated in legally and operationally independent entities that are shielded from group problems.

11. Recovery and resolution planning

11.1 Jurisdictions should put in place an ongoing process for recovery and resolution planning, covering at a minimum domestically incorporated firms that could be systemically significant or critical if they fail.

11.2 Jurisdictions should require that robust and credible RRPs, containing the essential elements of Recovery and Resolution Plans set out in I-Annex 4, are in place for all G-SIFIs and for any other firm that its home authority assesses could have an impact on financial stability in the event of its failure.

11.3 The RRP should be informed by resolvability assessments (see Key Attribute 10) and take account of the specific circumstances of the firm and reflect its nature, complexity, interconnectedness, level of substitutability and size.

11.4 Jurisdictions should require that the firm's senior management be responsible for providing the necessary input to the resolution authorities for (i) the assessment of the recovery plans; and (ii) the preparation by the resolution authority of resolution plans.

Recovery plan

11.5 Supervisory and resolution authorities should ensure that the firms for which a RRP is required maintain a recovery plan that identifies options to restore financial strength and viability when the firm comes under severe stress. Recovery plans should include:

(i) credible options to cope with a range of scenarios including both idiosyncratic and market wide stress;

(ii) scenarios that address capital shortfalls and liquidity pressures; and

(iii) processes to ensure timely implementation of recovery options in a range of stress situations.

Resolution plan

11.6 The resolution plan is intended to facilitate the effective use of resolution powers to protect systemically important functions, with the aim of making the resolution of any firm feasible without severe disruption and without exposing taxpayers to loss. It should include a substantive resolution strategy agreed by top officials and an operational plan for its implementation and identify, in particular:

(i) financial and economic functions for which continuity is critical;

(ii) suitable resolution options to preserve those functions or wind them down in an orderly manner;

(iii) data requirements on the firm's business operations, structures, and systemically important functions;

(iv) potential barriers to effective resolution and actions to mitigate those barriers;

(v) actions to protect insured depositors and insurance policy holders and ensure the rapid return of segregated client assets; and

(vi) clear options or principles for the exit from the resolution process.

11.7 Firms should be required to ensure that key Service Level Agreements can be maintained in crisis situations and in resolution, and that the underlying contracts include provisions that prevent termination triggered by recovery or resolution events and facilitate transfer of the contract to a bridge institution or a third party acquirer.

11.8 At least for G-SIFIs, the home resolution authority should lead the development of the group resolution plan in coordination with all members of the firm's CMG. Host authorities that are involved in the CMG or are the authorities of jurisdictions where the firm has a systemic presence should be given access to RRPs and the information and measures that would have an impact on their jurisdiction.

11.9 Host resolution authorities may maintain their own resolution plans for the firm's operations in their jurisdictions cooperating with the home authority to ensure that the plan is as consistent as possible with the group plan.

Regular updates and review

11.10 Supervisory and resolution authorities should ensure that RRPs are updated regularly, at least annually or when there are material changes to a firm's business or structure, and subject to regular reviews within the firm's CMG.

11.11 The substantive resolution strategy for each G-SIFI should be subject, at least annually, to a review by top officials of home and relevant host authorities and, where appropriate, the review should involve the firm's CEO. The operational plans for implementing each resolution strategy should be, at least annually, reviewed by appropriate senior officials of the home and relevant host authorities.

11.12 If resolution authorities are not satisfied with a firm's RRP, the authorities should require appropriate measures to address the deficiencies. Relevant home and host authorities should provide for prior consultation on the actions contemplated.

12. Access to information and information sharing

12.1 Jurisdictions should ensure that no legal, regulatory or policy impediments exist that hinder the appropriate exchange of information, including firm-specific information, between supervisory authorities, central banks, resolution authorities, finance ministries and the public authorities responsible for guarantee schemes. In particular:

(i) the sharing of all information relevant for recovery and resolution planning and for resolution should be possible in normal times and during a crisis at a domestic and a cross-border level;

(ii) the procedures for the sharing of information relating to G-SIFIs should be set out in institution-specific cooperation agreements (see Annex I); and

(iii) where appropriate and necessary to respect the sensitive nature of information, information sharing may be restricted, but should be possible among the top officials of the relevant home and host authorities.

12.2 Jurisdictions should require firms to maintain Management Information Systems (MIS) that are able to produce information on a timely basis, both in normal times for recovery and resolution planning and in resolution. Information should be available at the group level and the legal entity level (taking into account information needs under different resolution scenarios, including the separation of individual entities from the group). Firms should be required, in particular, to:

(i) maintain a detailed inventory, including a description and the location of the key MIS used in their material legal entities, mapped to their core services and critical functions;

(ii) identify and address exogenous legal constraints on the exchange of management information among the constituent entities of a financial group (for example, as regards the information flow from individual entities of the group to the parent);

(iii) demonstrate, as part of the recovery and resolution planning process, that they are able to produce the essential information needed to implement such plans within a short period of time (for example, 24 hours); and

(iv) maintain specific information at a legal entity level, including, for example, information on intra-group guarantees and intra-group trades booked on a back-to-back basis.

Appendix I: General guidance on the implementation of the Key Attributes

I-Annex 1: Information Sharing for Resolution Purposes

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

I-Annex 3: Resolvability assessments

I-Annex 4: Essential elements of recovery and resolution plans

I-Annex 5: Temporary stay on early termination rights

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)[8] 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.[9]

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.

8 FSB (2011), *Key Attributes of Effective Resolution Regimes for Financial Institutions*, October.

9 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.

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.[10]

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.

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

[10] 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.

1.5 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.

I-Annex 3: Resolvability Assessments

1. Defining resolvability

A SIFI is “resolvable” if it is feasible and credible for the resolution authorities to resolve it in a way that protects systemically important functions without severe systemic disruption and without exposing taxpayers to loss. For resolution to be feasible, the authorities should have the necessary legal powers - and the practical capacity to apply them - to ensure the continuity of functions critical to the economy. For resolution to be credible, the application of those resolution tools should not itself give rise to unacceptably adverse broader consequences for the financial system and the real economy.

2. Objectives of resolvability assessments

The objectives of resolvability assessments are to:

(i) make authorities and firms aware of the implications of resolution for systemic risk both nationally and globally;

(ii) identify factors and conditions affecting the effective implementation of resolution actions, both endogenous (firm structure) and exogenous (resolution regime and cross-border cooperation framework), in relation to firms, and the degree of contingency preparedness (adequacy of RRPs); and

(iii) help determine the specific actions necessary to achieve greater resolvability without severe systemic disruption and without taxpayer exposure to loss, while protecting systemically important functions.

3. Process for assessing resolvability

Resolvability assessments are necessarily qualitative and are not binary. Group resolvability assessments of G-SIFIs should be conducted by the home authority and coordinated within the firm’s CMG, taking into account national assessments by host authorities. The process for group resolvability assessment should be established in institution-specific cross-border cooperation agreements (see I-Annex 2). Host authorities that conduct resolvability assessments of local subsidiaries of foreign firms should coordinate as far as possible with the home authorities conducting the group resolvability assessment. The results of those resolvability assessments should inform the recovery and resolution planning for that firm.

The process for assessing resolvability consists of three stages.

Stage 1 - Feasibility of resolution strategies: Identify the set of resolution strategies which would be *feasible*, given the current resolution tools available, the RRP for the firm, and the authorities’ capacity to apply them at short notice to the firm in question.

Stage 2 - Systemic impact assessment: Determine the *credibility* of all feasible resolution strategies by capturing the likely impact of the firm's failure and resolution on global and national financial systems and real economies.

Stage 3 - Actions to improve resolvability: Conclude whether resolution is likely to be both feasible and credible and identify any changes necessary to the RRP or to the structure or operations of the firm to improve resolvability. Timelines for completing the requisite changes should be established. Progress should also be monitored.

Resolvability assessments, and the actions flowing from them, form a key part of the resolution planning process and are a **continuous** process consisting of:

(i) qualitative assessments by national authorities of the extent to which a firm is resolvable given its structure and the resolution regimes under which it operates;

(ii) assessments conducted by the home authority and coordinated within the firm's CMG drawing on shared national assessments of the resolvability of subsidiaries by members of the CMG, and identification of the issues to be addressed by the firm or by specific authorities;

(iii) presentation of issues to be addressed to the firm (or relevant regulatory authorities);

(iv) remediation by the firm or relevant regulatory authorities; and

(v) re-assessment of resolvability coordinated by the home authority.

4. Assessing the feasibility of resolution strategies

Set out below are some of the questions that, at a minimum, would need to be explored in order to assess the feasibility of resolution strategies.

Firm structure and operations

4.1 **Firm's essential functions and systemically important functions.** Based on the firm's strategic analysis, what are the principal businesses and what are the services that are core to the firm's franchise value? What critical financial and economic functions does it perform for the global and national financial systems and the non-financial sector?

4.2 **Mapping of essential functions and systemically important functions and corporate structures.** How do legal and corporate structures relate to principal business lines and critical and core functions?

4.3 **Continuity of Service Level Agreements.** What is the extent to which key operational functions such as payment operations, trade settlements and custody are outsourced to other group entities or third party service providers? How robust are the existing Service Level Agreements in ensuring that the key operational functions will continue to be provided to a bridge institution or surviving parts of a resolved firm when necessary?

4.4 **Assessment.** What are the obstacles to separating systemically critical functions from the rest of the firm in a resolution and for ensuring their continuity, given the issues referred to in paragraphs 4.1 to 4.3 above?

Internal interconnectedness

4.5 **Intra-group exposures.** What is the extent of the use of intra-group guarantees, booking practices and cross-default clauses? Are intra-group transactions well documented? How strong is the relevant risk management? To what extent are these transactions conducted at arm's length? Could back-to-back trades be unwound (for example, to facilitate a partial sale), if necessary? Do firms maintain at the legal entity level information on intra-group guarantees and intra-group trades booked on a back-to-back basis?

4.6 **Assessment.** Do intra-group transactions result in material imbalances of value across legal entities that affect incentives for cooperation? How quickly could intra-group transactions be unwound?

Membership in FMIs[11]

4.7 **Continuity of membership in FMIs.** Can the firm being resolved retain membership of FMIs? Will a newly established bridge institution be able to access FMIs?

4.8 **Transfer of centrally cleared contracts to a bridge institution.** Can centrally cleared financial contracts of a failed institution be transferred to a bridge institution pending the bridge institution's access to the CCP?

4.9 **Transferability of payment operations.** Do firms have in place arrangements that facilitate the transfer of payment operations to a bridge institution or third party purchaser? In particular, is there:

(i) a centralised repository for all their FMI membership agreements;

(ii) standardised documentation for payment services, covering issues including notice periods, termination provisions and continuing obligations, to facilitate orderly exit;

(iii) a draft Transitional Services Agreement as part of RRPs that, if needed, will allow the firm to continue to provide uninterrupted payment services (including access to FMIs) on behalf of the new purchaser, by using existing staff and infrastructure; and

(iv) a "purchaser's pack" that includes key information on the payment operations and credit exposures, and lists of key staff, to facilitate transfers of payment operations to a surviving entity, bridge institution or purchaser?

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11 See Key Attributes, footnote 2.

4.10 **Second-tier firms.** Do firms that are not direct FMI participants have contingency arrangements to access FMIs via more than one firm? Can they quickly switch if one direct participant fails?

4.11 **Assessment.** Can critical payment functions continue? Can access to FMIs be maintained?

Management information systems (MIS)

4.12 **Adequacy of MIS.** To what extent do the firm's MIS capabilities permit it to construct a complete and accurate view of its aggregate risk profile under rapidly changing conditions? Can the firm provide key information such as risk exposures, liquidity positions, interbank deposits and short-term exposures to and of major counterparties (including CCPs) on a daily basis? Can the firm ensure the continuity of MIS for both the remaining and successor entities if the firm or one or more component legal entities have entered into resolution or insolvency? Are the necessary MIS available at the legal entity level, including on intra-group transactions and collateral?

4.13 **Prompt provision of necessary information to relevant authorities.** How quickly could information (for example, financial, credit exposure, legal entity specific and regulatory) be provided to the home supervisor, to functional supervisors, to resolution authorities and to host supervisors, as appropriate? What types of legal impediments preclude information sharing among authorities? Does the firm have processes and tools to provide authorities with the information necessary to allow the rapid identification of depositors and amounts protected by a deposit insurance scheme?

4.14 **Assessment.** To what extent is it likely that the firm could deliver sufficiently detailed, accurate and timely information to support an effective resolution?

Coordination of national resolution regimes and tools

4.15 **Domestic powers and tools to maintain continuity of systemically important functions.** Do the resolution regimes in the jurisdictions where the SIFI performs systemically important functions (or has subsidiaries which provide crucial services to those functions) provide for the resolution powers set out Key Attribute 3?

4.16 **Cross-border resolution powers.** Do home and host country authorities have the requisite powers to act in a manner that supports implementation of a coordinated resolution, as set out in the *Key Attributes*? For example:

(i) What are the mechanisms in place to coordinate with a host authority the cross-border operation and recognition of a bridge institution when the home authority has decided to use such a tool as part of a resolution procedure;

(ii) Do resolution regimes provide for a differential treatment of creditor claims on the basis of the location of the claim, or the jurisdiction where it is payable; and

(iii) Could resolution measures in one foreign jurisdiction trigger action in other jurisdictions? How does this affect the resolution process and likelihood to achieve a coordinated solution?

4.17 **Information sharing between home and host authorities.** Are there any legal impediments to information sharing? How willing and able are home and host authorities to share the information necessary to effect a coordinated resolution?

4.18 **Practical cross-border coordination.** Do existing cross-border cooperation agreements reflect the requirements set out in the *Key* Attributes and give authorities confidence that they have the practical, operational and legal capacity to coordinate effectively with their foreign counterparts?

4.19 **Assessment.** Are the authorities confident that they have the necessary legal tools and operational capacity to achieve an internationally coordinated resolution of the SIFI?

5. Assessing the systemic impact

The assessment of the expected adverse consequences for the financial system and the overall economy resulting from the failure should help identify and develop measures that mitigate the systemic impact of the firm's failure.

The ***residual*** systemic impact of the firm's failure reflects three sets of factors:

(i) The inherent systemic risks in the firm's business profile;

(ii) Mitigating actions taken by the firm through sound business structures, governance, management practices and well-articulated resolution planning; and

(iii) The robustness of the identified institution-specific resolution strategies.

The criteria for evaluating the systemic impact of a firm's failure are still at a nascent stage and therefore the evaluation process is largely qualitative and judgmental. The core of the analysis, however, is assessing the residual systemic risks as they relate to the principal channels of systemic spillovers. Below are some suggested qualitative criteria to aid authorities' judgement of a given resolution strategy. The criteria should be assessed individually for each jurisdiction involved, and collectively for the firm as a whole.

5.1 **Impact on financial markets.** To what extent is the firm's resolution likely to cause disruptions in domestic or international financial markets, for example, because of lack of confidence or uncertainty effects?

5.2 **Impact on FMI.** Could the firm's resolution cause contagion through FMIs, for example by triggering of default arrangements in FMIs, or leaving other firms without access to FMIs?

5.3 **Impact on funding conditions.** What are the likely impacts of the firm's resolution on other (similarly situated) firms in rolling over and raising funds?

5.4 **Impact on capital.** To what extent could the exposure of systemically important counterparties to the firm in resolution result in their capital, individually or in aggregate, falling to levels below the regulatory thresholds?

5.5 **Impact on the economy.** To what extent could the firm's resolution and its consequences have an impact on the economy and through which channels? Is there a potential for credit and capital flows to constrict? Are there important wealth effects?

I-Annex 4: Essential Elements of Recovery and Resolution Plans

The *Key Attributes* call on jurisdictions to put in place an ongoing recovery and resolution planning process to promote resolvability as part of the overall supervisory process (see Key Attribute 11). The process should involve the resolution authorities and all other relevant authorities.

1. Objectives and governance of the RRP

1.1 An adequate, credible RRP is required for any firm when its failure is assessed by its home authority to have a potential impact on financial stability. This would include, at a minimum, all G-SIFIs (see Key Attribute 11.2).

1.2 The RRP should take account of the specific circumstances of the firm and reflect the nature, complexity, interconnectedness, level of substitutability and size of the firm.

1.3 The underlying assumptions of the RRP and stress scenarios should be sufficiently severe. Both firm (group) specific and system-wide stress scenarios should be considered taking into account the potential impact of cross-border contagion in crisis scenarios, as well as simultaneous stress situations in several significant markets. RRPs should make no assumption that taxpayers' funds can be relied on to resolve the firm.

1.4 RRPs should serve as guidance to firms and authorities in a recovery or resolution scenario. They do not in any way imply that the authorities would be obliged to implement them, or be prevented from implementing a different strategy in the event that the firm needs to be resolved.

Recovery plan

1.5 The recovery plan serves as a guide to the recovery of a distressed firm. In the recovery phase, the firm has not yet met the conditions for resolution or entered the resolution regime. There should be a reasonable prospect of recovery if appropriate recovery measures are taken. The recovery plan should include measures to reduce the risk profile of a firm and conserve capital, as well as strategic options, such as the divestiture of business lines and restructuring of liabilities.

1.6 The responsibility for developing and maintaining, and where necessary, executing the recovery plan lies with the firm's senior management. Authorities should review the recovery plan as part of the overall supervisory process, assessing its credibility and ability to be effectively implemented. The authorities should have the requisite powers to require the implementation of recovery measures.

1.7 Firms should be required to update the recovery plan at regular intervals, and upon the occurrence of events that materially change the firm's structure or operations, its strategy or aggregated risk exposure. They should be required to regularly review the exogenous and firm-specific assumptions a recovery plan is based upon and assess

on an ongoing basis the relevance and applicability of the plans. If necessary, firms should adapt their recovery plan accordingly.

Resolution plan

1.8 The resolution plan should facilitate the effective use of the resolution authority's powers with the aim of making feasible the resolution of any firm without severe systemic disruption and without exposing taxpayers to loss while protecting systemically important functions. It should serve as a guide to the authorities for achieving an orderly resolution, in the event that recovery measures are not feasible or have proven ineffective.

1.9 The responsibility for developing and maintaining, and where necessary, executing the resolution strategies set out in resolution plan lies with the authorities.

1.10 At the national level, all relevant authorities involved in supervision, implementation of corrective actions and resolution should participate in the RRP process.

1.11 Firms should be required to provide the authorities with the data and information, including strategy and scenario analysis, required for purposes of resolution planning on a timely basis. Authorities should identify the specific information requirements and satisfy themselves that the firm has the capacity to provide the information upon request and in a timely manner.

1.12 Authorities should review resolution plans with the firms to the extent necessary. Authorities may decide not to disclose a resolution plan or parts of it to the firm.

Governance and oversight of the RRP

Authorities

1.13 Authorities should establish a robust governance structure for the oversight of the recovery and resolution planning processes, including the ongoing review and updating of RRPs to take into account any changes in circumstances facing the firm or the financial system. Responsibilities for the development, review, approval and maintenance of RRPs should be clearly assigned. Authorities should define and communicate a clear process for interaction with the firms in recovery and resolution planning. In those jurisdictions where court orders are required to apply resolution measures, resolution authorities should take this into account in the resolution planning process, so as to ensure that the time required for court proceedings will not compromise the effective implementation of resolution actions.

1.14 Authorities should have sufficient resources and expertise to support the preparation and assessment of RRPs on an ongoing basis.

1.15 Authorities should review, and where necessary, direct changes to the assumptions and stress scenarios underlying a firm's RRP and require the firms to prepare additional stress scenarios. The stress scenarios should adequately consider all relevant

endogenous and exogenous risk exposures that the firm faces, taking into account the firm's specific situation, strategy and positions. Authorities should seek to achieve a reasonable degree of consistency in the severity of stress scenarios used by different firms. However, the stress scenarios used need not be the same for each firm.

1.16 Authorities should assess the willingness of the firm's management to implement corrective measures, and where necessary, enforce the implementation of recovery measures.

1.17 Authorities should consider the systemic impact of measures if these were being implemented by several firms at the same time.

Firms

1.18 Firms should be required to have in place a robust governance structure and sufficient resources to support the recovery and resolution planning process. This includes clear responsibilities of business units, senior managers up to and including board members, and identifying a senior level executive responsible for ensuring the firm is and remains in compliance with RRP requirements and for ensuring that recovery and resolution planning is integrated into the firm's overall governance processes.

1.19 Firms should be required to have in place systems to generate on a timely basis the information required to support the recovery and resolution planning process to enable both the firm and the authorities effectively to carry out recovery and resolution planning, and where necessary, implement the RRP.

1.20 Firms should be required to draw up concrete firm-specific stress scenarios, including both idiosyncratic and market-wide stress and, upon request, provide strategy and scenario analysis.

1.21 Firms should upon request engage in periodic simulation or scenario exercises with home and host authorities to assess whether the RRPs are feasible and credible.

Cross-border coordination

1.22 The top officials of the home and key host authorities of G-SIFIs should meet, where appropriate with the CEO of the firm, and review at least annually the overall resolution strategy (see Key Attribute 11.6).

1.23 Appropriate senior officials of the home and host authorities should, at least annually, review the operational resolution plans for each G-SIFI and engage in periodic simulation or scenario exercises to test the viability of the plans. These exercises may include the firm in question.

1.24 At least for G-SIFIs, the home resolution authority should lead the development of the group resolution plan in coordination with all members of the firm's CMG. Host resolution authorities may maintain their own resolution plans for the firm's operations in their jurisdictions, cooperating as far as possible with the home authority to ensure that the plan is as consistent as possible with the group plan.

1.25 For all G-SIFIs, the home authorities should have a process to ascertain which jurisdictions that are not included in the CMG assess the local operations of the firm as systemically important to the local financial system, and the reasons for that assessment. The home authorities should establish a process for maintaining contact with such non-CMG jurisdictions and ensure that appropriate modalities for cooperation and information sharing are in place.

2. General outline of RRPs

Structure of RRPs

2.1 To support rapid execution, both recovery and resolution plans should include:

(i) a high-level substantive summary of the key recovery and resolution strategies and an operational plan for implementation;

(ii) the strategic analysis that underlies the recovery and resolution strategies;

(iii) conditions for intervention, describing necessary and sufficient prerequisites for triggering the implementation of recovery or resolution actions;

(iv) concrete and practical options for recovery and resolution measures;

(v) preparatory actions to ensure that the measures can be implemented effectively and in a timely manner;

(vi) details of any potential material impediments to an effective and timely execution of the plan; and

(vii) responsibilities for executing preparatory actions, triggering the implementation of the plan and the actual measures.

Recovery and resolution strategies

2.2 RRPs should contain a high-level substantive summary of the key recovery and resolution strategies and an operational plan for their implementation. This should include the identification of the firm's essential and systemically important functions (for example, illustrated with an organisational chart of the firm's major operations), a description of the critical measures to implement the key recovery and resolution strategies and an assessment of potential impediments to their successful implementation, as well as any material changes or actions taken since the firm's last submitted RRP.

Strategic analysis

2.3 A key component of RRPs is a strategic analysis that identifies the firm's essential and systemically important functions and sets out the key steps to maintaining them in recovery as well as in resolution scenarios. Elements of such analysis should include:

(i) identification of essential and systemically important functions, mapped to the legal entities under which they are conducted;

(ii) actions necessary for maintaining operations of, and funding for, those essential and systemically important functions;

(iii) assessment of the viability of any business lines and legal entities which may be subject to separation in a recovery or resolution scenario, as well as the impact of such separation on the remaining group structure and its viability;

(iv) assessment of the likely effectiveness and potential risks of each material aspect of the recovery and resolution actions, including potential impact on customers, counterparties and market confidence;

(v) estimates of the sequencing and the time needed to implement each material aspect of the plan;

(vi) underlying assumptions for the preparation of the RRPs;

(vii) potential material impediments to effective and timely execution of the plan; and

(viii) processes for determining the value and marketability of the material business lines, operations, and assets.

3. Essential elements of a recovery plan

3.1 Firms should identify possible recovery measures and the necessary steps and time needed to implement such measures and assess the associated risks. The range of possible recovery measures should include:

(i) actions to strengthen the capital situation, for example, recapitalisations after extraordinary losses, capital conservation measures such as suspension of dividends and payments of variable remuneration;

(ii) possible sales of subsidiaries and spin-off of business units;

(iii) a possible voluntary restructuring of liabilities through debt-to-equity conversion; and

(iv) measures to secure sufficient funding while ensuring sufficient diversification of funding sources and adequate availability of collateral in terms of volume, location and quality. Proper consideration should also be given to possible transfers of liquidity and assets within the group.

3.2 Firms should assess the additional requirements to which they may potentially become subject during crisis situations in order to maintain their membership of FMIs, for example, as regards pre-funding or collateralising of positions, and identify options for addressing the additional requirements (for example, plan for the sourcing of additional collateral, and assess potential constraints on the firm’s total payment flows).

3.3 Firms should ensure that they have in place appropriate contingency arrangements (for example, functioning of internal processes, IT systems, clearing and settlement facilities, supplier and employee contracts) that enable them to continue to operate as they implement recovery measures.

3.4 Firms should define clear backstops and escalation procedures, identifying the criteria (both quantitative and qualitative) which would trigger the implementation of the recovery plan or individual measures by the management of the firm, in consultation with the authorities. Such triggers should be designed to prevent undue delays in the implementation of recovery measures.

3.5 Firms should develop a proper communication strategy with the authorities, public, financial markets, staff and other stakeholders.

4. Essential elements of a resolution plan

4.1 Authorities should identify potential resolution strategies and assess the necessary preconditions and operational requirements for their implementation, including with regard to arrangements for cross-border coordination. In addition to the overall resolution strategy and the underlying strategic analysis, authorities should identify:

(i) regulatory thresholds and legal conditions that provide grounds for the initiation of official actions (including thresholds for entry into resolution) and scope for authorities' discretion (for example, the extent to which authorities can refrain from taking actions or not avoid acting under certain conditions);

(ii) the critical interdependencies and the impact of resolution actions on other business lines and legal entities (would other entities be able to continue to operate?); financial contracts (do authorities have powers to limit or suspend termination or close-out rights?); markets and other firms with similar business lines; and include a comparative estimate of losses to be borne by creditors and any premium associated with various resolution strategies;

(iii) the range of sources available for resolution funding;

(iv) the process for disbursements by deposit insurance funds and other insurance schemes (including, for example, identification of insured and uninsured depositors);

(v) the processes for preserving uninterrupted access to payment, clearing and settlement facilities, exchanges and trading platforms;

(vi) the internal processes and systems necessary to support the continued operation of the firm's critical functions;

(vii) processes for their cross-border implementation; and

(viii) proper communication strategies and processes to coordinate communication with foreign authorities.

5. Information requirements for recovery and resolution planning

Firms should have the capacity to provide the essential information needed to implement the RRPs on a timely basis for purposes of recovery and resolution planning, as well as in crisis situations, including information on the following:

5.1 Intra-group inter-linkages, for example, core business operations and interconnectedness by reference to business lines, legal entities and jurisdictions, intra-group exposures through intra-group guarantees and loans, and trades booked on a back-to-back basis; dependencies of the firm's legal entities on other group entities for liquidity or capital support as well as other (for example, operational) support.

5.2 Operational data, for example, the extent of asset encumbrance, amount of liquid assets, off-balance sheet activities, etc.

5.3 Organisation and operations that support the execution of recovery and resolution measures, for example, information on dealing room operations, including trade booking practices, hedging strategies, custody of assets; information on payment, clearing and settlement systems; and inventory of the key management information systems, including accounting, position keeping and risk systems.

5.4 Key crisis-management roles and responsibilities, for example, contact information, communication facilities for in-crisis communication, and the firm's procedures for providing relevant home and host authorities with access to information, both in normal times and during a crisis.

5.5 Legal and regulatory framework in which the firm operates, for example, the relevant home and host authorities and their roles, functions and responsibilities in financial crisis management; resolution regimes, including the relevant aspects of applicable corporate, commercial, insolvency, and securities laws and insolvency regimes affecting major portions of the group; liquidity sources, including both private and central bank sources.

I-Annex 5: Temporary stay on early termination rights[12]

1. Objectives

1.1 Under standard market documentation for financial contracts and absent any statutory or regulatory provisions to the contrary, contractual acceleration, termination and other close-out rights (collectively, "early termination rights") in financial contracts may be triggered upon entry of a firm into resolution or in connection with the use of resolution powers. In the case of a SIFI, the termination of large volumes of financial contracts upon entry into resolution could result in a disorderly rush for the exits that creates further market instability and frustrates the implementation of resolution measures aimed at achieving continuity.

1.2 The Key Attributes (see Key Attribute 4.3) stipulate that, subject to adequate safeguards, entry into resolution and the exercise of any resolution powers should not constitute an event that entitles the counterparty of the firm in resolution to exercise early termination rights provided the substantive obligations under the contract, including payment and delivery obligations, and provision of collateral, continue to be performed. Should early termination rights nevertheless be exercisable, the resolution authority should have the power to stay temporarily such rights where they arise by reason only of entry into resolution or in connection with the use of resolution powers and provided that the substantive obligations under the contract, including payment and delivery obligations, and provision of collateral, continue to be performed.

1.3 Limited in this way, the restrictions on early termination rights set out in paragraph 1.2 do not affect other rights of counterparties under a netting and collateralisation agreements and do not interfere with payment or delivery obligations to FMIs.13 If a firm in resolution fails to meet any margin, collateral or settlement obligations that arise under a financial contract or as a result of the firm's membership or participation in an FMI, its counterparty or the FMI would have the immediate right to exercise an early termination right against the firm in resolution. The counterparty and the FMI could not terminate and close-out the contract based solely upon the entry into resolution or the exercise of resolution powers. They would have such right if the firm in resolution or the resolution authority failed to meet any margin, collateral or settlement obligations that arise under a financial contract or as a result of the firm's membership or participation in an FMI.

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12 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.

13 For the purposes of this document, the term "financial market infrastructure" is defined as "a multilateral system among participating financial institutions, including the operator of the system, used for the purposes of recording, clearing, or settling payments, securities, derivatives, or other financial transactions". It includes payment systems, central securities depositories (CSDs), securities settlement systems (SSSs), central counterparties (CCPs), and trade repositories (TRs). See CPSS-IOSCO (2012), *Principles for financial market infrastructures*, April.

2. Conditions for a temporary stay

2.1 A temporary stay of the exercise of early termination rights should be subject to the following conditions:

(i) The stay only applies to early termination rights that arise for reasons only of entry into resolution or in connection with the use of resolution powers (including, for example, a change in control of the relevant firm or its business arising from such proceedings);

(ii) The stay is strictly limited in time (for example, for a period not exceeding two business days);

(iii) The resolution authority would only be permitted to transfer all of the eligible contracts with a particular counterparty to a new entity and would not be permitted to select for transfer individual contracts with the same counterparty and subject to the same netting agreement ("no cherry-picking" rule);

(iv) For contracts that are transferred to a third party or bridge institution, the acquiring entity would assume all the rights and obligations of the firm from which the contracts were transferred;

(v) The early termination rights of the counterparty are preserved against the firm in resolution in the case of any default occurring before, during or after the period of the stay that is not related to entry into resolution or the exercise of a resolution power (for example, a failure to make a payment or the failure to deliver or return collateral on a due date);

(vi) Following a transfer of financial contracts the early termination rights of the counterparty are preserved against the acquiring entity in the case of any subsequent independent default by the acquiring entity;

(vii) The counterparty can exercise the right to close out immediately against the firm in resolution on expiry of the stay or earlier if the authorities inform the firm that the relevant contracts will not be transferred; and

(viii) After the period of the stay, early termination rights could be exercised for those financial contracts that are not transferred to a sound firm, bridge institution or other public entity.

Operation of the stay

2.2 The stay may be discretionary (imposed by the resolution authority on a case-by-case basis) or automatic in its operation. In either case, jurisdictions should ensure that the counterparties to the firm in resolution have clarity as to the beginning and the end of the stay.

2.3 As part of the resolution planning process and resolvability assessments, authorities should consider the implications of a temporary stay on the exercise of early termination rights for FMIs and other counterparties of the firm (see I-Annex 3, 4.8; I-Annex 4, 4.1).

Appendix II: Sector-specific Guidance

II-Annex 1: Resolution of FMIs and FMI Participants

II-Annex 2: Resolution of Insurers

II-Annex 3: Protection of Client Assets in Resolution

II-Annex 1: Resolution of Financial Market Infrastructures (FMIs) and FMI Participants

Part I of this Annex ("Resolution of Financial Market Infrastructures") provides guidance on the implementation of the *Key Attributes of Effective Resolution Regimes for Financial Institutions* (the '*Key Attributes*', KAs) in relation to resolution regimes for systemically important FMIs.

Part II of this Annex ("Resolution of FMI Participants") deals with the resolution of FMI participants that could be systemically significant or critical in the event of failure.

I. Resolution of Financial Market Infrastructures

The *Key Attributes* state that FMIs – defined to include payment systems, central securities depositories (CSDs), securities settlement systems (SSSs), central counterparties (CCPs) and trade repositories (TRs) – should be subject to resolution regimes that apply the objectives and provisions of the *Key Attributes* in a manner appropriate to FMIs and their critical role in financial markets (KA 1.2).

This guidance supplements the *Key Attributes* – which apply generally to resolution regimes for all systemically significant or critical financial institutions, including FMIs - by indicating how particular KAs, or elements of particular KAs, should be interpreted when applying to resolution regimes for FMIs or specific classes of FMI. The presumption is that all FMIs are systemically important or critical, at least in the jurisdiction where they are located, typically because of their critical roles in the markets they serve. However, an authority may determine that an FMI in its jurisdiction is not systemically important or critical and, therefore, not subject to the *Key Attributes*. The scope of the guidance is aligned with that of the CPSS-IOSCO *Principles for financial market infrastructures* (PFMI)[14] and makes clear that FMIs owned and operated by central banks are not subject to the *Key Attributes*.

Where relevant, this guidance sets out specific features of resolution regimes appropriate for different types of FMIs. This Annex should be read with the *Key Attributes,* and the guidance on individual KAs should be considered in conjunction with the KA to which it relates. The Annex does not replace the *Key Attributes,* and there should be no inference that a particular KA or element of a KA does not apply to an FMI simply because there is no supporting provision in this Annex.[15]

This Annex should also be read alongside PFMI which require systemically important FMIs to have a comprehensive and effective recovery plan.[16] More specifically, the PFMI require FMIs to establish explicit rules and procedures that address fully any credit losses they may face as a result of any individual or combined default by participants with respect to any of their obligations to the FMI; how potentially uncovered credit losses would be allocated; and how financial

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14 CPSS-IOSCO (2012), *Principles for financial market infrastructures*, April

15 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.

16 Further guidance on the recovery planning process and the content of recovery plans is set out in the CPMI-IOSCO report on Recovery of financial market infrastructures. [*To add hyperlink when guidance is published.*]

resources that the FMI may deploy during a stress event are replenished.[17] The PFMI also require FMIs to establish explicit rules and procedures that enable the FMI to effect same-day, and where appropriate, intra-day and multi-day settlement of payment obligations on time following any individual or combined default among its participants.[18]

Nevertheless, there may be circumstances where resolution of the FMI is necessary. Entry into resolution should be possible, subject to determination by the relevant authorities, if the recovery plan and any rules and procedures for loss allocation have failed to return the FMI to viability or have not been implemented in a timely manner, or the relevant regulator, oversight, supervisory, or resolution authority determines that, even though the plan may not yet have been fully implemented or exhausted, recovery measures are not reasonably likely to return the FMI to viability or would otherwise be likely to compromise financial stability. This requires FMIs to be subject to resolution regimes that apply the objectives and provisions of the *Key Attributes* in a manner as appropriate to FMIs and their critical role in financial markets (KA 1.2).

1. Objectives (KA Preamble)

1.1 An effective resolution regime for FMIs should pursue financial stability and allow for the continuity of critical FMI functions without exposing taxpayers to loss, either by restoring the ability of the FMI to perform those functions as a going concern or ensuring the performance of those functions by another entity or arrangement coupled with the orderly wind-down of the FMI in resolution. It should, as applicable, aim to:

(i) achieve continuity and timely completion of critical payment, clearing, settlement and recording functions;

(ii) facilitate the timely settlement of obligations of the FMI;

(iii) maintain continuous access of participants to securities or cash accounts provided by the FMI and securities or cash collateral posted to and held by the FMI that is owed to such participants;

(iv) avoid any disruption in the operation of links between the FMI in resolution and other FMIs that would have a material negative effect on financial stability or the functioning of markets; and

(v) safeguard, preserve and enable continuous processing of, and access to, data stored in a TR.

[17] Principle 4, Key Consideration 7.

[18] Principle 7, Key Consideration 10.

2. Scope of resolution regimes for FMIs (KA 1)

Application to systemically important FMIs

2.1 FMIs that are systemically important should, irrespective of their licensing status (for example, FMIs licensed as banks), be subject to a resolution regime that applies the Key Attributes in a manner appropriate to the specific characteristics of the type of FMI in question and its critical role in financial markets. The resolution regime should include the features that are relevant to the specific types of FMI covered by the scope of that regime.

2.2 The Key Attributes and Guidance set out in this Annex do not apply to FMIs owned and operated by central banks.

Systemic importance

2.3 Authorities should have regard to the presumptions set out in paragraph 1.20 of the CPSS-IOSCO *Principles for Financial Market Infrastructures*[19] regarding the systemic importance of FMIs.

3. Resolution authority[20] for FMIs (KA 2)

Statutory objectives

3.1 As part of its statutory objectives and functions, an authority responsible for the resolution of FMIs should be guided in the exercise of its resolution powers by the specific objectives of pursuing financial stability and maintaining continuity of the critical functions of an FMI in resolution without losses for taxpayers (see KA 2.3 (i) and paragraph 1.1), in addition to the other relevant general objectives set out in KA 2.3.

Appointment of an administrator, conservator or other official

3.2 The resolution of an FMI may be carried out by the resolution authority directly or through a special administrator, conservator, receiver or other official with similar functions. A special administrator, conservator, receiver or other official should be guided by the objectives specified in paragraphs 1.1 and 3.1 (including those set out in KA 2.3) when carrying out that resolution.

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19 CPSS-IOSCO (2012)

20 Consistent with KA 2.1, references to "resolution authority" include references to more than one authority where two or more authorities are responsible for exercising resolution powers under the resolution regime.

Resolution authority expertise

3.3 The staff of the resolution authority should have the necessary knowledge and expertise regarding systemically important FMIs. Where the resolution authority is separate from the supervisory authority, it should have the ability to draw on the expertise of the latter.

Consultation and cooperation with central banks and other authorities

3.4 Where the central bank is not also the resolution authority, supervisory or oversight authority of an FMI that settles through, or is otherwise linked to, systems operated by the central bank, the resolution authority or appointed administrator should consult and cooperate with the central bank when planning or carrying out the resolution of that FMI.

3.5 The resolution authority or appointed administrator should consult any other market regulatory authority where the services of the FMI are material for the adequate functioning of the capital markets that are overseen by that authority.

4. Resolution powers for FMIs (KA 3)

Choice of resolution powers

4.1 The choice of resolution powers that are applied to an FMI should take into account:

(i) the type of FMI and the critical functions that it provides;

(ii) the risk profile of the FMI, including its exposure to credit, liquidity and general business risks and, in particular, whether it takes credit risk through exposures to its participants as principal;

(iii) the FMI's capital structure, available assets, default resources and loss allocation arrangements;

(iv) any recovery measures taken by the FMI;

(v) in the case of an FMI that has rules-based loss allocation procedures, the extent to which those procedures have not been exhausted before entry into resolution;

(vi) the type of the stress (for example, credit losses or liquidity shortfalls) and its source (for example, stress arising from participant default or from other causes, such as, business, operational or other structural weaknesses); and

(vii) the market structure in which it operates (for example, the existence of alternative providers).

4.2 The choice of resolution powers should take into account the expected impact of those powers on direct and indirect FMI participants, any linked FMIs and third parties, regardless of where they are located, and the expected impact on financial markets more widely.

Entry into resolution (KA 3.1)

4.3 Entry into resolution should be possible when an FMI is, or is likely to be, no longer viable or no longer able to meet applicable legal or regulatory requirements on a continuing basis, and has no reasonable prospect of returning to viability within a reasonable timeframe through other actions that could be taken by the FMI (that do not themselves compromise financial stability). Entry into resolution should be possible, in particular, if:

(i) recovery measures available to the FMI, including the use of its available assets and default resources and the application of any loss allocation rules, are exhausted and have failed to return the FMI to viability and continuing compliance with applicable legal and regulatory requirements, or are not being implemented in a timely manner; or

(ii) the relevant oversight, supervisory or resolution authority determines that the recovery measures available to the FMI are not reasonably likely to return the FMI to viability within the timeframe required to enable continued compliance with applicable legal and regulatory requirements, or that they are otherwise likely to compromise financial stability.

Implementation of loss allocation rules and procedures prior to entry into resolution

4.4 Where the FMI has rules and procedures for loss mutualisation or allocation, those rules and procedures should generally be exhausted prior to the entry into resolution of the FMI unless it is necessary or appropriate for achieving the resolution objectives (paragraph 3.1.) to initiate resolution before those rules and procedures have been exhausted. Where any such rules and procedures have not been exhausted prior to entry into resolution, the resolution authority should have the power to enforce implementation of those rules and procedures (see paragraph 4.9 (i)).

Continuity upon entry into resolution

4.5 Settlement finality rules should continue to apply in resolution.

4.6 Any licenses, authorisations, recognitions and legal designations of a (domestic or foreign) FMI necessary for the continued performance of the FMI's critical functions in resolution, including its recognition for the purposes of the application of relevant settlement finality rules, should not be revoked automatically solely as a result of entry into resolution under either domestic or foreign law and should remain effective to the extent necessary to allow for continuity of the critical functions of the FMI in resolution.

4.7 The entry into resolution of an FMI should not lead automatically to the restriction, suspension or termination of its participation in, or link with, other FMIs (wherever located) and FMIs should not be prevented (including by law or regulations) from maintaining the participation of, or link with another FMI that is in resolution provided that the FMI in resolution continues to meet its payment and delivery obligations when due and to comply with any other applicable obligations under the rules of the FMI.

Temporary administration

4.8 The resolution authority or an appointed administrator, conservator, receiver or similar official should have the power and the capacity to ensure the continued provision of the critical functions of an FMI in resolution and to fulfil the FMI's payment and settlement obligations on time, including on the day that the FMI enters into resolution, until the FMI is restored to viability or those functions transferred, replaced by another provider or wound down in an orderly manner.

Powers to allocate losses and allocate or terminate contracts (KA 3.2 (iii), KA 3.5)

4.9 Subject to the relevant safeguards set out in paragraph 4.11 and in KA 5 (as elaborated in paragraph 6.1) resolution authorities should have powers to:

(i) enforce any existing and outstanding contractual obligations of the FMI's participants to meet cash calls or make further contributions to a guarantee or default fund, or any other rules and procedures of the FMI for loss allocation (including for the repayment of liquidity providers) where they have not been already applied exhaustively by the FMI prior to the entry of the FMI into resolution;

(ii) enforce any existing and outstanding obligations of the FMI's participants pursuant to the rules and procedures of the FMI to accept allocations of the positions of a defaulting participant;

(iii) write down (fully or partially) equity of the FMI;

(iv) write down and/or convert to equity ("bail in") unsecured debt of the FMI in a manner that respects the hierarchy of claims under the applicable insolvency regime;

(v) reduce the value of any gains payable by the FMI to participants (for example, by variation margin hair-cutting);[21]

(vi) terminate ("tear up") or close out contracts.

Termination of some but not all contracts ("partial tear up") or any reduction in value of gains payable by the FMI to participants should only be performed where consistent with the legal framework and the rules of the FMI drawn up in accordance with the legal framework.

4.10 Resolution authorities may write down initial margin of direct participants and, where permitted, indirect participants, where the initial margin is not remote from the

[21] For example, to the extent defaulting participants with 'out-of-the-money' positions had been unable to pay variation margin to a CCP, the CCP's obligations and variation margin payments to all 'in-the-money' participants could be haircut pro rata to the size of their variation margin claims.

insolvency of the FMI and where consistent with the legal framework and the rules of the FMI drawn up in accordance with the legal framework.[22]

4.11 Any power to allocate losses to participants of the FMI by reducing the value of any gains payable to such participants (for example, by variation margin hair-cutting) in accordance with paragraph 4.9 (v) or by writing down initial margin in accordance with paragraph 4.10, should be subject to the following conditions:

(i) the FMI's pre-funded resources have been exhausted and other mechanisms under its rules to cover losses and restore viability have either been unsuccessful or have not been implemented (because the resolution authorities determine that their implementation would be likely to compromise financial stability or unlikely to be successful having regard to the circumstances, or for any other reason);

(ii) the loss allocation respects the rules of the FMI and the hierarchy of claims under the applicable insolvency regime; and

(iii) the loss allocation applies to collateral and margin only to the extent that such collateral or margin would be used to cover losses other than those related to the obligations of the participant that posted them either under the loss allocation rules of the FMI or if the FMI entered into insolvency.

In a situation where an FMI participant has failed to meet its obligations to the FMI under the rules and procedures of the FMI prior to the FMI's entry into resolution, these conditions do not preclude the use of the participant's initial margin to meet those obligations (where consistent with the legal framework and the rules of the FMI).

Termination ("tear up") or close out of contracts

4.12 When considering whether to terminate the outstanding contracts of a CCP, the resolution authority should take into account, among other things, the impact of that action on:

(i) the risk management of the CCP's participants; and

(ii) financial stability.

Transfer of critical functions to a solvent third party or bridge institution (KAs 3.2 (vi) and (vii), 3.3 and 3.4)

4.13 Resolution authorities should have the power, subject to legal safeguards for counterparties relating, in particular, to netting sets and collateral arrangements, to transfer to a third party purchaser or bridge institution the ownership of an FMI or all or part of an FMI's critical operations (for example, clearing in one specific product),

[22] Initial margin is in principle only available to cover obligations of the participant that posted it. In some jurisdictions, however, where the initial margin is not held in a manner that is remote from the insolvency of the CCP, the initial margin may, in the event of a CCP's insolvency, be exposed to the claims of creditors other than the participant that posted such initial margin.

including all associated rights and obligations and necessary service-level agreements. Any such power should be exercisable notwithstanding any requirements for consent or novation that would otherwise apply.

4.14 Where functions of an FMI are transferred to a third party purchaser or bridge institution, the resolution authority should aim to ensure continuity of the FMI's legal and technical arrangements, such as delivery-versus-payments arrangements, domestic or cross-border links with other FMIs or other critical service providers and relevant contractual arrangements.

4.15 Where functions are transferred to a bridge institution, any licenses, authorisations, recognitions and legal designations of the FMI necessary for the continued performance of those functions in resolution, including its recognition for the purposes of the application of relevant settlement finality rules, should be transferred or otherwise applied to the bridge institution (or institutions).

4.16 The transfer powers of resolution authorities should enable the authority, in cases where the FMI in resolution holds client assets in a capacity as custodian, to transfer those assets to another institution for custody without affecting the ownership rights or entitlements of the relevant clients to those assets.

Moratorium (KA 3.2(xi))

4.17 A resolution authority should not impose a moratorium on payments due by the FMI to its participants or to any linked FMI if that moratorium would:

(i) affect the ordinary flow of payments, settlements and deliveries being processed by the FMI in the course of its core functions; or

(ii) otherwise jeopardise or prevent continuity of other critical functions performed by the FMI in resolution or linked FMI.

This should not prevent a resolution authority from imposing a moratorium on payments to general creditors, that is, creditors whose claims on the FMI (a) are not the result of the use of the FMI's critical functions or (b) do not arise from services necessary for the provision of those functions.

4.18 A resolution authority should not be prevented from using any loss allocation powers referred to in paragraph 4.9 or 4.10 in relation to payments, settlements and deliveries subject to a moratorium.

Resources to support orderly CCP resolution

4.19 Resolution authorities for systemically important CCPs should have access to a set of resolution-specific resources and tools available for resolution and, if available in accordance with paragraph 4.20, financial resources from access to non-exhausted recovery tools (collectively, the "resolution toolbox"). The set of resolution-specific resources and tools should 1) be loss absorbing, provide recapitalisation options, and provide liquidity to give resolution authorities a reasonable opportunity to achieve a

successful resolution in default loss and non-default loss scenarios; 2) be reliable and readily available in resolution; 3) mitigate potential adverse effects on financial stability; and 4) achieve outcomes in resolution consistent with the Key Attributes and in a manner mindful of the NCWO safeguard, by ensuring equity remains in a first-loss position and by preserving incentives for clearing participants to participate in recovery and central clearing.

4.20 In accordance with the FMI Annex of the Key Attributes, resolution authorities should have a) specific legal authority to use non-exhausted resources and tools that are available to the CCP in recovery, and b) the power to intervene before recovery resources have been exhausted (see paragraphs 4.1(v), 4.4, 4.9(i)). In addition, resolution authorities with the necessary practical capabilities to intervene while recovery resources are still available may consider those expected additional financial resources when choosing which resolution-specific resources and tools to include in their resolution toolbox, the specification of those tools, and their calibration; however, jurisdictions should not rely solely on resources or tools designated for recovery and should establish a resolution toolbox in line with the standard set out above.

4.21 The set of resolution-specific resources and tools should, in aggregate, meet the following dimensions to support the objectives as stated in 4.19 of this Annex:

(i) Purpose and usability: provide resources and tools that are sufficient for loss absorption, liquidity, and, if needed, recapitalisation in resolution to give resolution authorities a reasonable opportunity to achieve a successful resolution;

(ii) Timeliness and performance risk: include resources and tools that would be reliable and readily available in resolution for the purpose for which they are intended;

(iii) Legal and operational considerations: include resources and tools without significant legal, operational or governance impediments (in a manner mindful of the NCWO safeguard) to the ability of the resolution authority to access the resource at the time of resolution;

(iv) Impact on financial stability: include resources and tools that are predictable and can be used without creating material adverse effects on financial stability;

(v) Costs: provide options to manage relative costs of the resources and tools with respect to the magnitude and allocation among the parties; and

(vi) Impact on CCP’s business models and clearing participant incentives: preserve incentives across recovery and resolution by ensuring CCP equity appropriately remains in a first-loss position and by preserving incentives for market participants to participate in recovery and central clearing.

4.22 The composition of the resolution toolbox should include a combination of resolution-specific resources and tools from the following list (presented in alphabetical order):

(i) Bail-in bonds

(ii) Equity in a first-loss position in resolution

(iii) Resolution cash calls

(iv) Resolution funds (regional/national/supranational)

(v) Resolution-specific insurance

(vi) Resolution-specific third-party contractual support

(vii) Statutory or contractual VMGH for resolution

The FSB may review and augment this list from time to time, as appropriate, as jurisdictions may have or develop further resources and tools not covered in this report that help achieve resolution objectives and that the FSB may consider for inclusion.

4.23 Jurisdictions should determine and make transparent their approach to calibrating one or more resolution-specific resources and tools in the resolution toolbox, for both default losses and non-default losses, which will serve as an expected amount of resolution-specific resources and tools that can be relied upon for resolution. Disclosures could be in a general form, not a precise or CCP-specific amount. Disclosing the resource or tool calibration (e.g. underlying methodology) in a regulatory publication or similar text, would be sufficient for transparency purposes.

5. Set-off, netting, collateralisation, segregation of client assets (KA 4)

Temporary stay on early termination rights (KA 4)

5.1 Entry into resolution of, or the exercise of any resolution power in relation to, an FMI should not trigger a right to acceleration or early termination by any participant in an FMI or any other counterparty of an FMI. Such rights should remain exercisable where the FMI (or the authority, administrator, receiver or other person exercising control over the FMI in resolution) fails to meet payment or delivery obligations, including collateral transfers, when due in accordance with its rules, but subject to any application of loss allocation to margin or collateral under the rules of the FMI or through the exercise of statutory loss allocation powers.

5.2 Where such rights to acceleration or early termination nevertheless arise by reason only of entry into resolution or in connection with the exercise of any resolution powers, the resolution authority should have the power to stay temporarily such rights. When considering whether to impose a temporary stay on the exercise by FMI participants and other relevant counterparties of acceleration or early termination rights triggered by entry into resolution of the FMI, the resolution authority should take into account the impact on the financial markets and on the safe and orderly operations of the FMI and any linked FMI.

6. Safeguards (KA 5)

"No creditor worse off" principle (KA 5.2)

6.1 For the purposes of determining whether a participant is worse off as a result of resolution measures than in liquidation (application of the "no creditor worse off safeguard" set out in KA 5.2), the assessment of the losses that would have been incurred and the recoveries that would have been made by FMI participants if the FMI had been subject to liquidation should assume the full application of the FMI's rules and procedures for loss allocation.

7. Funding of FMI resolution (KA 6)

7.1 Jurisdictions should have in place appropriate arrangements and powers to provide temporary funding to facilitate resolution and to recover any resulting losses to public funds from the FMI, unsecured creditors (including FMI participants) or, if necessary, participants in the financial system more widely (see KA 6.2 and 6.4).

7.2 Where jurisdictions provide for the power to place an FMI under temporary public ownership and control in order to ensure continuity of its critical functions, they should make provision to recover any losses to public funds from the FMI, its unsecured creditors (including FMI participants) or, if necessary, participants in the financial system more widely (see KA 6.5).

8. Cross-border cooperation (KA 7)

8.1 The legal framework should not provide for the automatic revocation of any licenses, authorisations, recognitions and legal designations of an FMI necessary for the continued performance of the FMI's critical functions in resolution, including its recognition for the purposes of the application of relevant settlement finality rules, or automatically restrict, suspend or terminate its participation in or links with other FMIs, as a result of official intervention or its entry into resolution in another jurisdiction.

9. Cooperation, coordination and information sharing (KA 8, 9, 12)

9.1 Crisis Management Groups (CMGs) or other arrangements based on the cooperative arrangements maintained under Responsibility E23 that achieve an equivalent outcome should be maintained for all FMIs that are systemically important in more than one jurisdiction, as determined by the oversight or supervisory authorities and resolution authorities in those jurisdictions.

9.2 For any such FMI, the CMG (or equivalent arrangement) should include the resolution authorities responsible for the FMI, the authorities that participate in the cooperation

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[23] Responsibility E of the Responsibilities of central banks, market regulators and other relevant authorities for financial market infrastructure, CPSS-IOSCO (2012) *Principles for Financial Market Infrastructures*, April, section 4:

arrangements adopted in accordance with Responsibility E and other relevant authorities, of the jurisdictions where the FMI has operations that are material to its resolution.

9.3 The requirement for institution-specific cross-border cooperation agreements (KA 9) may be met by crisis coordination and communication agreements, protocols or MoUs adopted in accordance with Responsibility E, provided that those arrangements are adapted, amended or supplemented where necessary to support the cooperation, coordination and information sharing needed to carry out the functions relating to recovery and resolution that are specified by the Key Attributes. In particular, they should:

(i) provide for the resolution authority and other authorities that do not participate in the arrangements adopted under Responsibility E (for the purposes of regulation, supervision or oversight of the FMI) to participate in planning, preparing for and carrying out resolution of the FMI;

(ii) define the roles and responsibilities of the authorities involved in planning, preparing for and carrying out resolution;

(iii) include arrangements and procedures for sharing information necessary for the purposes of planning, preparing for and carrying out resolution; and

(iv) include institution-specific details regarding the implementation of the resolution measures set out in the resolution plan for the FMI.

10. Resolvability assessments of FMIs (KA 10)

10.1 Systemically important FMIs within the scope of this guidance (see Section 2) should be subject to regular resolvability assessments that are conducted in accordance with KA 10 and I-Annex 3.

10.2 In the case of an FMI that is systemically important in more than one jurisdiction, the resolvability assessment should be carried out by the home resolution authority of the FMI and coordinated within the FMI's CMG or under an equivalent arrangement.

10.3 When conducting a resolvability assessment of an FMI, authorities should assess the feasibility and credibility of implementing the resolution strategy and operational resolution plan developed for the FMI, by assessing in particular:

(i) the likely implications for resolution (including the availability of funds to repay liquidity providers) of the implementation of the FMI's recovery plan, including of any rules and procedures for loss allocation or for the allocation of contracts;

(ii) technical and legal barriers to the transfer of the critical functions of the FMI to another entity, including those arising from the bespoke nature of the risk management and technical processes of individual FMIs;

(iii) where the resolution plan provides for transfer of the critical FMI functions to another entity or bridge institution, the robustness of any arrangements in place to facilitate the transfer and to maintain continuity, including of the legal and technical arrangements, such as delivery-versus-payments arrangements;

(iv) the impact of resolution strategies and measures set out in the operational resolution plan on FMI participants and on any linked FMIs, including the ability of participants and those linked FMIs to retain continuous access to the FMI's critical functions during the resolution;

(v) the ability of the FMI in resolution or of a successor entity or bridge institution to which critical FMI functions have been transferred to maintain access to the services of any linked FMIs and other service providers during the resolution;

(vi) the rights and obligations of linked FMIs in the event of the failure of one of those FMIs that could affect the conduct of resolution and the ability to maintain enforcement rights over collateral; and

(vii) any interoperability agreements and cross-margining or loss-sharing arrangements with other FMIs.

10.4 The oversight, supervisory or resolution authorities for FMIs should have powers to require an FMI, to adopt measures consistent with the legal framework to improve the resolvability of the FMI including, where necessary and appropriate:

(i) operational, structural or legal changes so that different FMI functions or services (for example, the clearing of different products) can be dealt with separately in resolution;

(ii) changes to the terms or operation of its links with other FMIs; and

(iii) changes to delivery, segregation or portability arrangements of participants' positions or related collateral.

Any such requirements should take due account of the likely effects of such changes on the soundness of operations of the FMI, including its risk management, the functioning of markets, the provision of liquidity, and the incentives of direct and indirect participants to use the FMI.

11. Recovery and resolution planning for FMIs (KA 11)

11.1 FMIs that are systemically important should be subject to a requirement for ongoing recovery and resolution planning.

11.2 Recovery and resolution plans need to be tailored to the specific risks and systemic implications that a particular type of FMI may be exposed to or create.

Recovery plans

11.3 FMI recovery plans should be consistent with the CPSS-IOSCO Principles for Financial Market Infrastructures (including Principle 3, key consideration 4) and take into account the guidance in the CPMI-IOSCO report on Recovery of financial market infrastructures.[24]

Resolution strategies and plans

11.4 Resolution authorities for an FMI should, in cooperation with the FMI's oversight or supervisory authorities (where distinct from the resolution authority), develop resolution strategies and operational plans to facilitate the effective resolution of the FMI in a way that ensures continuity of the critical functions carried out by the FMI.

11.5 In the case of an FMI that is systemically important in more than one jurisdiction, the resolution strategy and plan should be developed by the home authority of the FMI and coordinated within the FMI's CMG or equivalent arrangements.

11.6 Resolution plans for FMIs should:

(i) contemplate scenarios where some or all existing loss allocation arrangements between participants under the FMI rules have been fully or partially put into effect or not implemented;

(ii) contemplate scenarios where there may be no existing alternative provider to which the critical functions of an FMI can be transferred in the short term;[25]

(iii) consider and address the potential technical and legal barriers to a transfer of FMI functions;[26]

(iv) where necessary to ensure continuity of the FMI's legal and technical arrangement and support the transfer of its functions, provide for advance agreement with other FMIs or relevant service providers;

(v) take into account the legal mechanism by which collateral is provided, including whether collateral is provided as a security interest or pledge or by way of title transfer, the status of that collateral in insolvency (that is, whether it could be considered 'bankruptcy remote'), and the implications of that status for the extent to which losses can be imposed under loss allocation rules of the FMI and the exercise of statutory powers;

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24 See footnote 15.

25 For many FMIs there will, in the short term, be no alternative providers of its critical functions to which operations can be transferred.

26 Practical challenges (such as IT incompatibility) may make a transfer difficult unless the alternative provider is willing and able to take over the failing FMI's operations in their entirety and run them separately until they can be integrated. Where an alternative provider exists, FMIs and resolution authorities should therefore consider in advance the potential technical and legal barriers to the transfer of activities and seek to address them.

(vi) consider whether assets pledged or available to the FMI would in fact be available for use in resolution or whether such use or the transfer of functions could be hampered or prevented by residual interests of direct and indirect participants in those assets;

(vii) if resolution measures would split netting sets, consider the impact of that splitting on liquidity and collateral requirements;

(viii) address how providers of liquidity to the FMI before and during resolution will be repaid;

(ix) take into account the structure of the FMI, for example, whether it is part of a broader group of FMIs, and the different legal and regulatory regimes under which it operates;

(x) address any need to maintain links with other FMIs (both domestic or in another jurisdiction) that are necessary for the continuity of critical FMI services in any relevant jurisdiction; and

(xi) take into account the impact on direct and indirect participants.

11.7 Resolution plans for FMIs should contain the essential elements set out in I-Annex 4 to the *Key Attributes* and include in addition, as appropriate to the type and specific characteristics of each FMI and its critical functions, the following elements in particular:

(i) draft transition agreements that would allow the FMI to continue to provide uninterrupted critical services on behalf of a purchaser or bridge institution using existing staff and infrastructure or, where it is not possible to develop such draft agreements in advance, an issues list and the information necessary to draw up such an agreement at short notice; and

(ii) key information on the critical operations, IT procedures, creditors and list of key staff and service providers necessary to facilitate the continued operation of critical functions in resolution or the transfer of some or all of the operations to another FMI or bridge institution.

12. Access to information and information sharing (KA 12)

12.1 In order to facilitate the implementation of resolution measures, FMIs should be required to maintain information systems and controls that can promptly produce and make available, both in normal times and during resolution, relevant data and information needed by the authorities for the purposes of timely resolution planning and resolution, in particular, on the following:

(i) FMI rules, default fund and other loss allocation arrangements;

(ii) stakeholders, including the FMI's direct and indirect participants, owners, settlement agents, liquidity providers, linked FMIs, custodians and other service providers;

(iii) data and information needed for effective and timely risk control during resolution, including gross or net exposures or risk and margin requirements, where appropriate, between the FMI and each participant;

(iv) the status of obligations of FMI participants (for example, the extent to which FMI participants have fulfilled their obligations to make default fund contributions);

(v) links and interoperability arrangements with other FMIs, including exposures to and collateral provided to and received from linked FMI;

(vi) the location of participant collateral, the arrangements under which it is held and any rights of use or rehypothecation that have been exercised in relation to collateral; and

(vii) netting arrangements, so that authorities can assess the impact of possible transfers of part of the business of an FMI on participants' netting rights).

12.2 Oversight, supervisory and resolution authorities should take into account the impact of any contractual agreement between an FMI, its direct participants and, where relevant, its indirect participants on the information available on the positions or flows of indirect participants.

II. Resolution of FMI participants

The Preamble to the *Key Attributes* states that an effective resolution regime should ensure continuity of systemically important financial services and payment, clearing and settlement functions. FMIs play an important role in the resolution of any of their participants and should endeavour to minimise disruption caused by the failure of a participant to any such functions that are provided by the FMI. To resolve a failing firm in a manner that maintains continuity of its critical functions, it is necessary that the firm in resolution (or a successor firm[27]) can continue to rely on services provided by FMIs in which it participates, as long as it promptly performs its margin, collateral or settlement obligations that arise under a financial contract or as a result of its participation in the FMI. It is important that FMIs' rules and procedures adequately address circumstances where FMI participants enter resolution, and that the resolution plans for FMI participants are compatible with the rules and procedures of the FMIs in which they participate.

This guidance sets out certain objectives as regards resolution planning for FMI participants and FMI rules and procedures to ensure consistency with and support for actions by a resolution authority to manage the failure of a participant that could be systemically significant or critical if it fails.

1. Rules and procedures governing a participant's default

1.1 Jurisdictions should ensure that the participation requirements and rules and procedures of an FMI governing a participant's default (see Principle 13 of CPSS-IOSCO Principles for Financial Market Infrastructures) ("FMI rules") are not likely to hamper unnecessarily the orderly resolution of participants in the FMI.

1.2 The entry into resolution of an FMI participant or use of a resolution tool should not lead to an automatic termination of its participation in the FMI. Jurisdictions should ensure that laws and regulations applicable to FMIs should not prevent FMIs from maintaining the participation of a firm in resolution provided that the safe and orderly operation of the FMI is not compromised. FMI rules should provide the FMI with sufficient flexibility to cooperate with the resolution authority of the FMI participant in order to prepare for and implement an orderly resolution in a way that does not increase risk to the FMI, its risk management or its safe and orderly operations.

1.3 To support the continuity of critical functions of a participant in resolution, FMI rules should:

(i) allow for a firm or a successor entity to maintain its participation during a resolution process, subject to adequate safeguards to protect the continued safe and orderly operations of the FMI, including the condition that the firm or successor entity continues to meet payment and delivery obligations when due and comply with any other obligations of participants under the rules of the FMI;

[27] This may include a bridge institution or a private sector entity to which to functions of the firm in resolution have been transferred.

(ii) facilitate, for example, through a fast-track application process, the participation of a third party successor or bridge institution that assumes particular functions or positions of the failing firm, subject to the maintenance of adequate risk control standards; and

(iii) facilitate, where appropriate, the transfer of positions of the clients of a participant in resolution to other participants in the FMI.

2. Resolvability assessments of FMI participants (engagement of resolution authorities with FMIs)

2.1 As part of resolution planning and resolvability assessments for firms that are FMI participants, resolution authorities should engage regularly with the FMIs in which those firms are participants in order to have a clear understanding of:

(i) the implication of the application of resolution tools on the firm's FMI membership (including circumstances where resolution leads to a change of control of the participant);

(ii) the conditions that the firm needs to meet to maintain its participation in the FMI, such as requirements to contribute to default funds, liquidity commitments, payment and settlement obligations (including collateral and margin);

(iii) the implication for the risk management of the FMI and for its other participants of continued participation in the FMI of a participant in resolution;

(iv) the conditions for a bridge entity or another firm to which functions of the firm in resolution would be transferred to participate in the FMI and the time any application process would take;

(v) the technological changes needed to implement the resolution measures, for example, transfer or integration of IT systems, and the preparations needed to facilitate the rapid execution of such transfer or integration;

(vi) the operational arrangements necessary to ensure that all of the firm's obligations to the FMI, including margin, collateral and settlement obligations, are met as they fall due, including on the day the firm enters into resolution whether by the firm directly or by the resolution authority on behalf of the firm;

(vii) the FMI's segregation and portability regime, where relevant and the implications for assets of clients of FMI participants to ensure that those assets are dealt with in a way consistent with domestic laws and regulations;

(viii) the process for and consequences of termination of membership and its impact on other participants, any linked FMIs and the operations of the FMI;

(ix) the FMI's internal governance policies and policies for communication in a crisis;

(x) the FMI's procedures for evaluating the financial health of its participants;

(xi) the ability of the FMI to segregate information regarding the outstanding activity at and obligations to the FMI of a single participant and to report it promptly in an organised format to the resolution authority; and

(xii) the FMI's risk management protocols with respect to a participant that it determines to be in danger of default.

2.2 FMIs should be required as part of their contingency arrangements to test the effectiveness of their procedures if a major participant were to enter into resolution, including the conditions and requirements for continuing participation or admitting as a new participant in the FMI an entity to which that participants' activities have been transferred.

3. Temporary stay on early termination rights of FMIs

3.1 If a participant in resolution fails to meet any margin, collateral or settlement obligations to the FMI, the FMI should retain the right to exercise any acceleration or early termination rights that arise as a result of that failure.

3.2 The power for resolution authorities to impose a temporary stay on the exercise of contractual acceleration or early termination rights should apply to any such rights that are exercisable by an FMI that arise by reason only of the entry into resolution of, or the exercise of resolution powers in relation to, an FMI participant. Any such power should be exercised in relation to an FMI with due regard to the need to ensure that it does not compromise the safe and orderly operations of the FMI.

4. Potential impediments to resolvability

4.1 Resolution authorities should inform FMIs and the relevant authorities responsible for oversight or supervision of FMIs of any impediments arising from FMI rules and procedures that could affect the effective implementation of a resolution of an FMI participant. The oversight, supervisory and resolution authorities should consider whether rule changes (for example, introduction of carve-outs or exemptions in FMI rules or fast-track application processes) or other actions can be taken to address those reported impediments without compromising the risk management and safe operation of the FMI.

5. Provision of information by resolution authorities to FMIs

5.1 Resolution authorities should inform FMIs as soon as possible of the resolution of a participant, and if possible in advance of the firm's entry into resolution. Throughout the period that a participant is in resolution, authorities should provide the FMI with information about the participant or any bridge institution to which its functions have been transferred relevant to the continued participation of that firm or bridge institution in the FMI.

II-Annex 2: Resolution of Insurers

The *Key Attributes of Effective Resolution Regimes for Financial Institutions* (the '*Key Attributes*', KAs) state that any financial institution that could be systemically significant or critical if it fails should be subject to a resolution regime consistent with the *Key Attributes*.

The systemic impact of an insurance failure can materialise in various ways, including through contagion (where policyholders or markets consider that similar problems may exist in similar products from other insurers) and financial links (for example, in the derivatives markets), and may have an impact on the broader economy through a failure to make good on promises to policyholders or to engage in new transactions that would foster economic activity.

The general assumption is that traditional insurance activities and even some non-traditional insurance activities that are no longer viable will typically be resolved through run-off and portfolio transfer procedures. It may not be possible, however, to rely on these tools in all circumstances, and particularly in those cases in which the business model is complex or there is no corresponding market for portfolio transfers. Run-off and portfolio transfer tools may not, for example, be sufficient to mitigate the systemic impact of a sudden deterioration in the viability of a larger, complex insurance group engaging in other non-traditional insurance and non-insurance activities that may involve some degree of bank-like leverage and maturity transformation. Insurance or reinsurance companies, groups and conglomerates that could be systemically significant or critical if they fail (hereinafter collectively referred to as "insurers") should therefore be subject to resolution regimes that meet the standard set out in the *Key Attributes.* Consistent with the scope of the *Key Attributes* set out in KA 1.1 the term "insurer" also includes holding companies and significant 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 insurers.

This Annex provides guidance on the implementation of the *Key Attributes* in relation to resolution regimes for insurers. It supplements the *Key Attributes* by indicating how particular KAs, or elements of particular KAs, should be interpreted when applied to resolution regimes for insurers. The guidance on individual KAs should be read in conjunction with the KA to which it relates.[28]

1. Objectives

1.1 A resolution regime for insurers should meet the general objectives set out in the *Key Attributes* (Preamble and KA 2.3)[29]. It should make it feasible to resolve an insurer without severe systemic disruption or exposing taxpayers to loss, while protecting vital economic functions through mechanisms that make it possible for shareholders and unsecured creditors to absorb losses in a manner that respects the hierarchy of claims in liquidation. For insurers, the resolution regime should have as specific objective the

[28] 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.

[29] KA 2.3 provides that resolution authorities should have as their objectives both to pursue financial stability and to protect insurance policy holders. KA 2.3 does not rank the specific objectives and functions. The relative weighting and balancing of objectives may therefore vary according to the particular circumstances specific to the failing institution.

protection of policyholders, beneficiaries and claimants (collectively hereafter, 'policyholders'). This however does not mean that policyholders will be fully protected under all circumstances and does not exclude the possibility that losses be absorbed by policyholders to the extent they are not covered by policyholder protection arrangements.

2. Scope of resolution regimes

2.1 Any insurer that could be systemically significant or critical if it fails and, in particular, all insurers designated as Globally Systemically Important Insurers[30] ("G-SIIs"), should be subject to a resolution regime consistent with the *Key Attributes.*

3. Resolution authority[31]

3.1 As part of its statutory objectives and functions, the authority responsible for the resolution of insurers ('resolution authority') should exercise its resolution functions in a way that meets the relevant general objectives set out in the Preamble and KA 2.3 and the specific objective of protecting policyholders (see Section 1).

3.2 To achieve its objectives, the resolution authority should coordinate with applicable schemes for the protection of insurance policyholders ('policyholder protection schemes'). The respective mandates, roles and responsibilities of the resolution authority and policyholder protection schemes should be clearly defined and coordinated.

3.3 The resolution powers may be exercised by the resolution authority directly or through a special administrator, receiver, conservator or other official subject to the same objectives as the resolution authority.

4. Resolution powers

Entry into resolution (KA 3.1)

4.1 The resolution regime should set out clear standards or suitable indicators of non-viability to guide the decision as to whether an insurer meets the conditions for entry into resolution. Such standards or indicators should allow for timely and early entry into resolution when the insurer is no longer viable or likely to be no longer viable, and has no reasonable prospect of becoming so, and before it is balance-sheet insolvent. Suitable standards or indicators may include a determination by the supervisory authority, in consultation with the resolution authority (where the supervisory authority is not also the resolution authority) that, for example:

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30 An initial list of G-SIIs was published by the FSB on 18 July 2013. The group of G-SIIs will be updated annually and published by the FSB each November, starting from November 2014.

31 Consistent with KA 2.1 references to "resolution authority" include a reference to more than one authority where multiple authorities are responsible for exercising resolution powers under the resolution regime.

(i) The insurer is in breach of minimum capital, assets backing technical provisions, or other prudential requirements and there are not reasonable prospects of restoring compliance with these requirements;

(ii) there is a strong likelihood that policyholders or creditors will not receive payments as they fall due; and

(iii) recovery measures have failed, or there is a strong likelihood that proposed recovery measures will not be sufficient, to return the insurer to viability or cannot be implemented in a timely manner.

Choice of resolution powers

4.2 Resolution authorities should have at their disposal a broad range of resolution powers, but should in each case only use those powers that are suitable and necessary to meet the resolution objectives. The choice and application of the resolution powers provided for in KA 3 should take into account insurance specificities and, in particular, the types of business the insurer engages in and the nature of its assets and liabilities. Before the exercise of other resolution powers, the resolution authorities should consider whether the resolution objectives (see section 1) can be effectively achieved through ordinary run-off, or portfolio transfer procedures.

Control, manage and operate the insurer or bridge institution (KA 3.2 (i, ii, iii and iv))

4.3 Resolution authorities should have power, directly or indirectly, over an insurer in resolution (see section 3.3) or the bridge institution, so that the insurance business or parts of it can be carried on and the insurer or bridge institution can, where appropriate:

(i) continue to fulfil in whole or in part existing obligations under contracts of insurance;

(ii) permit the exercise of options under existing contracts of insurance, including the surrender or withdrawal of contract cash value and the payment of further premiums provided for under the existing contracts; and

(iii) buy reinsurance (or retrocession) coverage.

Restructuring of liabilities (KA 3.2 (iii))

4.4 The resolution authority should have the power to restructure, limit or write down liabilities, including insurance, reinsurance and other liabilities, and allocate losses to creditors and policyholders in a way consistent with the statutory creditor hierarchy, subject to the safeguards set out in KA 5. Powers to restructure liabilities, as appropriate and in a manner consistent with the jurisdiction's legal framework (see Section 5), may include but are not limited to the following:

(i) reducing or terminating future (or contingent) benefits and guarantees, such as the sum assured or the annuity provided, or the guaranteed minimum sum

assured or the guaranteed annuity rate, in a manner that allocates losses as appropriate to policyholders whilst maintaining continuity of insurance coverage and payments falling due;

(ii) reducing the value of contracts upon surrender, where insurance contracts have a surrender value to enable losses to be imposed as appropriate on policyholders that seek to surrender their contracts;

(iii) terminating or restructuring options provided to policyholders, for example as part of a deferred or variable annuity contract;

(iv) settling crystallised and contingent insurance obligations[32] by payment of an amount calculated as a proportion of estimated present and, if possible, future claims, to provide a more rapid and cost-effective resolution where future claims are uncertain and run-off is not feasible or there is not time to carry out a detailed actuarial valuation; and

(v) reducing the value of, or restructuring reinsurance contracts issued by the firm, for example by imposing limits on a policy, to allow losses to be imposed on cedants, as appropriate and where this does not compromise financial stability.

4.5 The resolution authority should be able to exercise powers to restructure liabilities, subject to the safeguards set out in KA 5, without a requirement of prior individual notification to and consent from creditors, including policyholders. It should be able to exercise the powers effectively and in a way that binds unknown policyholders where:

(i) claims have not yet arisen;

(ii) claims have arisen but have not yet been notified;

(iii) claims have arisen, been notified, but not yet been estimated; or

(iv) the identity of policyholders is not known (for example because cover has been written through third parties and the claim investigation has not progressed to the point whereby all relevant parties have been identified).

Portfolio Transfer (KA 3.2(vi) and 3.7(i))

4.6 Resolution authorities should have the power to transfer contracts of insurance and reinsurance, including the power to vary or reduce the value of those contracts transferred subject to the applicable laws in each jurisdiction.

4.7 Resolution authorities should have the power to transfer any reinsurance associated with the transferred policies without the consent of the reinsurer subject to adequate safeguards.

[32] This includes obligations under inwards reinsurance contracts.

Power to suspend insurance policyholders' surrender rights

4.8 In order to achieve an effective resolution, the power of the resolution authority to suspend policyholders' rights in resolution should extend to the ability to temporarily restrict or suspend the rights of policyholders to withdraw from their insurance contracts with an insurer. The exercise of the power, its scope of application, and the duration of the stay should be appropriate to the nature of the insurance product (for example, the different nature of life and non-life insurance).

4.9 The resolution authority should, subject to adequate safeguards, have the power to stay rights of reinsurers of an insurer or of another reinsurer in resolution to terminate or not reinstate coverage relating to periods after the commencement of resolution.

5. Safeguards

Respect for hierarchy of claims in liquidation (KA 5.1)

5.1 The position of policyholders in the creditor hierarchy should be consistent with the objective of policyholder protection.

Pari passu principle (KA 5.1)

5.2 The resolution authority should have the flexibility to depart from the general principle of equal (*pari passu*) treatment of creditors of the same class and treat policyholders of different types of policies or policyholders (for example, policyholders covered by a policyholder protection scheme versus policyholders not covered by policyholder protection schemes) differently in a resolution, including in run-off or wind down proceedings, if necessary to maximise the value for creditors (including policyholders) as a whole - subject to the "no creditor worse off" safeguard (KA 5.2) - or to minimise the potential systemic impact of a firm's failure. There should be no differential treatment of policyholders holding the same type of product or policies.

6. Funding resolution

6.1 Jurisdictions should have in place privately-financed policyholder protection schemes or resolution funds that can assist in:

(i) securing continuity of insurance coverage and payments by the transfer of insurance policies to a bridge insurer or other insurer or use of any other resolution powers; and

(ii) compensating policyholders for their losses in the event of a wind-up or liquidation.

7. Crisis Management Groups (CMGs) and Cooperation Agreements (COAGs)

7.1 Crisis Management Groups (CMGs) and institution-specific cooperation agreements (COAGs) should be maintained or developed for G-SIIs. They can build upon existing supervisory colleges and cooperation agreements.

8. Resolvability assessments

8.1 Any insurer that could be systemically significant or critical upon failure, and at a minimum all G-SIIs, should be subject to regular resolvability assessments that are conducted in accordance with KA 10 and I-Annex 3.

8.2 In undertaking a resolvability assessment to evaluate the feasibility and credibility of implementing the resolution strategy and operational resolution plan developed for the insurer, resolution authorities, in coordination with other relevant authorities, should assess in particular whether the chosen resolution strategy ensures the continuity of critical functions and can be implemented without severe systemic disruption and without exposing taxpayers to loss.

8.3 The assessment of the feasibility of the resolution strategy should cover as appropriate:

(i) the likely availability of a transferee or purchaser for any business activities of the insurer in resolution, taking into consideration the ability to use a bridge institution to operate the business on a temporary basis;

(ii) the time needed to evaluate policyholder liabilities and the assets supporting, backing or to be transferred as consideration for assuming the liabilities, and for a potential transferee to carry out due diligence;

(iii) the capacity of the policyholder protection scheme or resolution funds to fund a transfer where there are insufficient assets to resolve all insurance liabilities in a timely manner;

(iv) where the resolution strategy includes a solvent run-off, back-up plans to address the risk that the insurer will not remain solvent for the whole duration of the run-off;

(v) where the resolution strategy includes a run-off (whether solvent or insolvent), the feasibility of maintaining a risk management programme (such as a hedging strategy) which ensures that the risks to policyholders appropriately reflect the features of the policies they hold (including any options and guarantees).

(vi) the quality of management information systems and the capacity of the insurer to deliver detailed, accurate and timely information on the relevant data and information needed for the purposes of orderly resolution (see paragraph 10.1);

(vii) availability of human resources and key personnel (for example, staff may be employed by a different group entity);

(viii) the extent to which a sale, transfer, run-off or orderly wind down of different business activities can be accomplished (for example, whether the activities are sufficiently separable to be sold or transferred);

(ix) the extent to which corporate capital structures would permit a bail-in within resolution in accordance with KAs 3.5 and 3.6;

(x) the legal, operational and financial separateness of traditional insurance business from non-traditional insurance and non-insurance business;

(xi) the extent to which service agreements or outsourcing agreements that are necessary to ensure continuity of essential services and functions (for example, claims servicing), including services provided by entities in another jurisdiction, can be maintained in resolution;

(xii) the extent to which any interconnections or interdependencies between group entities through intra-group transactions (for example, reinsurance transactions, loans or letters of credit, collateral upgrades or other liquidity support provided to banking entities, guarantees or letters of support, cost sharing or profit and loss-sharing agreements among affiliates) and any interconnections or interdependencies with third parties affect the implementation of the resolution strategy;

(xiii) how contractual termination events (including cross-default) in financial contracts of the insurer are defined (for example, whether rating down-grades, restructuring or (solvent or insolvent) run-off if occurring in a single entity within the insurer (insurance group), could trigger early termination of contracts of other entities in the group; and

(xiv) the ability to fund the continued operations of critical functions and services, for example, ability to meet potentially increased demands to post collateral.

8.4 When assessing the credibility and overall impact of implementing the resolution strategy, consideration should be given to its effects on third parties and on financial stability in affected jurisdictions, including whether the resolution of the insurer would cause:

(i) a material adverse impact on economic activity as a result of any disruption to continuity of insurance cover and payment, which is likely to be greatest when insurance is a pre-requisite to day-to-day economic activity (for example, employers' liability, trade credit and transport liability insurance), where a disruption in insurance claims and benefit payments is likely to cause significant and widespread financial hardship to households and businesses, or where the insurer has a significant share of the market;

(ii) a lack of confidence in other insurers triggering a policyholder run, particularly where the insurers provide insurance that resembles on-demand savings products;

(iii) an adverse impact on the resolvability of insurance or other financial operations undertaken elsewhere in the group;

(iv) large investment losses for other financial institutions that could affect the insurer's capital resources;

(v) the termination of securities lending and reverse repo operations that could affect funding and liquidity for other parts of the financial system; and

(vi) an amplification of financial market disruption owing to the termination of financial guarantees or credit default swaps.

9. Recovery and resolution planning

9.1 All insurers that could be systemically significant or critical upon failure, and at a minimum all G-SIIs, should be subject to a requirement for an ongoing process of recovery and resolution planning.

9.2 Recovery and resolution plans (RRPs) need to be tailored to the specific risks and systemic implications that each insurer may be exposed to or create and take into account factors such as the types of business the insurer engages in, its derivatives transactions, intercompany guarantees, inter-affiliate support arrangements, risk pooling, shared services, risk management model and the nature of its assets and liabilities.

9.3 A key component of RRPs is a strategic analysis that identifies the insurer's critical functions and sets out the key steps to maintaining them in both recovery and resolution scenarios. Elements of such analysis should include identification of essential and systemically important functions, mapped to the legal entities in which they are conducted.

Recovery plans

9.4 Recovery plans should be developed on the basis of severe stress scenarios that combine adverse systemic and idiosyncratic conditions. They need to take into account insurance specificities such as the longer pay-out duration and the liquidity profile of insurers.

9.5 The insurer's supervisory authority should review the insurer's recovery plan and cooperate with the policyholder protection scheme and relevant resolution authorities, as appropriate.

9.6 In the case of G-SIIs, the review of the recovery plan should be carried out within the insurer's CMG.

9.7 Insurers should identify possible recovery measures and the necessary steps and time needed to implement such measures and assess the associated risks of implementation. The range of possible recovery measures could include:

(i) actions to strengthen the capital situation, for example, recapitalisations after extraordinary losses, capital conservation measures such as suspension of dividends and payments of variable remuneration;

(ii) triggering of contingent capital instruments;

(iii) possible sales of subsidiaries, portfolios of insurance contracts, or spin-off of business units;

(iv) changes to the reinsurance programme;

(v) changes to the investment strategy and hedging programme;

(vi) changes to business mix, sales volumes and product designs, including options to close books of business to new sales or business;

(vii) changes to underwriting and claims handling practices; and

(viii) modifications to contract terms and conditions, the level of charges, fees and surrender payments, the amount and timing of any discretionary benefits and the operation of discretionary incentives to renew contracts (such as 'no-claims discounts' or contract renewals without new underwriting).

9.8 An insurer in solvent run-off should be required to have a scheme of operations plan that sets out how all liabilities to policyholders will be met in full as they fall due and should include, for example, details on how expenses can be reduced as business volumes fall.

Resolution strategies and plans

9.9 In the case of G-SIIs, the resolution strategies and plans should be developed within the insurer's CMG.

9.10 Resolution plans for insurers should contain the essential elements set out in I-Annex 4, as appropriate to insurers in general and to the type of insurer, and include in particular the following:

(i) identification of policyholders that are protected by a policyholder protection scheme and policyholders that are not eligible for benefits from such schemes;

(ii) the actuarial assumptions used for calculating insurance liabilities and an independent actuarial valuation of the technical provisions (policyholder liabilities);

(iii) review of asset quality and concentration issues;

(iv) preparation of insurance portfolio transfers to the best extent possible, including a determination of the acceptability of assets to be transferred to any insurer assuming liabilities in a portfolio transfer;

(v) sources of funding;

(vi) provision for continuity or an orderly winding down of any derivatives portfolio;

(vii) details on a transfer of reinsurance, if any, and impact on coverage;

(viii) operational and practical arrangements for ensuring continuity of coverage and payment under insurance policies, and, where appropriate, a restructuring or termination of insurance policies;

(ix) identification of major counterparties and their interconnectedness with the insurer, and the impact that the failure of a major counterparty would likely have on the insurer;

(x) a communications and coordination strategy with insurance policy holder protection schemes and other authorities with a role in the resolution of an insurer, and

(xi) participation in financial market infrastructures.

10. Access to information and information sharing

10.1 Insurers that could be systemically significant or critical upon failure, including all G-SIIs, should be required to maintain information systems and controls that can promptly produce, both in business as usual and as the firm approaches resolution, the relevant data and information needed to establish and maintain a resolution strategy and operational resolution plan and to implement resolution measures in a timely manner. The following information, in particular, should be readily available:

(i) the number and type of insurance policies, the benefits due to each policyholder and the reinsurance in place;

(ii) details of eligibility for protection under policyholder protection schemes and the scope of protection for eligible policyholders;

(iii) insurance and financial products that could be prone to runs;

(iv) information on assets, especially assets backing the insurance liabilities, the fungibility of any surplus assets between jurisdictions in stressed conditions, and custodians of assets; and

(v) information about service agreements or outsourcing agreements that are necessary to ensure continuity of essential services and functions of the insurer.

II-Annex 3: Client Asset Protection in Resolution

This Annex provides guidance on the interpretation and implementation of the *Key Attributes of Effective Resolution Regimes for Financial Institutions* (the '*Key Attributes*', KAs) relating to elements in resolution regimes that are necessary to resolve a financial firm with holdings of client assets (hereafter "firm"). The *Key Attributes* state that the legal framework governing the segregation of client assets should be clear, transparent and enforceable during a crisis or resolution of firms and should not hamper the effective implementation of resolution measures (KA 4.1). Effective resolution regimes should allow for the rapid return of segregated client assets or the transfer to a performing third party or bridge institution of the client asset holdings.

This Annex supplements, and should be read in conjunction with, the *Key Attributes* in relation to any financial firm that directly or indirectly holds client assets and that could be systemically critical or important in the event of failure.[33]

National regimes for client asset protection vary significantly in the methods by which client assets are protected because such protection depends on the particularities of the laws defining property rights and resolution and insolvency regimes in each jurisdiction. Client asset protection regimes fall into a number of broad categories which have been classified by IOSCO as 'custodial regimes', 'trust regimes' and 'agency regimes,[34] based on the legal nature of the relationship between the firm and its clients with respect to client assets. Those differences are likely to affect the legal nature of the client's rights to its assets, the way in which those rights are protected by the regime and the treatment in insolvency. Moreover, the definition of a 'client asset' that is subject to a particular form of protection and rights for the client varies across jurisdictions.

Client assets are held by different types of firms in the course of different financial activities and services, including safeguarding, administration and custody, investment services and brokerage, prime brokerage and collateral taking in connection with other financial transactions. The regulatory classification of those different types of firms varies across jurisdictions.

The legal and contractual arrangements by which client assets are held and the permissible use, if any, of those assets by the firm or third parties may also differ depending on the type of firm holding the assets and the activities in question. For example, in some jurisdictions prime brokers have and exercise contractual rights to re-hypothecate and use some of the client assets that they hold. By contrast, custodians generally hold, administer and safeguard securities on behalf of clients.

The Technical Committee and, later, the Board of IOSCO have issued a number of reports pertaining to client asset protection: namely the Report on Client Asset Protection (August 1996);[35] the Final Report on Survey of Regimes for the Protection, Distribution and/or Transfer

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33 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.

34 IOSCO (2011), *Survey of Regimes for the Protection, Distribution and/or Transfer of Client Assets: Final Report*, March, Introduction, pp. 3-5.

35 IOSCO (1996), *Client Asset Protection*, August.

of Client Assets (March 2011);[36] and the Final Report on Recommendations Regarding the Protection of Client Assets (January 2014).[37] The recommendations and principles regarding standards of client asset protection, including those relating to safeguarding, administration, management, and the deposit of client assets in a foreign jurisdiction, waivers of client asset protection, rights of use and disclosure to clients are relevant to and support the guidance set out in this draft Annex. This draft Annex relies upon those IOSCO standards to specify in further detail how the principles in the Annex relating to the safeguarding and identification of client assets, use of assets and transparency to clients should be met.

Given the significant variations in national regimes for client asset protection, the draft guidance is intended to specify outcomes rather than prescribe methods or mandatory rules by which those outcomes should be achieved. Whatever national arrangements apply, client assets should be shielded - in a manner appropriate to those arrangements - from the failure of the firm and, to the extent possible, of any third party custodian.[38] The legal status of client assets and the clients' entitlement to them should not be affected by entry into resolution of the firm.[39]

1. Scope

1.1 This Annex applies to resolution regimes for firms within the scope of KA 1.1 that are holding client assets.

2. Objectives (Preamble and KA 2.3)

2.1 The resolution authority or an administrator in charge of the resolution of a firm with holdings of client assets should, in the exercise of its resolution powers, be guided by the following specific objectives related to the protection of those assets (in addition to the general objectives set out in KA 2.3):

(i) ensuring prompt access for the firm's clients to their assets through the continued functioning of the firm following stabilisation in resolution, the rapid return to the client of identifiable and segregated client assets or the transfer of the client asset holdings of that firm to a performing third party or bridge institution; and

(ii) avoiding adverse impacts that might arise from lack of access for clients to their assets.

2.2 The objectives related to protection of client assets should be reflected in the mandate and objectives of the resolution authority or of the administrator in charge of the resolution of the firm. They should be balanced with other objectives of the resolution authority or administrator, as appropriate in the circumstances of the specific case.

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36 IOSCO (2011), *Survey of Regimes for the Protection, Distribution and/or Transfer of Client Assets: Final Report*, March.

37 IOSCO (2014), *Recommendations Regarding the Protection of Client Assets: Final Report*, January.

38 Although it is generally possible to ensure that client assets placed with a third party are shielded from the failure of the third party, this is not always the case: for example, client money deposited in a bank could be affected by the failure of that bank.

39 In some jurisdictions, the fact that assets are held through and in the name of a financial intermediary does not alter the client's ownership interest.

3. Definition of client assets

3.1 For the purposes of this guidance, client assets should be interpreted broadly to include all assets that are treated as client assets and subject to protection as such under applicable national law or regulation. Typically, they are assets held by a firm (whether or not through a custodian) for or on behalf of a client in the course of or in connection with services provided by the firm to the client. Client assets typically include assets to which the client (or clients collectively) has (or have) a proprietary or similar right to the return of those assets,[40] subject to any right of the firm to those assets as collateral (for example, security interests, netting or set-off, as applicable). Client assets typically include:

(i) money held on behalf of or owed to a client by a firm that is classified as "client money" under applicable national law;[41]

(ii) financial instruments or other assets held for or on behalf of a client;

(iii) client collateral, that is, assets received from a client and held by a firm for or on behalf of the client to secure an obligation of the client (other than under a title transfer transaction, see paragraph 3.2 (iii)); and

(iv) assets and other (contractual) rights arising from transactions entered into by a firm on behalf of a client (for example, mark-to-market accruals arising from the change in value of futures and options positions).

3.2 For the purposes of this Annex client assets are not considered to include:

(i) deposits held by banks (as 'deposits' are defined for the purposes of the regulation of the activity of taking deposits under applicable law), unless the deposits held by a firm with a bank constitute customer funds under the applicable legal framework and are labelled as such;

(ii) assets held by an insurer or policyholder claims and rights in connection with insurance business; and

(iii) assets delivered in a full title transfer transaction, such as securities lending transactions, repurchase or reverse repurchase agreements, where neither the client nor clients collectively retain proprietary or similar rights to the assets.[42]

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40 Where the assets are held on dematerialised basis, the right might be to a quantity of a particular security referred to for example by its CUSIP (Committee on Uniform Security Identification Procedures) number or ISIN (International Securities Identification Number).

41 The classification and treatment of money held on behalf of, or owed to, a client varies between jurisdictions. In some jurisdictions, clients may have a direct ownership interest in segregated cash balances, and in this case the money is treated as "client money", and may be subject to specific forms of protection. In others, cash balances qualify as mere claims against a firm and as such would not be covered by this Annex.

42 This does not preclude jurisdictions from applying forms of client asset protection to such assets or client claims under national law. However, this Annex does not specifically address considerations relevant to the treatment of such assets or claims in resolution.

3.3 The legal framework should include clear and transparent rules on how:

(i) client assets are defined, including the classification of securities held for or on behalf of a client and (where applicable) client money; and

(ii) client assets are treated in the event of failure of the firm that holds the client assets either directly or indirectly (through one or more intermediaries or custodians).

4. Transfer powers in relation to client assets (KA 3.2(vi) and (vii) and KA 3.3) [43]

4.1 The powers set out in KA 3.2 (vi) and (vii) and KA 3.3 ("transfer powers") should extend to the transfer of client assets.

(i) In the case of client assets held by the firm in resolution, the resolution authority or an appointed administrator should have the power to transfer the assets and corresponding client contracts to a sound financial institution or bridge institution that, in either case, is capable of providing similar services (a 'qualified transferee'), as an alternative to returning the assets to the clients.

(ii) In the case of client assets held by a domestic affiliate of the firm in resolution, a similar approach should be possible if the viability of the group or domestic sub-group is affected.

(iii) In the case of client assets held by a third party custodian, the resolution authority should have the power to transfer the contractual rights and obligations between the custodian, the firm in resolution and its clients to the qualified transferee.

4.2 Transfer powers should enable the resolution authority to transfer entire business lines and related client assets to a qualified transferee and should not require the consent of affected clients.

4.3 The exercise of transfer powers should be subject to the relevant safeguards set out in KA 5.

4.4 The exercise of powers to transfer or achieve a rapid return of client assets should be supported, to the extent consistent with the national legal framework, by:

(i) expedited court approvals, where these are necessary (consistent with KA 5.4 and 5.5);

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[43] The use of transfer powers may vary according to whether the assets are held by the firm in resolution or by an unaffiliated third party custodian. In the former case, transfer from the firm in resolution (or rapid return of the assets to clients) is likely to be the most appropriate action. However, where the client asset holdings of a firm in resolution are held by a third party custodian, transfer of the assets is not likely to be necessary. The resolution authority may instead transfer the contractual rights and obligations between the firm in resolution and its clients to the successor firm or bridge institution. Separate considerations may apply if the assets are held by a firm that is affiliated to the firm in resolution, if the viability of the group is affected.

(ii) protection in law for resolution authorities, their employees or appointed administrators against liability for actions taken and omissions made while acting within their legal powers and discharging their duties in good faith;

(iii) the availability of investor protection or similar industry backstop funds to support transfers of client assets or to make advance payments of client funds and delivery of securities;

(iv) mechanisms for later adjustments to deal with disputed claims in relation to assets that have been transferred; and

(v) the ability of the resolution authority or appointed administrator to adopt pragmatic approaches to the transfer or return of client assets (for example, advance distributions, piecemeal returns, returning substitute assets).

5. Identification, safeguarding and segregation of client assets (KA 4.1)

5.1 Firms should be required to maintain effective arrangements, such as segregation, for the identification and safeguarding of client assets so that resolution authorities or administrators are able to identify quickly which assets are client assets and to ascertain the nature of claims and entitlements of individual clients to those assets, including with respect to client assets held in a holding chain.

5.2 Clients should be adequately informed about the way their assets are held, including the type of segregation and the existence of any holding chain, and the applicable client asset protections. That information should include in particular the effects of pooling of client assets in omnibus client accounts in the event of the insolvency of the firm or any custodian, how any shortfall in pooled assets will be allocated; and, where relevant, the fact that the regime for client asset segregation and protection may be different under foreign law, and that the client may not receive the same level of protection available under domestic law.

6. Securities financing transactions, re-hypothecation or use of client assets (KA 4.1)

6.1 Jurisdictions that permit securities lending by firms as agents for clients or re-hypothecation and use of client securities by the firm or third parties as principal should adopt clear frameworks governing those arrangements.

(i) Where a firm lends client securities as agent, it should keep adequate records of outstanding transactions, including counterparties, contract terms, legal documentation, collateral details and location of collateral. Those records should be sufficient to enable clients to unwind outstanding transactions to which they are principal or, in the event of resolution, to enable outstanding transactions to be transferred to a qualified transferee. Particular consideration should be given to ensuring that the firm holds adequate records of collateral allocation where securities collateral is held for multiple clients on a pooled basis and where cash collateral is reinvested on a pooled basis.

(ii) Where a firm re-hypothecates or otherwise uses client assets as principal, it should keep clear records of which client assets have been re-hypothecated or used. In particular, in order to facilitate resolution, it should be clear how the exercise of the right of use is recorded[44] and what quantity of assets can be re-hypothecated or used.

6.2 Where the legal framework permits securities lending, rights of use, re-hypothecation or similar arrangements in respect of client assets, it should require adequate disclosure to clients of the effects of such transactions on the protection of their assets and the nature of their legal claims in resolution.

7. Shortfalls in client assets and use of protection funds (KA 6)

7.1 Jurisdictions should have in place clear rules on how losses are shared between clients in the event of shortfalls in a pool of client assets. Their application should not unduly delay or prejudice the objective of a rapid return or transfer of client assets.

7.2 There should be clarity as regards the role of investor protection schemes and other guarantee schemes or funds supporting the transfer of client assets and addressing shortfalls.

7.3 When an investor protection scheme may also be used in connection with resolution measures, there should be safeguards to avoid an excessive depletion of the protection scheme for the financing of resolution measures not directly aimed at the protection of client assets.

8. Cross-border issues (KA 7)

8.1 Home and host resolution authorities should provide each other with the relevant information on:

(i) the operation of their domestic client asset protection regimes;

(ii) the resolution measures and other actions that can be taken at national level in the event of a firm's failure and their impact on the ownership status and the clients' rights in relation to the assets; and

(iii) available mechanisms to achieve a rapid return or transfer of client assets.

8.2 Jurisdictions should develop:

(i) cooperation arrangements that complement effective resolution strategies and plans and that facilitate a rapid return of clients assets held in their jurisdiction,

[44] For example, by debiting the account of the client and crediting the account of the collateral taker, or by a form of notification on the client account.

including procedures for timely recognition of the appointment of an administrator to a foreign firm with holdings of client assets in their jurisdiction; and

(ii) expedited mechanisms to give effect to transfers by a foreign resolution authority (acting directly or through a special administrator, receiver, conservator or other official) of client assets held in their jurisdiction, which may consist of the recognition of foreign transfers or the exercise of transfer powers by the local resolution authority or administrator to transfer such client assets or the contract between the foreign firm in resolution and a domestic intermediary that holds client assets on behalf of the foreign firm in resolution.

9. Resolution planning and actions to promote resolvability (KA 10 and KA 11)

9.1 Resolution planning for a firm holding client assets should consider the following:

(i) arrangements in place within or involving the firm that ensure that the identity of clients and their assets can be established rapidly;

(ii) the legal or procedural requirements for the transfer of client assets or of the contracts governing the holding of, or custody arrangements for, client assets;

(iii) the type of segregation and its impact on rapid return or transfer of client assets;

(iv) any re-hypothecation arrangements and rights of use that may be exercisable, and the impact of the exercise of such rights on the ability to transfer or recover and return assets;

(v) the scale of lending of client assets by the firm as agent, including the following features:

- the maturity structure of the book and how quickly it could be unwound,
- the liquidity of any cash collateral reinvestment and whether that could impede a rapid unwinding of the book,
- how any cash collateral is reinvested (for example, whether on a pooled or segregated basis),
- how any securities collateral is held (for example, whether on a pooled or segregated basis),
- the quality of the firm's records of outstanding securities lending transactions, particularly where collateral is held on a pooled basis, and
- what information is provided to clients and how frequently;

(vi) the effect of correlated failures on the resolvability of the firm, where a custodian, sub-custodian or other intermediary in the holding chain is an affiliate of the firm and is itself in resolution or insolvency;

(vii) where client assets are held in another jurisdiction, the effect of foreign law on the nature of the protection of client assets and their treatment in insolvency, to the extent necessary for resolution;

(viii) how shortfalls in client assets and resultant client claims are treated in the resolution and how losses to clients will be allocated;

(ix) the role of investor protection schemes or other guarantee schemes or funds to support transfers of client assets or to make advance payments of client funds and delivery of securities; and

(x) cooperation and information sharing arrangements with relevant foreign authorities to support the rapid return or transfer of client assets where those assets are held in a foreign jurisdiction.

9.2 To support the effective exercise of transfer powers, resolution authorities should have the power to require changes to a firm's business practices, information management systems and contractual arrangements relating to the holding and protection of client assets.

10. Information requirements and record keeping (KA 12.2)

10.1 In order to facilitate the rapid transfer or return of client assets, firms should be required to maintain information systems and controls that can promptly produce, both in normal times and during resolution, and in a format understandable by an external party such as a resolution authority or an administrator, information on the following:[45]

(i) the amount, nature and ownership status of client assets held directly or indirectly by the firm;

(ii) the identity of the clients;

(iii) the location of the client assets, how the assets are held (that is, by the firm, an affiliate or third party custodian or sub-custodian) and the identity of all relevant depositories;

(iv) the terms and conditions on which the client assets are held, including contractual arrangements between the firm and the client and any third party holding the client assets;

[45] Record keeping requirements should be guided by the IOSCO Recommendations Regarding the Protection of Client Assets.

(v) the type of segregation ("omnibus" or "individual"), if applicable, at all levels of a holding chain and the effects of the segregation on the clients' ownership rights;[46]

(vi) the applicable client asset protections, in particular where client assets are held in a foreign jurisdiction and will be subject to the client asset protection and resolution or insolvency regime of that foreign jurisdiction, and any waiver, modification or opting out by the client of the client asset protection regime (where permitted by the applicable regime);

(vii) the ownership rights of the clients and any potential limitations to those rights, including the existence of liens or other encumbrances that may affect the return of such assets or their value to clients, and the firm's obligations with respect to the client assets;

(viii) the existence and exercise of any rehypothecation or rights of use by the firm, including details of the assets that have been re-hypothecated or used and the legal consequences of the exercise of those rights on the clients' rights over those assets; and

(ix) outstanding loans of client securities arranged by the firm as agent, including details of counterparties, contract terms and collateral received on behalf of the clients.

11. Impediments to orderly resolution

11.1 Resolution authorities should inform the relevant supervisory authorities if their resolvability assessments indicate that that client asset protection regime could impede orderly resolution and the rapid return or transfer of client assets. Supervisors should consider appropriate modifications to that regime or other actions to address the reported impediments.

[46] In some jurisdictions, segregation of client assets from the firm's proprietary assets may directly affect the clients' rights to the assets. In others, segregation does not affect those rights, but facilitates identification and recovery of client assets.